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Prison and Prison Reforms in India

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ABSTRACT

All men are created equal and are given certain fundamental human rights by their maker. These rights primarily include the rights to life and liberty, but if a person violates societal ethics, that person's rights are revoked and he or she is subjected to appropriate punishment. Many analysts feel that one of the primary goals of prisons is to reintegrate convicts into society.

A modern prison organization's three core functions are custody, care, and treatment. For nearly a century, there was a strong emphasis on custody, which was thought to be dependent on excellent order and discipline. The goal of prison discipline was to make incarceration less appealing.

As a result, the basic premise of jail treatment was rigorous punitive labour with no respect for human characteristics and severe punishments. More than 40 prison offences were included in several States' jail manuals, and any infraction was met with a slew of brutal punishments.

The goal of jail gradually shifted from simply deterrence to discouragement and rehabilitation. This resulted in the abolition of some of the most heinous punishments and the establishment of a system of rewards for excellent work and behaviour in the form of remission, sentence reviews, wages for prison labour, open-air therapy, parole, furlough, and canteen facilities, among other things.

Keywords: Prison, Reforms, India

I. INTRODUCTION

Punishment is symbolized by incarceration. It contributes to the reduction of crime by removing criminals from society. It is a correctional facility where offenders can be reformed and rehabilitated. In the State List of the Seventh Schedule, India's Constitution includes the concepts of "prison" and "police and law and order." There is no responsibility on the part of the central government.

All civil societies have a primary function of punishing offenders. Throughout history, detention facilities have been documented. The presence of penitentiaries can be traced back to an earlier period. It was hoped that complete disconnection and incarceration would force

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the guilty parties to change their ways. Nonetheless, experience painted a false picture of this urge, and standard detention had the opposite effect. With the development of social sciences, it became clear that incarceration alone would not suffice to renew alleged perpetrators.

Reforms in the judiciary and justice system, as well as police and prison reforms, are all part of criminal justice reform. Despite the fact that all three reforms are equally important to society as a whole, prison reform goes unrecognized in most countries, including India. This is why it is said that prison serves as a recruiting ground for the criminal army.

The occurrence of prisons can be attributed directly to ancient times. Originally, it was thought that strict seclusion and custodial provisions would be enough to reform the violators. It will eventually be replaced by the modern idea of public safeguard.

II. INDIAN PRISONS BEFORE INDEPENDENCE

The evolution of India's prison system reflects shifts in society's response to crime over time. From the beginning, India had a well-organized prison system to prevent offenders from committing crimes again.

(A) Prisons in ancient India

Death penalty, hanging, whipping, beating, branding, disfigurement, starvation to death, and isolation were all recognized modes of punishment in India during Hindu and Mughal rule². During this time, there was a strong focus on the divine side of life and consciousness. Prisoners were exposed to ill-treatment, brutality, and rigorous monitoring as a result of these methods of punishment.

(B) Prisons in British India

During the British rule in India, the first steps toward prison reform were taken. The Government of India established the Prison Enquiry Committee in 1836, which recommended that the practise of prison inmates operating on road infrastructure be abolished. The Inspector-General of Prisons was designated in 1855 to establish order amongst these inmates and penitentiary officials. The second Prison Enquiry Committee was established in 1862 to investigate the unhygienic environments in jails³. It also raised questions about the need for appropriate convict food, apparel, and basic healthcare.

² Corner, L., 2021. *Reforms in Indian Prison System - Backgrounds, Problems And Judicial....* [online] Law Corner. Available at: <<https://lawcorner.in/reforms-in-indian-prison-system-backgrounds-problems-and-judicial-pronouncement/>> [Accessed 27 July 2021].

³ *Ibid*

Health facilities were improved in 1866, and better amenities were issued to the female prisoners to prevent them from disease. The Prison Act of 1894 was established to ensure uniformity in India's prison system. The Act gave existing regions the authority to enact their own rules for prison administration. Solitary confinement was also annulled and prisoners were categorized into smaller sections. Numerous efforts were made to separate juvenile offenders from adult offenders during the time period of 1907.

(C) Indian Jail Reform Committee, 1919-20

Sir Alexander Cardew, the chairman of the Indian Jail Reforms Committee, was appointed to suggest prison reforms in 1919-20. The Committee emphasised the importance of a rehabilitative strategy to prisoners and urged against the use of physical punishment in prisons. It emphasised the importance of productive activity for prisoners in order for them to make a decent living. It was also stressed that every prison's maximum capacity should indeed be determined based on its form and structure.

The goals of 'prison labour' have changed over the years. The Indian Jail Reforms Committee of 1919-20 strongly advised that the primary goal of prison labour just be protection of more criminal act through the reformation of lawbreakers, for which they should be taught modern techniques of work and be able to make a living wage upon discharge. The other goals were to keep violators actively involved in order to avoid psychological harm and also to allow them to share the burden of their sustenance.

Prisoners were assigned work based on their nutrition, the duration of their sentence, previous experiences of a commerce, and the exchange that would most probably include a decent salary upon release. Punitive labour, such as manual oil extraction, was annulled after independence, and more beneficial initiatives were initiated, such as co-training offenders as technicians.

Throughout the last thirty years, a few progress has been put to recruit prisoners, primarily from the agricultural community, in advanced agricultural and animal husbandry methodologies, but due to a lack of property, only small advancement has been achieved⁴.

Payment of wages to prison inmates was initially opposed on the grounds that they were already a financial burden on the government. Gradually, the need for some form of motivation for prisoners became apparent, and it was decided that a financial incentive would stimulate interest in the subject and provide the necessary incentive, especially if the prisoner could spend the income on himself or his relatives. Following independence, prisoners in some open prisons

⁴ Criminal Law Review. 2021. *Prison Reforms in India - Criminal Law Review*. [online] Available at: <<https://crlreview.in/prison-reforms-in-india/>> [Accessed 27 July 2021].

are paid market wages, from which they pay the State their maintenance costs. There is a growing awareness that a more libertarian wage system would provide more incentive for higher and better manufacturing.

III. INDIAN PRISONS AFTER INDEPENDENCE

The modern Indian prison system is a comprehensive facility for the treatment and transformation of prisoners, with a focus on providing services such as medical care, academic and vocational coaching, community work, so on and so forth.

(A) The Pakwasa Committee, 1949

The Pakwasa Committee agreed to use inmates as roadworkers in 1949, and wages were paid for their efforts. In addition, in 1949, a Model Jail was established in Lucknow, where inmates were required to work on handloom machines and also other domestic markets.

(B) All India Jail Manual, 1957

In 1957, a committee was formed to draught an All India Jail Manual based on recommendations provided by Dr. W. C. Reckless, a United Nations technical expert on crime prevention and treatment of criminals, who emphasized the use of rehabilitative techniques such as probation and parole to lighten the stress on jails.

(C) Central Bureau of Correctional Services, 1961

Another significant advancement was the establishment of a Central Bureau of Correctional Services at the federal level in 1961 (later renamed the National Institute of Social Defense in 1975). This was the first central organisation to incorporate social safeguard research, planning, documentation, and so on, as well as to assist and advise states on issues relating to social security.

(D) Mulla Committee, 1980

Justice A.N. Mulla was authorised by the Indian government to head an All India Jail Reforms Committee in 1980. The Committee suggested that a National Prison Commission be established to modernise India's prison system. It emphasised the need to resolve the current jail administration dispute at the federal and state levels. Mulla Committee recommended that an all-India service called the Indian Prisons and Correctional Service be established for the training and development of prison authorities, so that the prison staff can be adequately trained into various cadres. The different sections of violators were suggested for separation by the Committee as follows:

- Different jails for those awaiting trial.
- Women's prisons are separate from men's prisons.
- Juveniles and young offenders have their own institutions.
- Violent offenders are housed in high-security jails.

The Committee's primary objective was to evaluate the legislations, guidelines, and rules with the overall aim of maintaining social system and rehabilitating violators in mind⁵. To establish the Indian Prisons and Correctional Service as an all-India service for the recruitment of prison authorities. Upon, recovery, and parole should all be included in a prisoner's benefits package.

(E) Krishna Iyer Committee, 1987

The Indian government assigned the Justice Krishna Iyer Committee to investigate the situation of female inmates in India in 1987. It has recommended that more females be enlisted in the police department because of their unique role in dealing with women and children criminals⁶. In the Code of Criminal Procedure, a new Section 436-A was added, which states that if an under-trial convict has been detained for a time equal to one-half of the maximum period of imprisonment specified for that offence, he may be discharged by the Court on his personal bond, with or without sureties.

(F) The Repatriation of Prisoners Act, 2003

The Repatriation of Prisoners Act, 2003 was enacted by the Indian government in order to facilitate the transfer of prison inmates from India to some other nation and region. According to the Act, the Indian Government is responsible for arranging the transfer of a prisoner who is serving a term of imprisonment imposed by a Criminal Court order. Both countries have signed the transfer agreement, but it will only become effective after both countries have ratified it.

(G) Model Prison Manual, 2016

In 2013 and 2016, the National Crime Records Bureau drafted a Model Prison Manual, which is a comprehensive document that covers topics such as incarceration management, basic healthcare, education in jails, legal assistance, skills courses, computerization, and technical training courses, among others. In the Inhuman Conditions in 1382 Prisons case, the Supreme Court ordered that the Department of Justice investigate various elements of jail reform across the country and provide solutions. Filling vacancies for prison staff, preparing manuals for prison authorities, and encouraging open jails were among the different aspects described by

⁵ *Supra* note at 4

⁶ *Ibid*

the Court.

Committee under the chairmanship of Director General, Bureau of Police Research and Development (BPR&D), 2005

This Committee used the Justice Mulla Committee Report and the Justice Krishna Iyer Committee Report to make a number of new and additional recommendations. A National Policy on Prison Reforms and Correctional Administration was also drafted in 2007.

(H) National Policy on Prison Reforms and Correctional Administration, 2007

Adding prisons to the concurrent list and amending the constitution to include concepts of prison management and treatment of under trials under the Directive Principles of State Policy. The enactment of a unified and comprehensive law on prison issues. Each state and UT will have their own Department of Prisons and Correctional Services. All the above provisions were drafted in policy⁷.

(I) Justice Amaitava Roy panel on prison reforms, 2020

This panel was appointed by the Supreme Court in 2018. The committee's report was released in February 2020⁸, and it included several key suggestions. They are as follows:

1. for overcrowding

Petty offences should be dealt with in dedicated fast-track courts. The ratio of lawyers to inmates should be at least one lawyer for every thirty inmates.

2. for understaffing

The Supreme Court should issue orders to begin the hiring process for open positions. For trials, video conferencing must be used.

3. for prisoners

Every new convict must be entitled to one free telephone conversation each day to his family members to help him get during his first week behind bars. Other sanctions must be investigated.

IV. CURRENT SCENARIO

According to NCRB data from 2019, India has 1350 operational jails with a total capacity of approximately 4 lakh inmates; however the actual number of inmates is 4.78 lakh. Women

⁷ ForumIAS Blog. 2021. *PRISON REFORMS IN INDIA | 21st November, 2020*. [online] Available at: <<https://blog.forumias.com/prison-reforms-in-india-21st-november-2020/>> [Accessed 27 July 2021].

⁸ *Ibid*.

make up 4.3 percent of the population, while 69.05 percent (about 3.3 lakh) are awaiting trial, with only 30.11 percent guilty of a crime. The average occupancy percentage in all prisons is 118.5 percent. In usual, people on trial spend three to five years in prison before being released.

V. REQUIREMENT OF PRISON REFORMS

A man's right to freedom is taken away when he is sentenced to life in prison. Detention has an impact on the detainee as well as his impoverished family. When a family member who earns a living is incarcerated, the entire family must endure and adjust to the loss of income. The family will face financial hardship because they will need to hire a lawyer, plan food for the detainee, and transit to the jail to meet the prisoner, among other things. Inmates have a lot of advice on how to stay healthy. A few detainees have been diagnosed with various illnesses before to entering the jail, or they have been impacted after entering the jail. When a family member is incarcerated, the disruption of the family structure affects relationships between family members, as well as between guardians and children, transforming the family and network through generations. Detention in large groups has a significant social impact on families and networks.

In light of the preceding considerations, it is critical to remember that, when calculating the cost of detention, one must consider not only the true subsidises spent on each detainee's care, which are often significantly greater than those spent on a man sentenced to non-custodial approval, but also the indirect costs. Consider the expenses of social, financial, and human services, which are difficult to calculate yet enormous and long-term. The pre-trial detainees have a longer lifespan than the convicted prisoners. The most accessible time period for criminal equity process mistreatment is the pre-trial custody phase. Though pre-trial detainees should be believed innocent until proven guilty by a formal court, conditions in pre-trial should be taken into account. Detention conditions for indicted inmates are frequently far worse than those in prison.

VI. JUDICIAL PRECEDENTS OF PRISON REFORMS IN INDIA

The following case laws are related to prison reforms in India through a judiciary:

1. Sheela Barse V. State Of Maharashtra⁹

The Supreme Court stated that women convicts should be guarded by female guards or female constables, among other things. They must be kept apart from the male wards. It

⁹ A.I.R 1978 S.C 378

was also stated that the interrogation of female prisoners should take place in the presence of female officials.

2. State Of Gujrat V. High Court Of Gujrat¹⁰

The Supreme Court ruled that convicts should be paid adequate remuneration for the labour they perform while incarcerated.

3. D. Upadhyaya V. State Of Andhra Pradesh¹¹

The Supreme Court expressed concern for children living in jail with their incarcerated mother and issued orders for proper food, shelter, medical care, clothing, education, and recreational facilities for these youngsters. It went on to say that a kid born to a prisoner mother should not have his or her birthplace listed as "prison" on the birth certificate.

4. Sunil Batra V. Delhi Administration¹²

The Supreme Court ruled that prisoners should be classified scientifically based on the type of crime they have committed, their age, gender, personality, and level of education.

VII. CONCLUSION

The reforms were intended to safeguard society from criminals by rehabilitating offenders, deterring them, and extracting recompense for illegal behavior to the pleasure of society. The goal of instituting changes was to affect a change in behaviour in the prisoner's attitude toward community. Criminals are products of social situations, and as a result, they must be treated instead of punished. The goal of incarcerating criminals is to convert them into law-abiding individuals.

The study of crime and criminals is still in its early stages. The immediate need for study is to analyse present treatment modalities and propose novel ways to crime prevention. The use of non-custodial measures for the reformation of inmates does not imply that the value of correctional measures is diminished. Non-custodial methods can only be utilised if certain factors are taken into account, such as the nature of the crime done by the offender and the age of the inmates. It is necessary to show the value of probation, open prisons, parole, and home leave as rehabilitative methods.

¹⁰ A.I.R 1998 S.C. 3164

¹¹ A.I.R 2006 S.C 1946

¹² A.I.R 1978 S.C. 1675