

INDIAN PRISON SYSTEM AND NEED OF REFORMATION

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ABSTRACT

As we know the prison is defined as such a place in which persons are kept in custody pending trial or in which they are confined as punishment after conviction. The word prison means different things for the different people. In Indian constitution there are no specific rights for prisoners, but under Part iii of the constitution certain rights have been given. Some statutes under Indian constitution provides certain rights to the prisoners like, Prisoners act,1900, Prisoners act,1955 and prison act 1894 etc. The prison manual provide certain safeguards and measures for the prisoners. Here we have explained the prison system in India and tried to provide some suggestions regarding the reformation of prison system in India.

KEYWORDS

Prisons, Prisoners, Reformation, Prison System and Rights.

INTRODUCTION

Prisons have been known to have existed since the ancient time period. Existence of prisons can be traced back from the history. It was believed that custodial measures and rigorous punishments would reform the offenders. In due course it is being substituted by the modern concept of social defense. The object earlier of imprisonment was only to deter the offender. It was rigid and strict. No regard was given to human life. Severe punishments were the main basis of the prison system.

Prisons are not comfortable places to be in. The prisoners are deprived of personal contacts with friends and family and freedom. The basic necessity of prison as an institution for the

rehabilitation of the offenders and preparing them for a life outside the prison has always been controversial. Some of the well behaved and persons of respectable class of the society sometimes fall prey to momentary impulsiveness, situational circumstances and provocation. There is yet another class of prisoners who have to bear the rigorous life of the prison due to miscarriage of justice. Such persons find it difficult to adjust themselves to the prison surrounding and find life inside the prison most painful and disgusting.

But the modern prison system works on custody, care and treatment of the offenders. Gradually, the objective of imprisonment is not merely to deter the criminals but also their reformation. Due to this various harsh and barbaric punishments have been abandoned. The change includes a review of sentences, parole, treatment in open conditions, wages for labor in prison, education and vocational training programs, medical facilities, etc. In spite of these measures, there are no clear policy measures in prison reforms. The leading problem is overcrowding in prisons mainly because of under-trial prisoners. Violation of human rights of prisoners is also being considered by the court.

The prison reforms in India were necessarily an outcome of the worst conditions of treatment during the imprisonment of the political sufferers. They made possible efforts through repeatedly launching protests with the prison authorities so that the prisoners are treated humanly and the rigorous prison life is mitigated. The prison reforms in India did not enforce through any social movement.

Prison Statistics India 2015

According to the data of 2015, the population of prison was 4,19,623, against an official capacity of 3,66,781 across the establishments of 1401 (occupancy rate 2015- 114.4%) throughout the country¹. The population of prison has steadily increased in the last decade in India. The population occupying the prison in majority is the male, which constitutes 95% and the two-third of the population is of the under trial prisoners.

DEVELOPMENT

A well organized system of prisons has been known to have existed since the ancient time period in India. It is on record that Manu was against the imprisonment of convicts

¹ NCRB <http://ncrb.gov.in>

in closed prisons, whereas Brahaspati laid great stress on the same. To avail the opportunity of self introspection, the offenders were kept in solitary confinement.

The object of punishment in India during the Mughal and Hindu period was to only deter the criminals from committing the crime again. The well known modes of punishment were whipping, flogging, branding, starving to death or a death sentence. The prisoners were subjected to most inhuman treatment, tortured and were also ill-treated. The prisons were places of abuse and maltreatment and prison authorities were required to be diligent and precise in executing sentences. They were kept under administration and strict control. The mark of beginning of penal reforms in India was made by The British Colonial Rule. The British prison authorities made formidable efforts to improve the condition of Indian prisons and prisoners.

The first central prison in India was built in Agra in the year 1846, the first inspector general officer was appointed in 1855.

EVOLUTION OF PRISON REFORMS IN INDIA

1. The Prisons Act of 1894

The act provided the classification of prisoners and abolished the sentence of whipping. Medical facilities were enhanced. The act tried to secure uniformity in the treatment of the prisoners.

2. All India Reform Committee

The all India reform committee on jail reforms was brought into existence on 25th July 1980 by Mr. J. Anand Narain Mulla. The main recommendations of this committee were as follows:

1. The living conditions of the prisoners.
2. Open air prisons rather than having closed prisons.
3. Revisions and specialized treatment for women, juveniles and ill prisoners.
4. More emphasis to be laid on the execution of activities in the Tihar Jail.

3. The Krishna Iyer Committee Of 1987

The Krishna Iyer Committee laid proper emphasis regarding the women prisoners in India. It further recommended the induction of more women police force for tackling women and child offenders.

Despite of these reform measures taken, the general condition of Indian Prisons is still unsatisfactory.

CONSTITUTIONAL PROVISIONS REGARDING PRISON SYSTEM AND INMATES IN INDIA

Prisoners Rights: The fundamental rights guaranteed under the constitution are not absolute and many restrictions have been imposed on their enjoyment. The right to freedom of the person is one of the most important rights among the fundamental rights. When a person is convicted or put in the prison, his status is different from that of an ordinary person, a prisoner cannot claim all the fundamental rights that are available to an ordinary person. However, certain rights which have been enumerated in part III of the constitution are available to the prisoners also because the prisoner remains a “ person” inside the prison.

Right To Equality: Article 14 of the constitution of India says that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Thus article 14 contemplated that Like should be treated alike, and also provided the concept of reasonable classification. This article is very useful guide and the basis for prison authorities to determine the various categories of prisoners and their classifications with the object of reformation.

Limitation On Right To Freedom: Article 19

Article 19 of the constitution guarantees six freedoms to the citizens of India, among these certain freedoms like ‘Freedom of movement’, ‘Freedom to reside and settle’ and ‘Freedom of profession, occupation, trade or business’ cannot be enjoyed by the prisoners

because of the very nature of these freedoms and due to condition of incarceration. But other freedoms like 'Freedom of speech and expression', 'Freedom to become a member of an association', etc can be enjoyed by the prisoners even behind the bars and his imprisonment or sentence has nothing to do with these freedoms. Both are subject to limitations of prison laws.

Scope Of Right To Life And Personal Liberty: Article 21

Article 21 of the constitution of India says that no person shall be deprived of his life or personal liberty except according to procedure established by law². This article lays down two major concepts which are Right to life and Principle of liberty. By article 21 of the constitution, it is clear that it is available not only for free people, but also to people who are behind the prison. Following are the rights of prisoners, which are implicitly provided under article 21:

1. Rights of inmates of protective homes
2. Right to free legal aid
3. Right to fair trial
4. Right to speedy trial
5. Right against cruel and unusual punishment
6. Right to live with human dignity
7. Right against custodial violence and death in police lock ups and encounters

State List: Entry IV

"Prisons, reformatories, borstals institutions and other institutions of a like nature, and persons detained therein, arrangements with other states for the use of prisons and other institutions".

PRISONERS RIGHTS: Landmark Judgements

In Sunil Batra v. Delhi Administration³ this court rejected the 'hands-off' doctrine and ruled that fundamental rights do not flee the person as he enters the prison

² Constitution of India

³ 1980 AIR 1579, 1980 SCR (2) 557

although they may suffer shrinkage necessitated by incarceration. Our constitutional culture has now crystallized in favor of prison justice and judicial jurisdiction.

In Patnaik D. Bhuvan Mohan v. State of A.P.⁴, when a person is imprisoned and convicted by a court, he does not lose all the fundamental rights which are available to all persons under the constitution, except those which cannot possibly be enjoyed owing to the fact of incarceration, such as the right to move freely [Art. 19(1) (d)] or the right to practice a profession [Art. 19(1) (g)].

In Ramamurthy v. State of Karnataka⁵ it is the landmark case of supreme court where the supreme court laid down nine major problems which needed immediate attention for executing prison reforms. The following are the major problems which are highlighted:

1. Overcrowding
2. Delay in trial
3. Torture and ill treatment
4. Neglect of health and hygiene
5. Insufficient food and inadequate health
6. Prison vices
7. Deficiency in communication
8. Streamlining of jail visits
9. Management of open air prisons

SUGGESTIONS

The following suggestions are made to ensure the potency and productivity of prison system:

Overcrowding: The alarming statistics revealed by NCBR states that according to the data of 2015, the population of prison was 4,19,623, against an official capacity of 3,66,781 across the establishments of 1401(occupancy rate 2015- 114.4%), The statistics provided fails to capture the feeling of being stuck in a dark, somber enclosed area where there is no privacy, where there is a constant threat of bodily injuries, where the amount

⁴ AIR 1974 SC 2092 (para10) : (1975)3 SCC 185

⁵ (1997) 2 SCC 642

of power and money determines the space you get to stretch your legs. Where the entry of more implies the quality and quantity of food and sanitation would suffer.

Further, most of the Indian prisons were built in the colonial times, they are in a consistent need of repair and some part of them are inhabitable. The prison capacity gets reduced and it is most of the times not reflected in official figures. Also the convicted prisoners and under trial prisoners and prisoners who have some sort of communicable disease or are mentally disabled should be housed separately.

The government needs to construct more prisons and modify the existing ones. More prison staff should be recruited to make prison system and its functioning more tolerant and transparent.

Parole And Probation: Parole and probation should be liberalized so that the prisoners are encouraged to maintain good behavior to seek more chances of parole and probation. This can solve two issues:

- a) First, the prisoners are encouraged to behave better, so that they can seek more chances of parole and probation.
- b) Second, the opportunity of parole and probation will increase a prisoner's chance to meet his family, relatives and engage himself in the society as a whole.

Position Of Women Prisoners:

The constitution of India provides certain prison rights to the prisoners, unfortunately the women prisoners still suffer in jails. Though the prison rules suggest segregation of offenders on the basis of their gender and certain rights to women prisoners yet the situation needs special attention. Most women convicts with children are separated from their children, after the child has turned 6 years he is sent to the government homes until his mother's remaining conviction period and in other cases to the father, relatives if they are capable of taking care of the child.

The women prisoners should be treated more charitably, and they should be allowed to meet their children frequently.

There should be separate police lock ups and every police station must provide enclosed and separate space to every female arrest.

The Prison Act of 1894 needs to be revised thoroughly as it is more than a century old. The changes are required due to the changed view of political and socioeconomic conditions of India over the years. Most of the provisions of the act have become outmoded and unnecessary.

CONCLUSION

The reformation of the prison system is the matter of national as well as international concern. Though the government of India has made efforts towards reformation of prison system. Due to awareness among the central and state government now prison reforms are visible in India. But besides the reformatory measures taken by the government the condition of prisons in India is far from satisfaction.