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## Prisons reforms in India: Socio-legal issues

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### Abstract

Generally speaking, a prison is a facility where people are detained, and it is a state subject under Entry 4 of List II of the Seventh Schedule to the Indian Constitution. States are responsible for the administration and management of prisons, which is the duty of the federal government. However, the Ministry of Home Affairs gives frequent guidance and assistance to States and Union Territories (UTs) on a variety of topics relating to prisons and convicts in jail. Prisons are known to have existed at various times throughout history. The existence of prisons may be dated back to prehistoric times. The prisoner, as well as his impoverished family, suffers as a result of his imprisonment. When a family member who earns a living is imprisoned, the whole family is forced to suffer and adapt to the lack of money. It is necessary for the family to incur financial hardship since they must retain an attorney, provide for the prisoner's meals, and arrange for transportation to and from the jail, and so on. Prisons have very negative effects on one's health. It is possible that some convicts were suffering from different ailments prior to being admitted to the jail or that they became ill after being admitted to the prison. As a result, there is no conducive environment in the jail. It is congested; there is no fresh air; there is a lack of adequate and nutritional food, among other things. Because the preservation of social cohesiveness is built on long-term ties, imprisonment has the effect of disrupting relationships and weakening social cohesion. Because of the disturbance to the family structure caused by incarceration, relationships between spouses as well as between parents and children are affected, resulting in the remaking of families and communities through generations. A fundamental social shift occurs in families and communities as a result of mass incarceration. Taking into account the foregoing considerations, it is important to note that, when calculating the cost of imprisonment, it is necessary to take into account not only the actual funds spent on the upkeep of each prisoner, which is typically significantly higher than the amount spent on a person sentenced to non-custodial sanctions, but also the indirect costs, such as the social, economic, and healthcare-related costs, which are difficult to quantify but which are enormous and long-term in nature. Attempts will be made in this research paper to demonstrate the need of prison changes, along with the social and legal problems that these reforms would face in practice.

**Keywords:** Prison, prisoners, prison reforms

### Introduction

All men are born with fundamental rights, and since they are all equal, it is their responsibility to adhere to particular social standards. If they fail to adhere to these norms, they will be robbed of their fundamental rights and will be subjected to appropriate punishment<sup>[1]</sup>. There are a variety of penalty options available, including death penalties, public hanging, whipping, flogging, and imprisonment, among others. The ideas that underpin each of these modes are diverse, including deterrence theory, retributive theory, preventive theory, and reformatory theory<sup>[2]</sup>. Whipping, flogging, and hanging in public places have all been outlawed in India with the passage of time, although the death penalty and imprisonment continue to be in effect. In their research, the researchers will place a strong focus on incarceration, which is also known as punishment for sending a person to jail. From the ancient era forward, India has had a well-organized jail system. It is discovered that Brihaspati placed emphasis on the detention of criminals in closed prisons, although Manu was opposed to this system<sup>[3]</sup>. The purpose of sending criminals to prison is to change them into honest and law-abiding individuals once they have had time to reflect on their actions while in prison<sup>[4]</sup>.

### Definitions of prisons

Prison may be described as an institution for the confinement of individuals who have been remanded in custody by a court of law or who have been rendered deprived of their liberty as a result of their conviction for a criminal offence<sup>[5]</sup>. Prison refers to any facility used to imprison offenders, whether on a permanent or temporary basis, as determined by a particular decree of the sovereign<sup>[6]</sup>. It also covers different facilities such as a subsidiary jail, a reformatory, a Borstal institution, or any other structure designated as such<sup>[7]</sup>.”

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### Reasons for prison reforms

1. Prison changes do not occur as a consequence of a popular uprising. These are the outcomes of the scenario in which political prisoners were imprisoned, where they were subjected to inhumane treatment and were aware of the plight of the detainees. Following that, they started a number of protests against prison officials, calling for them to treat inmates as human beings and to improve the circumstances of the facility<sup>[8]</sup>.
2. According to a research issued by the National Crime Records Bureau, the misery of prisoners in India will be brought to light in 2019. According to the report, at the end of 2016, there were 4,33,033 individuals in jails, with 68 percent of them being held awaiting trial.
3. As a result of overcrowding, convicts experienced difficulties such as tension, rivalry, groupies', stress, and other mental health complications.
4. There is a discrepancy between the number of inmates who are eligible for release and the number of convicts who are actually freed under Section 436A of the Code of Civil Procedure.
5. In recent years, there has been an upsurge in the number of incidents of unnatural death in jails.
6. It has been discovered that insufficient prison infrastructure is also a contributing factor to prison reform because jails were originally built for men, but as time has passed, women prisoners have begun to appear in jails, making the safety of women prisoners and their young children a top priority for reform.
7. In most cases, it is discovered that there is a paucity of personnel to ensure appropriate jail management.
8. Another important factor for prison reform is the need to improve health and sanitary conditions<sup>[10]</sup>.

### Prison reforms: Social legal challenges prison reforms before 1947<sup>[11]</sup>

1. Before the establishment of the British Empire in India, the jail system throughout the Hindu and Mughal periods was very harsh, and the circumstances in which inmates and guards were kept were deplorable<sup>[2]</sup>. They were ill-treated and exposed to a variety of inhumane treatment methods throughout their imprisonment<sup>[12]</sup>. In response to the British government's placement of political leaders in prison, where they were subjected to inhumane treatment, inmates began protests against jail officials, demanding humane treatment for prisoners and changes in prison conditions. As a result, jail reforms gained momentum throughout this time period. Despite the fact that they implemented significant jail changes, they did not offend indigenous peoples' feelings<sup>[13]</sup>.
2. For the first time, in the years 1836-1838, a Maculay Committee was convened, which suggested the establishment of the position of inspector general of police in order to maintain discipline among convicts and prison personnel.
3. Third, the Second Commission of Inquiry into Jail Management and Discipline (1862), which made recommendations about the health and cleanliness of convicts in their lodgings, was established. The Prison Act of 1894 was passed by the legislature.
4. The Indian Jail Reform Committee advised in 1919-1920 that the maximum intake capacity in jails should be determined by the shape and size of the jail. This committee unequivocally said that the purpose of the jail

is to reform and rehabilitate those who have committed crimes against humanity.

5. In 1946, the Jail Reform Committee recommended that juvenile offenders be handled differently, that a modern jail be built, and that criminals be classed scientifically as women offenders, habitual offenders, and disabled offenders.

### Prison reforms after 1947<sup>[15]</sup>

Certain rights guaranteed by the Indian Constitution are accessible to all people in general and convicts in particular, including the right to equality<sup>[16]</sup>, freedom of expression and association, and the ability to establish and become a member of a trade union<sup>[18]</sup>. A convict cannot be punished more than once for the same offense<sup>[19]</sup>, the prohibition against self-incrimination<sup>[20]</sup> is applicable to all human rights and the right to liberty<sup>[21]</sup> is applicable to women prisoners and their wards as well as other prisoners<sup>[22]</sup>, certain rights are also available to convicts when they are arrested or detained<sup>[23]</sup>, prisoners can approach the High Court and Supreme Court through certain constitutional remedies<sup>[24]</sup> is applicable to convicts when they are arrested or detained According to Article<sup>[26]</sup> of the Constitution, authorities are divided between the centre and states, and each state has the authority to legislate on issues that are included in List II of the Seventh Scheduled. However, this provision is not absolute, since they are subject to the powers of parliament, which may exercise powers normally reserved to state legislatures in specific circumstances<sup>[27]</sup>.

As a result, according to the Indian Constitution, "jail" is primarily an issue for the state legislature, which enacts legislation for it; nonetheless, such legislation must be consistent with legislation passed by parliament, which has supremacy in the event of ambiguity.

1. In the years after 1950, the concept of rehabilitation of convicts was centred on psychiatric therapy, as well as educational and vocational training programmes for inmates.
2. In 1956, the punishment of kala Pani was replaced with a sentence of life imprisonment.
3. One of the most significant committees This Committee was established in 1957-59 and published its report in 1960, in which it offered guidelines for effective prison administration and correctional treatment of offenders. All of these standards were included in the first Jail Manual, which was published in 1960.
4. There is still another committee. The Mulla Committee, which met from 1980 to 1983, placed a strong focus on the modernization of jails. The report went on to urge that post-incarceration care, rehabilitation, and probation be included as fundamental parts of prison services. Prisoners should be housed in different cells according to the offence they committed. The whole public should be allowed to visit the prisons.

The Juvenile Justice Act of 1986 established observation homes, special homes, and juvenile homes for the purpose of rehabilitating juvenile delinquents and neglected children.

In 1987, the Krishna Iyer Committee investigated the issue of female prisoners and suggested that more women be appointed to positions of authority in correctional facilities.

The International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights) is the foundational international instrument for the protection of the

rights of prisoners. In 1979, India became the first country to ratify the treaty. It has been said that convicts should have the right to physical and mental health as well as civil and political rights under the International Covenant on Economic, Social, and Cultural Rights (ICESR), which also applies to them <sup>[28]</sup>.

Every point raised in the preceding debate shows the ongoing attempts to reform prisons while also improving the living circumstances of inmates. Despite these attempts, the jail system continues to face social and legal issues, the most significant of which are as follows.

### **Social and legal challenges**

The issues that the prison system faces on a social level include those that arise inside the prison environment. What is meant by this is that it may be regarded as what should be the environment and rules and regulations inside prison as well as how inmates would be rehabilitated and integrated into society after they are released from prison. Jail circumstances, on the other hand, differ depending on the physical structure of the facility, the level of state care for prisons and prisoners, as well as their affiliations, the political perspective of offenders, and the view of people linked with prison. As stated in the 1996 case of *Ramamurthy v State of Karnataka*, the Supreme Court of India observed that there are nine major problems in jail that require reform, including overcrowding, delay in trial, health and hygiene, corruption within the jail, and communication problems with family members, among other things. Consequently, congestion and a lack of adequate classification of offenders based on the nature of their crimes are the most significant social difficulties inside jail. National Crime Record Bureau data shows that the overall number of prisons in the United States in 2018 was 1,339, and the actual capacity of prisons was 3,96,223 people. The number of inmates at the end of the year was 4, 66, 084 people, with a 117.6 percent occupancy rate at the end of the year. <sup>29</sup> According to a survey published by the National Crime Records Bureau in 2017, the most congested prisons in India are located in Uttar Pradesh, followed by Bihar and finally Madhya Pradesh <sup>[30]</sup>. It is undeniable that overcrowding is a human rights concern, particularly in terms of health and cleanliness. If the under trial is confined among hard offenders, this may result in psychological difficulties, such as stress, anxiety, rivalry, groupism, drug usage, and other problems inside the prison system.

Whenever a person is arrested and detained, according to criminal law process, he or she must appear before a magistrate within 24 hours of his or her arrest and detention date. To detain someone for an extended period of time, police must obtain a special order from a magistrate; however, this period should not be longer than 14 days in most cases. To extend this period, additional orders from the magistrate are required, and according to the law, it cannot be longer than 90 days. In circumstances when the prospective penalty of 10 years incarceration in police custody does not exceed 60 days, the potential sentence is suspended. If the accused individual meets all of the requirements of the bail<sup>31</sup>, he or she will be released on bail at the expiration of the sixty-day or ninety-day term, as the case may be. However, there is no upper limit to the amount of time a person may be held in jail once a charge sheet against them has been filed.

It is often discovered that the police do not adhere to the rule of 24 hours because they fail to record an arrest as soon as it is made, and that detainees are held in police custody for

significantly longer periods of time than is legally required. It is common for prisoners from low-income households to be unable to pay the amount of bail set by the court, resulting in their being held in prison for a lengthier period of time. In order to address the issue of overcrowding, the government modified the penal code in 2010 and altered Section 4132. Its practical implementation will contribute to the reduction of overpopulation. In addition, if plea bargaining is applied in its real meaning, it will assist in reducing the overcrowding in jail. In response to an increase in the number of incidences of ill treatment in prisons that came before the court, the courts began to recognise these concerns as human rights violations, which resulted in jail reforms that were only partially successful. Another social concern inside the facility is the lack of proper facilities and staffing levels. <sup>33</sup> In the prison rulebook, there are provisions for physicians, psychiatrists, free legal aid services, and community services, among other things. Generally speaking, prisons are experiencing a scarcity in terms of this kind of staff person.

During this pandemic condition, the Supreme Court of the United States issued an advice on March 16, 2020, urging all states to consider releasing inmates on parole in order to relieve congestion in prisons. According to this advise, a prisoner serving a sentence of seven years in prison may be eligible for parole, which will aid in the reduction of prison congestion. Also included in this advise is the fact that anybody who has not committed any serious crimes may be released on bond. Transportation of convicts from one jail to another should only be done in the most exceptional of circumstances <sup>[34]</sup>.

Another societal difficulty is the reintegration of inmates into society following their release from prison, which may be accomplished via vocational and educational training. The most significant obstacle is their integration into society, and society should be willing to embrace them. Diverse prisons have made steps to aid in their rehabilitation. For example, the Taloja jail in Navi Mumbai has provided offenders with the opportunity to spend time with their children and other family members. Drivers, beauticians, paper bag manufacturers, and other occupations are available to inmates at the Pooja Pura central jail in Thiruvananthapuram. Tihar Prison had a modest automobile manufacturing plant, which was managed entirely by inmates. In addition, inmates opened a cafeteria for the general public, which had a seating capacity of 100 people.

While the food is prepared and served by prisoners, the staff members are generally those who have been charged with murder and have changed their identities. Tihar jail also has a factory, which produces bakery products as well as handlooms and textiles, as well as pure mustard oil and herbal products, among other products. Organic gardening is practised by inmates at the Balasore District Jail in Odisha <sup>[35]</sup>. Jails are on the state's priority list, and the state's ability to improve them is dependent on the state's concern for the public and willingness to act.

In the event of a legal dispute, the Prison Acts of 1894 and 1900 provide for the employment of a welfare officer and a law officer in each prison, respectively. However, in practice, recruitment of these officers is still waiting in maximum-security prisons. The provision for infrastructure is included in the prison manuals as well, but there are still a large number of vacancies that must be filled. Some applications for parole are not handled on time due to a variety of factors <sup>[36]</sup>. Provisions for legal assistance are also available, although in practice, attorneys do not choose to help those who are

imprisoned<sup>[37]</sup>. The directives established by the Act of 1894 are still in effect. Prisoners are divided into three categories: A, B, and C; however, with the passage of time, only A and B remain. This categorization has resulted in a squalid condition inside the jail. This Act also contains directions that deal with "convict-officers," as the term is used in this context. These imprisoned officials were characterized by the highest levels of corruption and favoritism.

There are laws in place that deal with jails and inmates in general. There are several laws governing prisoners in India, including the Prison Act of 1894, the Prisons Act of 1903, the Identification of Prisoners Act of 1920, the Transfer of Prisoners Act of 1950, the Prisoners (Attendance in Courts) Act of 1954, the Probation of Offenders Act of 1958, the Model Prison Manual of 1964, the Repatriation of Prisoners Act of 2003, and the Model Prison Manual for Superintendence and Management of Prison in India The Juvenile Justice (Care and Protection of Children) Act, 2015, and the Model Jail Manual, 2016, are all examples of legislation. Various law commissions (from 1977 to 1979, 1979 to 1980, 1988 to 1991, and 1991 to present) have also been established.

994, 2000-2001) were established to discourse on the reformation of prisons and the circumstances of inmates, yet there is still a critical need for prison reformation to take place.

Prison reform is typically dependent on the willingness and ability of the state government to implement it. The notion of jail reform has been floated in a number of states, including Madhya Pradesh, which has passed the Village Court Act, 2000, which delegated authority to village courts for the disposition of minor offences. Gujarat state has implemented community-based punishments in accordance with the Community Services of Criminals Act, 1949, and the state of Andhra Pradesh has also begun requiring offenders to do community-based services<sup>[47]</sup>. Certain institutions in India, such as Tihar Jail, which is the biggest prison in South Asia, serve as models for prison reform. It is also referred to as Tihar Ashram, and it has the highest level of security. It has a capacity of 5200 convicts. There are nine separate core jails inside it. A rehabilitation centre, rather than a jail, is being constructed on the site. By providing education, business skills, and a prison-run manufacturing facility, it changes the inmates.

Additionally, the art of living missionary has begun a programme called as the Prison Smart programme, which aims to alter the lives of persons who work in or are jailed inside the criminal justice system. This programme is organized in 45 nations, and in India, over 100 jails have executed these programmes, resulting in the transformation of 5, 00,000 prisoners. This programme has been implemented in 45 countries. This programme aims to improve inmates' immunity and physical well-being, diminish their negative impressions of prison authorities, foster more respectful interactions between prisoners and prison officials, and lessen their desire to seek retribution as well as their feelings of guilt<sup>[50]</sup>. After being dubbed "the murderer of human rights," the Rajamundry prison has now been transformed into a haven of pleasure.

### Conclusion and Suggestions

There is a reason for the many types of punishments that are used. The purpose of imprisonment is to reform and rehabilitate inmates in order for them to be able to live a

normal life after they have been released. It is imperative that the current manner of incarceration be thoroughly examined. The link between the judiciary, prison administration, police, and non-governmental organizations and the community has the potential to alter the jail system.

The researchers attempted to provide some recommendations, which are summarized here.

1. The Prison Act of 1894 should be abolished and replaced with a new Act that meets the needs of the moment.
2. When it comes to the pay that prisoners get for their work, it is discovered that they are not paid in a consistent manner. There should be a policy in place to ensure that their earnings are consistent.
3. The funding that was awarded to the Prison Management Board but was not used until 2015 should be released.
4. In order to achieve its reformation and rehabilitation goals, the jail system must include prisoners into its many welfare programmes, including as the Sarv Sikhsha Abhiyan and other social welfare initiatives.
5. The state government should replace all empty positions in the administration, as well as prison personnel and other positions.
6. When designing new prisons, bear in account the needs of female inmates and their dependents.

It is possible that an open jail system is the best alternative to incarceration.

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