



CORRECTIONAL SYSTEM IN INDIA: A CRITIQUE

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Introduction

In modern criminal justice system, imprisonment is the most important form of sanction. With the passage of time, prison population has grown substantially in India. This has resulted into worsening of life conditions in prisons with its consequential effects on administrative, disciplinary, criminality, reformatory and other allied problems.

Prison administration in India has been a subject of criticism in the Press, the Parliament and the Judiciary. Over-crowded prisons, prolonged detention of under-trial prisoners, unsatisfactory living conditions; lack of treatment programmes and allegations of an indifferent and even inhuman approach of prison staff have repeatedly attracted the attention of critics over the years. Although some efforts have been put in to reform the system yet, nothing substantially seems to have changed in reality. In fact, there have been no worthwhile reforms affecting basic issues of great relevance to prison administration in India.¹

What is Correctional System?

A penal system (also known as correctional system) refers to a network of agencies that administer a jurisdiction's prisons and community-based programmes like parole and probation boards; this system is part of the larger criminal justice system, which additionally includes police, prosecution and courts. The correctional system has three main goals: punish, protect the population and rehabilitate the offender.² Punishment is to serve as a deterrent against one repeating criminal activity and as an example to others of why criminal activity should be avoided. Incarceration is the most common example of punishment. Protection is to protect the rest of society from criminals. This includes the policing of streets as well as the imprisonment of criminals in jails so that they cannot harm the public at large with criminal acts. Rehabilitation will make the criminal functional in normal society after release so that instead of being a cost to society he contributes to the well being of society.

Necessity for Correctional System

Modern Criminal Jurisprudence recognizes that criminals are not born but made, since when a crime occurs it takes place due to culmination of variety of factors and that a good many crimes are the result of socio-economic milieu. These factors may be social and economic, may be due to erosion of moral values by parental neglect, stress of circumstances or doing a criminal activity in spur of heat of a moment.³ So, whenever a criminal activity takes place it's not always that the person so involved had prior intention to commit the crime; thus sentencing such a man to prison term may often embitter him and when he comes out of the prison bars he becomes an enemy of society. Thus, it is absolutely necessary to rekindle him and bring him into mainstream of life. This type of rekindling can be best tried through probation and parole, community service and creative and employment opportunities. Thus probation service is becoming increasingly popular for many reasons, the most important being the economic cost of maintaining offenders in prison.⁴ Probation as a method of correctional service has been evolved after the criminologists and legal jurists thought of means of reformation to criminals by giving them a chance to prove "their worth" and not confine them behind the prison bars.

Indian Prison System

In India, prison is a State subject under List-II of the Seventh Schedule to the Constitution. Despite having constituted many committees on prison reforms, the plight of the prisoners has not improved. The National Human Rights Commission (NHRC) in Annual Report (1998-99) has expressed its deep concern regarding the conditions of overcrowding, lack of sanitation, poor medical care, and inadequate diet facilities in most of the jails of the country.

The existing judicial and administrative trend in India on prisoner reform is based on the fundamental principles of the Indian Constitution and Judicial decisions by Supreme Court of India and different High Courts. Though, the Constitution does not provide any specific provisions regulating right of prisoners or prison reform but certain Fundamental Rights generally

¹ David Biles,, "India's prison system can teach us through its mistakes", May 2, 2013.

² Prof. N.V Paranjape, *Criminology and Penology* (Central law Publications, Allahabad, 2006).

³ *Criminal Justice India Series 46* (Allied Publishers Pvt. Ltd, New Delhi, 2001).

⁴ Chakrabarti, Nirmal Kanti, *Probation Services in the Administration of Criminal Justice*6-7(Deep & Deep Publication Pvt. Ltd, New Delhi, 1999).



applicable and even recognised by the Court of Law for protecting prisoner's rights.⁵ These are: Article 14 (Right to Equality), Article 19 (Right to Freedom of Speech), Article 21 (Right to Life and Personal Liberty) and Article 22 (Protection against Arrest and Detention). In a series of land-mark judgments the apex court has, while laying down the constitutional dimensions and rights available to prisoners and the approach to be adopted in dealing with various aspects of custodial justice and administration, invoked Article 21 to protect and shield prisoners from prison vices. In a number of judgments on various aspects of prison administration, the Supreme Court of India has evolved three broad principles:⁶

- a. A person in prison does not become a non-person.
- b. A person in prison is entitled to all basic rights within the limitations of imprisonment. There is no justification in aggravating the suffering already inherent in the process of incarceration.
- c. Prisoners are sent to prison, not for punishment, but as punishment.

Prison Statistics

In 2014, there were 1387 prisons across the country categorised as central jails 131, district jails 364, sub-jails 758, women jails 19, borstal schools 20, open jails 54, special jails 37, and other jails 4.⁷ Besides such a large number of jails, there are no set common criteria for all the states and union territories for differentiating between these prisons. All the States and Union Territories (UT) do not have central prisons and some have more than one. The National Crime Record Bureau (NCRB) notes that central jails are larger compared to other prisons, housing prisoners sentenced for a longer period. However, central prisons not only house "prisoners sentenced for a longer period" but also under-trial prisoners. At the end of the year 2014, there were 67.6% under-trial prisoners in jails.⁸

Categorization

In most of the prisons, the inmates are divided into three categories, A, B, and C. Class A and Class B inmates are persons who "by social status, education and habit of life have been accustomed to a superior mode of living. Category C consists of "prisoners who are not classified in class A and B."⁹ In effect, those of high class and caste, those with property or lineage or education, are set apart from the poor, the uneducated, and the low caste. These classifications are not simply paper notations. They matter enormously in terms of prison conditions. In Maharashtra the class system has been abolished by court decision as a violation of Article 14 of the Constitution requiring equal protection of the laws. In most of the country, however, the class system prevails. In some States like Tamil Nadu there are only two classes i.e. A and B.

Expenditure on feeding a class A or B prisoner is much higher than C. The A and B prisoners are allowed to buy foods of "good nutritive value"; the others are not. The Class A prisoners can receive any newspapers, the others, only those on a prescribed list.¹⁰ The A category prisoners are exempted from the performance of menial labour tasks and from such restraints as handcuffs and irons. This classification system is serving and abetting the authority and promoting corruption of prison administrators. The official regulations provide that state officials classify the inmates, but the actual authority devolves down to the prison administrators. To dispense the grade and designate privilege at once enlarges their control over the prison population, and enhances their ability to exchange favours for favours.

Conditions in Prisons

- (a) **Overcrowding** - The National Human Rights Commission (NHRC) in Annual Report (1998-99) has observed that out of an estimated 2,46,700, prison population, 1,80,000 were under-trial prisoners, who constituted over 70% of the total prison population. The majority of the under-trial prisoners came from disadvantaged sections of society, having a rural background. Many under-trials through their advocates try to avoid trial proceedings to win over witnesses, resulting in overcrowding of jails. This leads to congestion, the straining of available services, and other undesirable consequences. As a result, overcrowding has assumed the proportions of a major problem for the Correctional Administration that gives birth to a number of other problems relating to health care, food, clothing and poor living conditions.¹¹ Overcrowding, which stands at 117.4%¹² is one of the problems which plagues Indian prisons.¹³

⁵ K. Vijaya Lakshmi, "Open Air Prisons-A Study with Special reference to Cheralpally Prison Andhra Pradesh", *Cri. L.J* 235 (2005).

⁶ Ahmad Siddique, *Criminology Problems and Perspectives* (Eastern Book Company, Lucknow, 2005).

⁷ National Crime Records Bureau, *Prison Statistics* (Ministry of Home Affairs, 2014).

⁸ *Ibid.*

⁹ Jindal, *Punjab Jail Manual* 196 (Chawla Publications (p) Ltd., Chandigarh, 2005).

¹⁰ The Home Department Policy Note on "The Administration of Jails in Tamil Nadu" 4-6 (1990).

¹¹ Report : All India Jail Manual Committee, 1957-9, Para 38.

¹² A. Sirajudeen, *Law and Practice of Rights of Prisoners* (Associated Book Company, Chennai, 2008).

¹³ National Crime Records Bureau, *Prison Statistics* (Ministry of Home Affairs, 2010).



- (b) **Under-Trials and Legal Aid** - In India, the State is obliged to provide legal aid to the poor, as the Indian Constitution makes it one of the Directive Principles of the State Policy to do so. However, as 70% of the prison population is illiterate, lacking an understanding of their rights, the poor do not always get the benefit of the provisions of law in this regard. Further, though there are panels of lawyers, at least in district courts, the panels do not have good and efficient lawyers.
- (c) **Inadequacy of Staff** - Combined with overcrowding is the issue of inadequate staff strength, which goes way below requirements. The current prison staffs to inmate ratio stands at 9:1.¹⁴
- (d) **Health, Hygiene & Sanitation** - Overcrowding brings with it a denial of health rights, poor sanitation and high prevalence of disease. The living conditions in most prisons, especially sub-jails are appalling, as even basic requirements are not met. Unhygienic conditions arise out of inadequate water supply and supply of essentials like phenol; lack of flush latrines, and lack of proper ventilation.¹⁵
- (e) **Medical Aid** – Since independence, no medical officer has been posted in many prisons and a doctor from the district hospital occasionally visits the prison for a short period. For the most part, the medical attention available to prisoners consists of the dispensation of one drug-- perhaps aspirin. This would be of little value for the treatment of infectious diseases prevailing in the prisons.¹⁶
- (f) **Transmittable Diseases** - Prisoners are required by law to be medically examined at the time of admission. However, prisoners are rarely examined due to an acute shortage of doctors. Therefore, marks of violence meted out to the prisoner by the police, communicable diseases (such as tuberculosis, hepatitis, HIV /AIDS) and chronic conditions that deteriorate with incarceration are often not detected until they become acute. Mental illness is frequently undetected or not adequately treated. The recently reported case of a mentally ill prisoner held without trial and released after 18 years of imprisonment is indicative of how acute the problem is.¹⁷
- (g) **Custodial Torture**- Custodial torture and violence remain entrenched and routine law-enforcement strategy and investigating practice across the country. On an average 1.8 million people are victims of police torture and violence in India every year.¹⁸ Police practices include assault, physical abuse, custodial rape, threats, psychological humiliation, as well as deprivation of food, water, sleep and medical attention.¹⁹ Most torture cases go unreported because victims fear reprisals. From 2001-2010, the NHRC reported a total of 14,231 cases of deaths in police and prison custody (i.e. 1,504 and 12,727 respectively), which represents an average of 43 deaths every day.²⁰
- (h) **Corruption** - In reality, of course, prisoners, particularly the poor and the illiterate ones, seldom get such food as allotted to them under the Jail Code due to "well organised" and "systematic" corruption in the prisons.²¹ Besides, the other forms of corruption viz. bribery, exchanging favour for favour, VIP culture, cast and religious based favouritism etc. are commonly reported.
- (i) **Drug Abuse** - Drug abuse is a common problem in prisons all over the country. The Bombay High Court in a recent hearing fined three government officials for not reporting before it, as ordered, on the government's plans to provide care to HIV positive prisoners in the state.²² Manipur is the only state to have formulated a policy on HIV/AIDS. It stipulates that pre-test and post-test counselling be provided to all prisoners, and that test results should not be communicated to the prison administration without the prior written consent of prisoners. Prisoners are also provided adequate information on HIV/AIDS, particularly the risk of homosexual contact in prison, and intravenous drug use.²³

Lacunae in Legislations

Consequent to Justice A.N Mulla Committee recommendations and National Human Rights Commission draft Bill, the Ministry of Home Affairs in 2000, appointed a Committee for the formulation of a Model Prison Manual in order to improve the Indian prison management and administration in line with the International Standard. This manual has been circulated to all States/UTs for adoption. Thereafter the Govt. again constituted a high powered committee under the Chairmanship of

¹⁴ *Id. at iv.*

¹⁵ *Human Rights in India, Status Report 86-89 (2012).*

¹⁶ *Human Rights Watch, "Prison Conditions in India", 38 (1991).*

¹⁷ *"Mentally ill man walks free after 18 years in Jaipur jail", the Times of India, February 18, 2011.*

¹⁸ *People's Watch, National Project on Preventing Torture in India (NPPTI): Torture and Impunity in India, (November 2008).*

¹⁹ *Ibid.*

²⁰ *National Human Rights Commission, Annual Reports, and 2001-2010: In: Asian Centre for Human Rights, Torture in India (2011).*

²¹ *Prison Conditions in India, 1991 by Human Rights Watch; Prison Conditions in India, 1991 by Human Rights Watch citing Jaytilak Guha Roy, Prisons and Society: A Study of the Indian Jail System 98-99 (Gian Publishing House, New Delhi, 1989).*

²² *"Screening in Tihar jail reveals large number of HIV-positive inmates", The Indian Express, July 23, 2004.*

²³ *Ibid.*



Director General, Bureau of Police Research and Development for drafting a National Policy paper on Prison Reforms and Correctional Administration on 1st December, 2005.²⁴

The present Committee is of the opinion that the enactment of a uniform and comprehensive legislation on prisons would be possible within the existing provisions of the Constitution of India, as India is a party to the International Covenant on Civil and Political Rights, 1966. Second, on the question of inducting alternatives to imprisonment such as community service, forfeiture of property, payment of compensation to victims, public censure, etc involves certain amendments in the substantive laws. Third, the suggestion for making sentence for life, even for those covered under section 433-A Cr. P.C, flexible in terms of actual confinement also requires amendment to the Code of Criminal Procedure, 1973. Fourth, there is an urgent need to reduce the population of under-trials. Though Section 309 Criminal Procedure Code (Cr. P.C), 1973 suggests that the trial proceedings should be held as expeditiously as possible and once the examination of witnesses has begun, it should be continued on day to day basis till completion of the case, this does not happen. Therefore, an amendment should be made in the Cr. P.C to make it possible for an under-trial prisoner to plead guilty at any stage of the trial.

Towards Resolution

The basic principle and the purpose of punishment are not to torture a person but to reform him and ultimately make him a good citizen. To achieve this objective, consideration should be given to his future settlement after release and he should be encouraged and assisted to achieve his own social rehabilitation.

The prisons should be places where programme of constructive activities to improve prisoner's lot are held. Their experience of prison should help them to maintain and improve their health and intellectual and social functioning. To achieve this, it is essential that prison which is a place for potential abuse; are administered in a manner which is fair, just and corruption free and which is perceived by everyone involved, being so. The prison is a community with rules and regulations which apply in different ways to everyone concerned, staff, prisoners and visitors. Since it has a hierarchical structure it is especially important that its regulations should be understood and followed by everyone, not solely by prisoners.

Further, these prisons should be subject to public scrutiny because of their coercive nature. Inspections by a body which is independent both of individual prisons and of the prison system should be introduced. Probation and parole system should be used liberally where ever it is feasible.

All law graduates may not be good lawyers. "Only meritorious graduates should be allowed to practice" observes the Supreme Court. Therefore, the Bar Council of India should consider holding an examination for the new entrants before issuing them license for practice. This will help to improve quality of lawyers.²⁵

The Lok Adalats should deal not only with compoundable cases but also with cases where the accused pleads guilty. Plea bargaining system has been introduced by way of Code of Criminal Procedure (Amendment) Act, 2005, and it has come into effect from July, 2006. Sections 265A to 265L of the Cr.P.C, 1973, allow plea-bargaining under specified conditions. Plea bargaining is applicable only in criminal cases where maximum punishment is up to seven years. The Government of India has introduced this system primarily to reduce the pendency of cases in trial courts and to contain overcrowding in prisons.

Decriminalization of certain offences should be considered to reduce prison population and introduce reformation. In the 2016 Union Budget, the Finance Minister has opened a window for the 'Black Money' holders to avoid prosecution by paying 45% tax. Similar action should also be taken to review the cases wherein a victim can be suitably compensated to his / her satisfaction such as property disputes etc.

Conclusion

In Indian prison system, although several steps have been taken to improve the condition of prisons, yet much more is required to be done. Central Government along with State governments, NGOs and prison administration should take adequate steps for effective centralisation of prisons and a uniform jail manual should be promulgated throughout the country. Such practices will help in changing the traditional and colonial outlook of the Indian Prison System and also help the prisoners to become more responsible, creative and potential citizen.

²⁴ Government of India, BPR&D, Report: National Policy on Prison Reforms and Correctional Administration (Ministry of Home Affairs, 2007).

²⁵ Bhadra Sinha, "Anyone Wearing a Black Robe does not become a Lawyer" Hindustan Times, Mar 03, 2016.