

---

# DOCTRINAL ANALYSIS ON SHORTCOMINGS OF THE PRISON SYSTEM IN INDIA

---

Ishaan Deepak Joshi, MIT-WPU Faculty of Law

## ABSTRACT

The quotient of utility when looking at the system of prisons in India as an institution for the core purpose of rehabilitation of the criminal convicts and giving them the necessities to prepare themselves for a normal life outside of prison has and will always be an issue that sparks controversy. The true motive and purpose of sending criminal convicts to the institution of a prison is to potentially spark a transformation in such offenders; changing them into citizens having an honest and law-abiding nature. This transformation is to take place by way of inducement of distaste in the minds of the offenders for crime and criminality, whereby the core principles are repentance through condemnation in confinement. However, in the realm of real-world practice, authorities in prison try to bring about a reformation in inmates by the use of undue force, brutality and other compulsive methods; proving to be, in the end, counterproductive as it leaves the convicts in a state of malice, hatred and a sense of damnation, which usually will prove to be a grave mistake when such offenders are given the chance to reintegrate in society. This research article aims to delve into the characteristics, problems and negative effects of the prison system in India, along with understanding prison reform measures in the country, Rights of prisoners and through the lens of case laws, the role of Judicial Activism in the realm of Prison Reforms.

## **Introduction**

In case where the primary objective of a prison sentence is not to have retribution against the criminal, but instead to make him / her a better citizen, the question arises as to the method of achieving the same. It has been proved to be a very difficult task since has the involvement of reconciliation of conflicting forces. However, on one hand, there exists an element of detention that is of a compulsive nature, with all its negative consequences, while on the contrary, there are the efforts of the society to reform the criminal. The rehabilitation and reformation of the criminal therefore becomes a very difficult task in an environment such as the prisons. Furthermore, it is a well-known fact that there is very minimal if any effect of any attempts of reformation on criminals of the hardened variety.

## **The Negative Consequences of Imprisonment**

A type of punitive reaction, imprison finds itself with its primary aim being to deprive the liberty of a criminal through confinement. There is a wide array of negative consequences of imprisonment. They are discussed hereinunder as follows:

### **1. Prisonization**

An imprisoned convict is introduced to and into a whole new environment with its own culture. From being a proper human being that bears unique personal characteristics, such a prisoner is now converted into a mere entity of an impersonal nature, with even his identity, his name being replaced by a number. His food, leisure hours and clothes are the same as of the fellow inmates. He is reduced to being but a mere unit, waiting to be processed by the staff in prison, with every inmate to be treated as a job, rather than being perceived as a human being. Social Debasement in Convicts is the result of such treatment in the eyes of the inmates themselves.

### **2. Impact on Family Relations**

The family life of the convicts is damaged by the institution of prisons due to very few or the lack of contact with members of their family. Imprisonment is widely recognized all around the world and throughout history as a ground of divorce by many legal systems.

### **3. Hardening of the Inmate Classes**

The negative attitude of the staff in prison of 'breaking over remaking persons', yields the result of the convicts developing increased hostility and anti-social attitudes post release from

prison. Along with this, having contacts with other criminals in prison does not do any good for neither the offender, the society or his fellow inmates. An increase in engagements such as deviant sexual behavior and gambling are common among hardened criminals.

#### **4. Convict Bogey**

The true punishment for a convict commences after departure from his iron-barred abode. The social stigma attached to imprisonment in general, makes the process of rehabilitation a tough one, as in the eyes of the society, his presence and existence is seen as that of a criminal even post penance. He is thereby, more often than not, forced to once again pursue criminal activities, as there is a lack of any other option for him.

### **Characteristics and Problems of the Prison System in India**

In India, the system of prisons is characterized by a formalized, authoritarian and routinized pattern of administration and negative attitude of said authorities. There is a severe lack of imagination and enthusiasm. The prison system is also viewed as a welfare measure that should enjoy perpetual continuance in its regular course, in the eyes of the Government. Remodeling is required in The Prisons Act of 1894.

The prison administration in India has fallen behind the reformatory role of work in prison and has its focus primarily on the 'deterrent' role. Furthermore, the economic conditions in India have limited the scope to evolve better modes and methods of enhancing prison management. Some of the Issues faced by prisons in India are as follows:

#### **1. The Issue of Prison Discipline**

In Prison, the life of inmates is necessarily presupposed to have certain restrictions on the liberty of the prisoners against their individual free will. The Consciousness of being subjected to forces compulsively by the State, using the prisons as an agency tends to lead to conflicts and scuffles between the inmates and prison officials. The most common causes of riots and disturbances in prisons are crude disciplinary methods, political instigations, differences with the prison staff and the monotonous and mundane routine- characteristic of life behind bars, etc.

#### **2. Criminality as a Problem in Prisons**

The inability to control sexual desire and drive, it is quite common of prisoners to resort to

sodomy and homosexuality that are offences of the unnatural kind. Such assaults and offences are common behind prison walls. Another cause of such criminality among the inmates is the frequent quarreling among them inside the institution. Every inmate tries to establish dominance and superiority over other inmates, sparking a kind of hierarchy in the microculture of the prison. Group rivalry, the formation of gangs and clashes between them are also common features.

### **3. Women Prisoners and Issues**

Female prisoners are vulnerable to sexual exploitation and face the enhanced threat of it in a prison set up that is predominantly male. A female prisoner, is in general in greater need of seclusion, privacy, psychiatric and medical care. However, there is an observed inadequacy of such facilities when it comes to prisons; affecting the inmates of both genders.

### **4. The Issue of Health Hazards**

Bad ventilation, poor drainage, insufficiency of clothing, deficiency of personal cleanliness, overcrowding, insufficient medical inspection etc., are few of the multitude of factors which have a damaging impact and effect on the health of the convicts.

### **5. Prisoner's Rights being Violated**

Every inmate has certain personal, constitutional, political, religious and legal rights. Rights such as voting are political rights. The access to legal facilities, courts and right to speech and expression are legal rights. Personal rights can be right to have meetings with friends and family members. Such rights are denied to prisoners quite often by the prison administration.

Due to the aforementioned issues the theme of rehabilitation in the prisons of India can be called a twisted joke.

### **Reformative Measures for Prisons in India**

The ideal prison is said to provide for vocational training, basic medical, recreational and educational facilities and adequate work for the inmates. The prison management is to be made goal oriented, functional and effective so that it can prove itself to be an effective agency for the administration of criminal justice. The ultimate aim of the institution of prison should be the reformation of offender, and not subjection of such offender to torture. As pointed out by Dr. Minocher Jehangir Sethna, the prisons are to function in the capacity of moral hospitals

and as a place of reeducation. They are however, not to turn out to be so comfortable, that they are viewed as an attractive prospect.

Long Range Psychotherapy is supposed to be applied while dealing with criminal behavior, wherein such behavior is a maladjustment in the personality of an individual. It requires a careful and individualized diagnosis and study, training and treatment of offenders, and the use of psychiatry, medicine, etc., and the provision of vocational guidance, recreational facilities and education as essential components in the mission to rehabilitate juvenile delinquents and criminals. Various measures for achieving said goal are discussed below:

### **1. The Classification of Offenders**

There is a necessity for individualized treatment of convicts. They can be classified at two separate stages:

At the time of determination of what specific type of prison an offender is supposed to be sent.

Within given prison, further classified during psychological and medical examinations.

In the prisons of India, the inmates are classified on the basis of age, sex, nature of offence, mental health and on them being a casual / habitual i.e., non-professional / professional criminal. In the context of modern times, social defense in the terms of protecting the society at large from criminals is the primary objective of punishment, while classifying said prisoners for the purposes of treatment is a means to achieve the goal. The classification of inmates helps to prevent any further intermingling of young and first offenders with the hardened criminals.

### **2. Prison Education**

The following are the components of prison education:

- Vocational education that trains one for an occupation.
- Health education to teach fundamentals of community and personal health.
- Fundamental academic education for the illiterate inmates to facilitate their daily life.
- Religious and sociocultural education to bring satisfaction of the aesthetic and intellectual nature.

### **3. Labor and Industry in Prison**

In prison, labor and industry serve as a means to gain certain skills, in which the prisoners shall,

apart from getting disciplined, also find them useful for getting into vocation of some kind post release. It also helps inmates to earn wages while being held in imprisonment. Prisoners however, more often than not, are not interested in the prospect of learning trade or skills either due to irrelevance of such training after release or due to a lack of aptitude. There is also a display of lukewarm attitude by the prison administration when it comes to such programs.

#### **4. After-care / Post Release Programs**

It is often observed that post release, it is difficult for prisoners to readjust and reintegrate into the outside world. There are two connotations to after-care. In a narrower sense. It implied things such as probation i.e., upon release, person is put under the care of a probation officer, who has the role, similar to that of a social worker. In the wider sense of the term, it can imply all the efforts taken to enable the prisoner to overcome various psychological, social and economic problems after being released. The process of after-care carries a person from the restricted prison environment to a satisfactory rehabilitation and reintegration in the society.

The post release assistance and help generally offered in our country relates to employment, financial assistance, basic necessities such as shelter, food and clothing and family welfare. However, it is a task of paramount difficulty to provide employment to ex-convicts. Hostels and 'Prisoner-aid-societies' look after prisoners after being released, functioning in the capacity of half way homes- a link between the prison and the community. However, there is a shortage of such hostels, and they are occupied at will by the criminals. The 'Crime Prevention Society' carries on the work of after-care in Uttar Pradesh.

#### **5. Female Prisoners**

Women prisoners are to be treated with a sense of generosity and should be allowed to meet with their children on a frequent basis. This helps in keeping them mentally fit and facilitates them to have favorable responses to therapy and treatment. It seems that there is a necessity for a liberal educational and correctional program in the case of female delinquents as they require lesser custody and control due to possessing a feminine temperament. Exclusive and separate prisons for females with prison staff that is exclusively comprised of women is a necessity of utmost importance.

#### **The Rights of Prisoners: Judicial Activism and Prison Reforms**

***Sunil Batra (II) v. Delhi Administration (1980) 3 SCC 488***

In this case, the apex court laid emphasis on the role of courts when in context of enforcing human rights within the walls of prisons to ensure that the treatment of prisoners is not of a cruel and arbitrary nature. The court stated that Being convicted for a crime does not amount to the reduction of a person to a non-person whereby his rights are subjected to the whims and fancies of the prison administration.

***Dharambir v. State of Uttar Pradesh (1979) 3 SCC 465***

In this case the State Government received the Court's advice to effect reforms by means of drawing up a set of rules and terms for the enlightenment of prison administration.

***Tapas Kumar Dutta v. State of Bihar (1997) 10 SCC 382***

In this case, the appellant in the duration where his appeal was pending, pursued his education and submitted the thesis for his Ph.D. With his reformation and reintegration in society in mind, the court decided to reduce his sentence.

In recent years, the Indian Courts have liberally interpreted prisoner's rights, whereby an innovative and deeper meaning is given to the theme of liberty and procedure as under Article 21 of the Indian Constitution.

**1. Access to Legal Facilities and Courts**

***M.H. Haskot v. State of Maharashtra (1978) 3 SCC 544***

In this case, the Supreme Court stated that while sentencing a person to imprisonment, a free copy of the judgement shall be provided to the convict by the court, wherein such copy shall be sent to prison authorities for delivering the same to the convict, at its earnest by the concerned official. In cases where an inmate is seeking to file a revision or an appeal, for the exercising of his right, every facility shall be made available by the Prison Administration. In the circumstance of a prisoner being disabled to engage a lawyer on reasonable grounds, a competent counsel shall be assigned to him by the court.

***Francis Coralie v. Union Territory of Delhi (AIR 1981 SC 746)***

It was stated by the court that right of detenu to seek the counsel of a legal advisor of choice for a purpose not being limited to criminal proceedings but also for release being secured from prevntive detention or writ petition filing.

## **2. Meetings with Friends and Family Members**

In the above-mentioned case of Francis Coralie, the Supreme Court stated that the jail manual rules permitting detenus i.e., those persons held under preventive detention to meet their friends and family only once on a monthly basis, while a similar benefit was available for undertrials and convicts on a weekly basis was violative of Articles 14 and 21, and purely arbitrary in nature.

## **3. Communication and Expression**

### ***State of Maharashtra v. Prabhakar Pandurang (AIR 1976 SC 424)***

The court, in this case, held that a detenu has the right to publish and write a book.

### ***Prabha Dutt v. Union of India (1982) 1 SCC 1***

It was held by the apex court that the press is entitled to interview convicts unless solid grounds to the contrary exist. Furthermore, an inmate has the Communication right and can have interviews with friends, relatives, legal advisors and the folks from the press.

## **4. Compensation**

### ***Rudal Shah v. State of Bihar (AIR 1983 SC 1086)***

It was observed that in the cases of imprisonment being wrongful and prisoners suffering from physical injuries due to the prison staff's negligence, some kind of relief should be provided to the aggrieved. The Supreme court in this case, awarded damages to the victim who was wrongfully imprisoned for 14 years after his acquittal.

## **Other Case Laws**

### ***Anukul Chandra Prasad v. UOI (AIR 1997 SC 2814)***

In this case, it was held by the Apex Court that fundamental rights cannot be claimed at par with others by the prisoners which necessitates exclusive classification under Section 62(5) of Representation of the People Act, 1951, where right to vote is denied to convicts.

A person imprisoned due to his own conduct is has his liberty deprived during time of such imprisonment and is incapable of claiming equal freedom of speech, expression and movement as the outsiders. It is perfectly reasonable to classify the outsiders and the imprisoned. The



voting restriction is one resultant from imprisonment as a prudent consequence. More so, if the aim is of keeping criminal convicts away from the election, any provision regarding the same isn't unreasonable. It is stated that the case's decision is a reversal of the Court's crusade for the prison condition's amelioration. Voting is a very valuable right as it helps persons participate in decision making in a Republic.

### **Directions to the Jail Administration by the Supreme Court**

- 1) Subjective to discipline, search and any other security criteria, the right to society regarding fellow men, parents and other relatives cannot be denied in the light of Article 19.
- 2) Sessions Judge and District Magistrate to visit jail in their jurisdiction and afford opportunities to ventilate legal grievances.
- 3) Court Nominated Lawyers shall be given all facilities for visits, interviews and confidential communication with inmates subject to security considerations and discipline.
- 4) The State is to take steps in keeping up with standards recommended by U.N. as the Minimum Rules for Treatment of Prisoners; especially those relating to wages and work, community contact, correctional strategies and treatment with dignity.
- 5) Unconvicted and Young inmates are to be kept separate and free from the exploitation by adult prisoners. In case of such imperative being violated, Article 19 of the Indian Constitution will be offended.
- 6) The court shall protect prisoner's right through contempt power and writ jurisdiction. Free legal aid shall be provided by legal aid societies for the same.
- 7) Modification is needed in the Prisons Act. A course of a correction-cum orientation nation shall be necessary for staff of the prison.

### **The Jail Committee on Prisoner's Rights**

Headed by Justice A.N. Mulla, the Jail Reforms Committee of 1980-1983 made recommendations on the rights of prisoners, under the influence of judicial activism. The following rights were recommended to be included in the National Prison Legislation's proposed scheme:

- 1) Right to Minimum Needs
- 2) Right to Human Dignity

- 3) Right of Access to Law
- 4) Right of Gainful and Meaningful Employment
- 5) Right to Communication
- 6) Right to be Released on Due Date
- 7) Right Against Arbitrary Prison Punishment

Every single one of the aforementioned rights are pre-contained in the Indian Constitution, Judicial Pronouncements and Jail Manuals but their practical implementation is a true challenge.

### **Conclusion**

The Supreme Court has taken note that the conditions in the Indian Prisons are pathetic and ten major problems are plaguing the prison system. They are as follows:

1. Delay in Trial
2. Over-Crowding
3. Torture and Ill-Treatment
4. Neglected Health and Hygiene
5. Prison Vices
6. Deficiency in Communication
7. Deficient Streamlining of Jail Visits
8. Inadequate Clothing
9. Insubstantial Food
10. Deficiency in Management of Open-Air Prisons

The court has stated that though overcrowding is not impermissible constitutionally, it affects health and hygiene of inmates. The thread of conjugal life, when broken leads to prison vices. Liberalized facilities for communication are the need of the hour. Jail visits are ought to be properly streamlined. Open-air prisons should be considered in the District Headquarters at the very least.

It has been further observed by the Court that release on parole / remission / bail, a recourse to alternative as to incarceration, such as civil commitment, fine and probation ought to be considered. An appropriate decision is to be made by the authorities concerned on the Report of All India Committee on Jail Reforms and the 78<sup>th</sup> Report of the Law Commission of India, within a span of 6 months. Speaking of Ill-Treatment and Torture, the enactment of a new

Prison Act and the reframing of The All-India Jail Manual is a must. Authorized officials are to inspect the standard of clothing and food, and mandating the installment of a complaint box must be taken into consideration.

## References

- Sunil Batra (II) v. Delhi Administration* (1980) 3 SCC 488
- Dharambir v. State of Uttar Pradesh* (1979) 3 SCC 465
- Tapas Kumar Dutta v. State of Bihar* (1997) 10 SCC 382
- M.H. Haskot v. State of Maharashtra* (1978) 3 SCC 544
- Francis Coralie v. Union Territory of Delhi* (AIR 1981 SC 746)
- State of Maharashtra v. Prabhakar Pandurang* (AIR 1976 SC 424)
- Prabha Dutt v. Union of India* (1982) 1 SCC 1
- Rudal Shah v. State of Bihar* (AIR 1983 SC 1086)
- Anukul Chandra Prasad v. UOI* (AIR 1997 SC 2814)
- Case Law: Rama Murthy v. State of Karnataka* (AIR 1997 SC 1739)
- Gluck Sheldon: The Problem of Delinquency* (Boston, 1959)
- Paul W. Tappan: Crime, Justice and Correction*
- S.P. Srivastava: Female Criminals and Female Victims* (1989), Delhi, Dattsons
- Vold and Bernard: Theoretical Criminology* (3<sup>rd</sup> ed., Oxford)
- Rights of Prisoners; Michael B. Mushlin*
- Correctional Organization and Management: Public Policy Challenges, Behavior and Structure* (Robert M. Freeman)
- Maharashtra Prisons Manual* (1979)
- Ishaan Deepak Joshi: The Significance and Need for Restorative Justice* (Indian Journal of Law and Legal Research, 2022)
- Indian Prisons: Towards Reformation, Rehabilitation and Resocialization* (K. Jaishankar, Tumpa Mukherjee, Priti Bharadwaj, Megha Desai Asher)
- Humanization of Prisons in India: Dr. C. Rajashekhar*