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# A CRITICAL ANALYSIS OF MAJOR PRISON REFORMS IN INDIA AND THE PATH AHEAD

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**Research Question:** “How is India reforming its Prison System post-independence? What are the major prison reforms still needed and possible solutions for it?”

## Statement of Problem

Of all the different theories of punishment Rehabilitative also known as Reformatory Theory is considered to be the most effective in reducing recidivism rates in prisons and it is well regarded for its humane practices. Reformatory theories success can be attributed to its desire to try and reform the offender as a person so that he/she may become a law-abiding member of the community once again.<sup>1</sup> So, I wanted to know to what extent has the Indian Prison System been able to utilize the reformatory theory of punishment for the offenders, since independence, and how the offenders in India are given an opportunity for self-growth. At the same time, what are the challenges prison reforms in India face and what are the possible solutions for the same.

## Introduction

Prison Reform is an essential part in the administration of crime and criminology. At one point in history, the only justified form of punishment was imprisonment or death, and punishment was given only to act as retributive or deterrent. But with time, many experts have seen that it is best to have multiple forms of punishment depending on severity of the crime and punishment must serve the purpose of helping the prisoner re-enter mainstream society as a law-abiding, responsible and productive citizen. But to be able to see that change in a prisoner’s perspective and behaviour many factors as mentioned below need to be enforced effectively by the state.

## Concept of Imprisonment- In need of Reform

Imprisonment should never be the first option of punishment, as it has many disadvantages for

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<sup>1</sup> Sindhuza, M.S, Reformatory Theory- India analysis need for revision, Int J Current Advanced Research (2017) <https://www.journalijcar.org/issues/reformatory-theory-india-anlalysis-need-revision>

the imprisoned, prison staff, families, communities and society at large. When discussing prison reforms, it must be considered that there are alternatives to imprisonment such as parole, furlough, probation, suspended sentence, restitution and community service which should be used as an when possible.

The Human Rights argument is central to the argument for Prison Reforms. A sentence of imprisonment should only lead to deprivation of the basic right to liberty. It does not entail the restriction of other human rights, except for those rights which are naturally restricted by the fact of being in prison. Prison reform is necessary to ensure prisoners' prospects for social reintegration only increases.

Additionally, it must be noted that imprisonment disproportionately affects individuals and families living in poverty. When an income earning member of the family is imprisoned, the rest of the family will have to adjust to this loss of income. The impact can be especially harsh in developing countries where the state does not provide sufficient financial assistance to the poor and where it is common for one breadwinner to economically/ financially support an extended family. After being released from prison, often with no prospects for employment, former prisoners often become subject to socio-economic exclusion and are thus susceptible to an endless cycle of poverty, criminality, imprisonment and societal marginalization.

Moreover, prisoners are likely to have existing health problems on entry to prison, as they are predominantly deprived socio-economically in comparison to the general population, with minimal access to adequate health services. Their health conditions can deteriorate in prisons where it is overcrowded, where food is sparse and nutrition is poor, sanitation is inadequate, and there is higher rates of drug addiction, where risk behaviors are prevalent and access to fresh air and exercise often unavailable. Psychiatric disorders, tuberculosis, HIV infection, hepatitis B and C, sexually transmitted diseases, skin diseases, malnutrition, malaria, diarrhoea and injuries are the main causes of morbidity and mortality in prison as the prevalence of these diseases is higher inside the prison than amongst the general population. Prison staff also become vulnerable to most of these diseases. Prison health is public health as prisons are not isolated from the society.<sup>2</sup>

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<sup>2</sup> Why promote prison reform? (United Nation Office of Drugs and Crimes), <https://www.unodc.org/unodc/en/justice-and-prison-reform/prison-reform-and-alternatives-to-imprisonment.html>

Furthermore, imprisonment disrupts relationships and can weaken social unity, since the maintenance of such unity/ cohesion is based on long-term relationships. When a member of a family is imprisoned, the disruption caused to the family structure affects relationships between spouses, parents and children etc. Mass imprisonment produces a deep social transformation in families and communities and therefore needs to be avoided as much as possible.

### **Indian Prison Reform Committees**

Since independence, the Central Government has constituted various committees periodically to comprehend and tackle the problems relating to prison administration in India.

**All India Jail Manual Committee, 1957-** This committee was appointed to prepare a model prison manual. The report requested for the formulation of a uniform policy and the use of latest methods relating to jail administration, probation, juvenile homes, remand homes, aftercare, reformatory school, borstal schools and protective homes, etc.

**Working Group on Prisons, 1973-** This Working Group brought out the need for a National Policy on Prisons in its report. It emphasized the need to treat offenders scientifically, the need of proper training of prison personnel. The need to use imprisonment alternatives as a measure of sentencing policy and emphasized that correctional administration and development of prisons should no longer remain separated from the national development process.

**Mulla Committee, 1980-** This Committee was set-up for Jail Reform, the Committee suggested setting up of a National Prison Commission to bring about modernization of prisons in India. The Committee also suggested the existing dichotomy of prison administration at Central and State level should be removed. It recommended a complete ban on the appalling practice of keeping together juvenile offenders with hardened criminals in prisons. The Committee also advocated for separation of mentally disturbed prisoners and placing them in mental asylums.

The Committee recommended improvement in prison conditions by making sufficient arrangements for food, sanitation, amenities, clothing and ventilation. It promoted making rehabilitation, probation and after care as an essential part of prison service. And allowing media to visit prisons and correctional institutions periodically so that the public can have first-hand information about conditions inside prisons.

**Krishna Iyer Committee, 1987-** This committee was appointed to carry out a study on the plight of the women prisoners in India. It has recommended creation of separate prisons for women with women staff members that has satisfactory sanitary conditions.

**Subsequent Developments-** The Supreme Court in *Ramamurthy vs. State of Karnataka*<sup>3</sup> laid down directions to bring in a unified and consolidated national framework on prison laws and to draft a model prison manual. A draft Model Prisons Management Bill was circulated in 1999 however, the bill has still not passed.

### **Prisoners' Rights protected by the Constitution of India**

(a) **Right to life and personal liberty-** The Supreme Court has widened the interpretation of Article 21 of the Constitution by including right to life with human dignity<sup>4</sup>, which is afforded to all, a right that even the State has no authority to violate.

(b) **Right to health and medical treatment-** The Supreme Court in many cases has declared the right to medical care comes under the ambit of Article 21 of the Constitution, imposing the obligation on the state to preserve life.<sup>5</sup> However, we still find cases where the prisoners' health has been neglected, and proper healthcare facilities have not been provided- a clear violation of fundamental rights of the prisoners by the State.

(c) **Right to a speedy trial-** The Constitution also guarantees Right to speedy trial under Article 21, which is guaranteed as a fundamental right, it is an important safeguard to prevent oppressive and undue imprisonment prior to trial. Delay in the disposal of cases is a denial of justice, the Court is supposed to take steps for speedy trial and quick disposal of cases.<sup>6</sup> A speedy trial can be demanded by the accused at any time during the criminal proceedings, the infringement of the said right can lead to charges of the conviction being quashed.<sup>7</sup>

(d) **Right to free legal aid (as part of the Directive Principle of State Policy under Article 38(1))-** Right to free legal aid is one of the facets of Article 21<sup>8</sup>, which creates a duty upon a state to provide free legal recourse. The State is under a Constitutional mandate to provide legal redressal to the ones who are unable to afford it, this access to legal justice should be without

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<sup>3</sup> *Ramamurthy v. State of Karnataka*, (1997) S.C.C. (Cri) 386.

<sup>4</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

<sup>5</sup> *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 812

<sup>6</sup> *Kadra Pahadiya v. State of Bihar*, AIR 1983 SC 1167

<sup>7</sup> *AR Antulay v. RS Nayak*, [AIR 1984] SC 1630, *Common Cause Society v. Union of India*, AIR 1996 SC 1619

<sup>8</sup> *State of Maharashtra v. Manubhai Pragaji Vashi*, AIR (1995) 5 SCC 730

any intervention from the prison authority. As said by Justice Krishna Iyer with regards to Free Legal Aid, “this is the State’s duty and not Government’s charity”.

(e) **Right to reasonable wages for work-** It is a legal right, social imperative, and ethical compulsion of a workman to have wages for the work they have done. The wages should be fair and equitable to fulfil the objective of rehabilitation of the prisoner and the compensation to be paid to the victim (Section 357-A of Criminal Procedure Code- Victim Compensation Scheme). Non-payment of wages would result in bonded labour and is a clear violation of Article 23 of the Constitution.

**Women Prisoners-** The appropriate prison authorities have been directed to take into consideration all reasonable facilities of ensuring pre-natal and post-natal care for the mother and the child are provided before sending the prisoner to jail, also providing holistic programs to help the offenders.<sup>9</sup> The children of the women prisoners should be provided with healthcare, education and recreation facilities. Facilities such as crèches and foster homes can add to a better care and custody of the child.

**Youth Offenders (Juvenile Offender)-** The mindset of the youth offenders will be impacted if they are imprisoned with adult offenders and hardened criminals. Therefore, it is considered that the younger the offender, the greater the care he needs and the more tactful and sympathetic must be his handlings.<sup>10</sup> The young offenders should be sent to juvenile and remand homes, reformatory school, protective homes and borstal schools where the juvenile offender are provided with opportunities of educational and vocational training to reform them. The system of foster care needs to be included in juvenile justice to reform juvenile offenders.

### **Approaches for Prison Reform**

**Educational Approach-** Educational facilities should be introduced where it is currently absent and improved where it currently exists. In many prisons, inmates including hardcore criminals and women prisoners have joined various courses offered by Indira Gandhi National Open University (IGNOU), New Delhi and National Institute of Open Schooling (NIOS), other State Universities and NGO’s. They mainly offer courses such as BA, MA, MBA & other post-graduation courses. The inmates can also join the classes of 10th and +2 for basic guidance. In

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<sup>9</sup> Shachi Gambhir, Policy Reform in India: Policy v. Reform, (Pro Bono India), <http://probono-india.in/blog-detail.php?id=80>, (2020)

<sup>10</sup> Roy, Joy tilak Guha, Prison and Society, 112 (Gian Publishing House, 1989)

many prisons with a view of imparting vocational training a fully-fledged computer training centers has been introduced for willing and eligible prisoners. Incarceration should not act as a hindrance in the overall development of the personality of the offender. The prisoners should be provided with plenty of opportunities to pursue his/ her education and furthermore make available any training or special teaching as required.

The inmates are also provided training in carpentry, metal working and fabric painting. Many prisons have also introduced programs for women empowerment by training them in stitching, weaving, making toys and embroidery items. Wage earning, gratuity schemes and financial incentives are also given to reduce the psychological burden on the convicts. Various seminars are organized by jail authorities to enlighten the prisoners on their legal rights, health and sanitation problems, HIV/AIDS and issues of mental health, minorities and juveniles and steps on how to reduce violence in prisons.

**Recreational Approach-** This approach has the inmates participating in outdoor activities like sports, cultural programs and handling prison industries. These activities help refresh prisoners mental state and would serve as a break from the tiresome work and would instill in him/ her a spirit of sportsmanship. The inclination towards the literature should be given due consideration by making available various books on self-help, legal books, motivation, novels, etc. An innovative idea is the setting up of souvenir shops and handling the prison business, adding income for the prison, that could be used for the inmates' welfare.

**Vocational Training-** Training on pen manufacturing, book binding, manure making, screen printing, envelope making, carpentry, tailoring and cutting, shoemaking etc. are regularly provided to the prison inmates. These training programs have not only resulted in learning of different trades and skills but also provided monetary gains to the prisoners. Furthermore, the Social Welfare Department of State Governments provide loans for setting up self-employed units after release to inmates.

**Non-custodial Methods-** New forms of sentencing have come in that are balanced with the best interests of the accused and society, like release on admonition, probation, imposition of fines and community service. About 80% of convicted prisoners are sent to prisons for short periods of time not exceeding three months. As keeping them in prison only exposes them to moral contamination and result in economic hardship and distress to their dependents.

**A Success story: Tihar Jail- Rehabilitative Technique (1993)-** The then Inspector General (Prison) Kiran Bedi wanted to make reforms in Tihar Jail, New Delhi. So, she introduced a panchayat system in the prison to encourage inmates to voluntarily take-up variety of activities to maintain discipline. This created positive equation between the staff and inmates and led to the inmates having a supportive environment and changing attitudes and values for the better. Prisoners could play football, kabaddi, basketball, etc. and they could enroll in bachelor courses of their choosing, including computer courses. Vipasana Yoga and Meditation Camp was organized for the very first time in Tihar Jail in 1994, it is a tradition that continues till today. Using creative art is another reformation technique adopted by the prison authorities, art requires the entire focus of mind of a person and hence it will not let the mind of any person to deviate. This was a successful experiment in reformatory theory that has shown how prison can help in the holistic development of a prisoner, and how prison is not just a place for prisoners to serve a sentence but a place to prepare themselves for life after prison.

### **Issues faced by Indian Prison System**

The Supreme Court, in its landmark decision in *Ramamurthy v. State of Karnataka*<sup>11</sup> has identified these 8 problems which need to be paid immediate attention to, for implementing prison reforms.

**Rampant Overcrowding-** The rate of incoming inmates is high in comparison to the rate of offenders released from the prison. This paddled with the high undertrial prison population has led to India's prisons becoming overcrowded by 18%<sup>12</sup> more than what is the capacity of the prisons as of 2015. This overcrowding in prisons makes it difficult to segregate serious criminals and minor offenders. This can cause a bad influence on the minor offenders, which might turn more minor offender's into professional offenders due to their continuous contact with hardened criminals. Furthermore, prisons in India have a sanctioned strength of 49 thousand prison authorities/ staff, of which, at present the staff strength is only around 40 thousand. This kind of under staffing could lead to unsafe and dangerous scenarios in prisons.

**Delay in Trials-** According to the latest statistics (end of 2020), 76% of all persons held in

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<sup>11</sup> *Ramamurthy v. State of Karnataka*, (1997) S.C.C. (Cri) 386.

<sup>12</sup> Aneesha Bedi, CHRI Analysis of NCRB Prison Data, The Print, 2020, <https://theprint.in/delhi-has-75-more-prisoners-then-capacity-69-of-all-prisoners-in-india-are-undertrials/496211/>

India's prisons are undertrials<sup>13</sup>. Undertrials refer to those people who are detained in jail amid trial, inquiry or investigation yet not charged of any crime by any Court of law. The undertrial share of the jail population in India is extremely high when compared to other countries.

**Torture and Ill-treatment-** The inmates including the undertrials are forced to do severe labour without any or much remuneration and treated with extreme torture and in some cases made to do rigorous work which is even barred by law. Women prisoners are also more vulnerable to abuse.

**Severe staff crunch-** About 36% of the openings for prison officers is yet unfilled. The ratio between the prison staff and the prison population is approximately 1:7. It means only one prison officer is available for 7 prisoners, while in the UK, 2 prison officers are available for every 3 prisoners. Lack of prison staff coupled with overcrowding in the prisons encourages extensive savagery and other criminal exercises inside the prisons.

**Neglect of Health and Hygiene-** The prisoners in India suffer from severe unhygienic conditions, lack of proper medical facilities and consistent risk of torment and misuse. Women prisoners suffer more in these prisons due at the time of their pregnancy and post-natal care.

**Insufficient food and inadequate clothing-** The quality and quantity of food, amenities and clothing provided in the prisons are barely enough to survive. It is inadequate and insufficient for the prisoners which lead to harsh effects on their health. The food is required to be prepared in better hygienic conditions.

**Management of Open-Air prisons-** The open prison system has come as a very modern and effective alternative to the system of closed imprisonment. The establishment of open prisons on a large scale as a substitute for the closed prisons, the latter being reserved for hardcore criminals shall be one of the greatest prison reforms in the penal system. It becomes very difficult to manage open-air prisons due to the prevailing overcrowding scenario in the prisons, staff crunch and weak management in prisons. But example of open-air prison in Rajasthan have been a success and have set a good record, by being the first state in the country to have an open-air prison and now it has been adopted by many states.

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<sup>13</sup> Prison Statistics India, 2020, National Crime Records Bureau, Ministry of Home Affairs, <https://www.ncrb.gov.in/en/prison-statistics-india-2020>



**Psychological effect-** Lack of inspection lead to a poor living condition. This rot in the criminal justice framework affects the psychological condition of the prisoner. It causes adverse psychological effects such as depression, claustrophobia, anxiety and panic attacks, stress etc. it makes the prisoner more vulnerable than before to criminal penchants.

### **Remedies and Solutions**

**Increase in wages-** Urgent reforms are needed in the prison labour scheme, the remuneration given to the prisoners should be enough to suffice their sustainable living inside the prison and also once they are out. Fair pay for fair wages should be the right of all. Furthermore, increasing the pay for prison staff, will mean more would aspire for the job, leading to filling the empty positions at prisons.

**Speedy Trials-** The prisoners languishing in jail should be given legal aid at the earliest by accelerating the pace of the criminal justice system. Speedy trials are necessary to deplete the total number of pending case burden on the Indian courts which now stands at 45 million cases.

**Separation of under trials, women offenders and first-time offenders-** Under trials are usually people who have not been convicted of the offence yet and such prisons should be kept in a separate prison cell, away from hardened criminals so that they do not get influenced by such offenders.

**Increasing the number of Prisons-** To deal with the problem of overcrowding, the number of prisons should be increased in the country and prisoners should be transferred from overcrowded prisons to prisons where the prisoner population is sparse.

**Provide more parole-** Provide an incentive for the prison inmate to want to re-enter society. The Supreme Court observed, “One method of reducing tension is by providing for vital links between the prisoners and his family. A prisoner insulated from the world becomes bestial and, if his family ties are snapped for long, becomes de-humanized.”

**Use of Technology-** Using touch-screen kiosks around the prison for the prisoner’s use. At these kiosks’ prisoners can access their court hearing dates, remission earned, prisoner property and cash details, parole/furlough application status and transfer status.

**Probation-** For people on parole and for first-time offenders, it would be better if, instead of imprisoning them, the State could put them on probation under the supervision of a probation

officer in order to provide them relative degree of freedom and chance to get back on track. This would also cost the State far less money to house, feed and care for them as inmates. However, Indian prisons do not yet have the system to monitor offenders using GPS software.

**Mentally Ill Prisoners-** Mentally ill prisoners should be accommodated in the psychiatric wing of a prison hospital or they should be sent to the nearest mental hospital for treatment.

**Inspection-** To set up a State Board for Prison Inspection to regularly visit prisons and to report on conditions prevailing in the prisons for consideration to the State Government.

**Food & Amenities-** Prisoners who can meet their own expenditure by depositing certain amount fixed by the Government should be able to enjoy special services like tea, newspapers, pillow, and quality food products taking into account inmate's dietary choices.

**Sanitation and hygiene-** Laundries need to be properly equipped for washing, disinfecting, and fumigating clothes and beddings; ratio of toilets to prisoners should be reasonable; so must the ratio of cubicles for bathing to prisoners, open gutters in the prison must be covered. And the local Public Health officer must be conduct regular inspections to allocated prisons.

**Appointment of the Welfare Officer-** Extensive use of Probation Services in deserving cases, adequately strengthening the infrastructure and arranging sensitization programs regularly for judicial officers, prosecuting officers and police officers.

**“Advisory Board Scheme-** Amending suitably the existing Section 433 of the Criminal Procedure Code to consider and release under the Advisory Board Scheme the prisoner who has shown reformation, good conduct and has high chance of rehabilitation even before the completion of their prison sentence.”<sup>14</sup>

**Community Participation, NGO's and Philanthropists-** Allowing NGOs and Philanthropists who are really interested in the welfare of prisoners in all the treatment programs in prisons like education, vocational training, medical and healthcare, sanitation and hygiene and recreation activities etc.

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<sup>14</sup> Uzhair Ahmed Khan, Legal Backdrop of Prison Reforms (I Pleader), <https://blog.ipleaders.in/legal-backdrop-prison-reforms/> (2019)

## **Conclusion**

Prison is the important wing of administration of crime and criminology in the country, and it part of the bigger picture of social recovery. There are many hurdles to cross for the prisons to be a reformative institution than a custodial home of torture. Prisons in the country shall endeavor to reform and re-assimilate offenders in the social milieu by giving them appropriate correctional treatment.

The real debate in India's Prison Reform is one between policies and practice. As can be observed, Indian legislatures have given full autonomy to the states to control the prisons and at the same time have constituted many high-profile committees who have given path breaking recommendations for prison reforms. And the Indian judiciary has time and again by expanding the scope of reading Article 21 of the Constitution safeguarded many fundamental rights of prisoners. However, it is the lack of implementation and/or poor enforcement of those recommendations by the states and the central governments through the executives that have led to the failure of implementing many prison reforms in India and which still leads to the poor living conditions of the prisoner inmates in India.