
PRISON REFORMS IN INDIA VIS-A-VIS THE BHARATIYA NAGARIK SURAKSHA SANHITA

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ABSTRACT

India witnesses a revolutionary shift in the Indian Criminal justice system through the enactment of the new criminal laws. The new laws, known as Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhinyam superseded the colonial era criminal law i.e Indian Penal Code (IPC) of 1860, the Code of Criminal Procedure (CrPC) of 1973, and the Indian Evidence Act (IEA) of 1872. The need for reforms and changes in the new laws is realization of the outdated existing laws. The new laws seek to achieve timely and effective response to the changing circumstances and challenges of crime. It seeks to modernize the criminal justice system with the integration of modern technologies in justice delivery. Key reforms in the Bharatiya Nagarik Suraksha Sanhita includes speedy disposal of cases, E-FIR, use of audio electronic records in arrest, search, seizure and disposal of seized article, the use of forensic technology and data analytics in criminal investigations, specific timeline for legal proceeding, introduction of preliminary inquiry in some cases, enlargement of bail provisions etc. One of the main hurdles in prison reforms is the problems of overcrowding. As per Prison Statistics 2022, the number of Prison in India is 1,330 and the actual sanction capacity is 4,36,266 prisoners. At the end of the year 5,73,220 prisoners were lodged in different Prison. This clearly indicate that over-crowding exist in the Indian Prison. To achieve Prison reforms would be a difficult task with problem of over-crowding. Therefore, this paper attempts to analyze that through the enactment of the Bharatiya Nagarik Suraksha Sanhita how Prison reforms can be achieved by reducing the problem of over-crowding

Keywords: Prison reform, over-crowding, criminal justice system, Bharatiya Nagarik Suraksha Sanhita

Introduction:

The Indian criminal justice system is undergoing a significant change with the introduction of three new criminal laws. In 2020, an initiative was taken by setting up of a Committee for Reforms in Criminal Laws under the Chairmanship of Prof Ranbir Singh. The three Bill Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), Bharatiya Sakshya Adhiniyam was introduced in Lok Sabha on 11th August, 2023. The Bill was referred to Standing Committee which submitted its report on 10th November, 2023. On 25th December, 2023 it received the President assent and come into force on 1st July, 2024. Among the several objectives of the new criminal laws is to replace the age old inherited laws from British colonial era, to provide timely and effective response to the changing circumstances and challenges of crime, speedy disposal of cases, law will deter criminals by instilling fear their minds and reducing crime rates and reduced overcrowding in Jail. Key reforms in the Bharatiya Nagarik Suraksha Sanhita includes the introduction of E-FIR, Zero-FIR, use of audio- video electronic means, witness protection scheme, time-line in investigation process and pronouncement of judgment, preliminary inquiry in offences relating to punishment of 3-7 years by the Police, introduction of in-absentia trial, opportunity of being heard in Complaint cases before taking cognizance of offences, enlargement of Bail provisions by release of first-time offender, increasing Magistrate power to impose fine, use of handcuff in certain offences, summon serve through electronic communication, digital evidences, limitation on adjournment of cases, enlargement of scope of plea bargaining, commutation sentences by specifically mentioning commutation sentences, information to victim on progress of investigation, use of electronic communication or use of audio-video electronic means in trial, inquiries and investigation. Over all the new criminal law seeks to modernize the criminal justice system with the integration of modern technologies in justice delivery

Literature Review:

Dr B.V. Trivedi, *Prison Administration in India* (Uppal Publishing House, New Delhi, 1st edn., 1987) the author on this Book stated that prison administration is the essential part of criminal justice; it is at the receiving end in a manner of speaking of police, the prosecution and the judiciary. Prison has been recognized not only as a place for detention or mere punishment, but it is an institutional device for correction and rehabilitation of inmates. But the societal reaction towards criminal is still ingrained in the idea that jails mainly exist to prevent the culprit and

the convicts from doing further offences. The author also stress on modernization of prison administration and stated that modernization of prison involves development of the capacity of the infrastructure and the apparatus and the humanization and sensitization of the entire administrative machinery and its approach and attitudes

K. Jaishanker, Tumpa Mukherjee, et.al (eds.), *Indian Prison Towards Reformation, Rehabilitation and Resocialization* (Atlantic Publishers & Distributors (P) Ltd, New Delhi, 2014). The authors in this Book throw a brief history of prison in colonial era. The author stated that prison is a form used by the discipline, a new technological power which can also be found in modern schools, hospitals, psychiatric clinics, factories, workshops, military barracks etc. The authors also talk about issues and challenges of Indian prison such as lack of political will, lack of human resources, overcrowding, prison torture, deaths in custody, disproportionate under-trial to convict ratio, delay in disposal of cases for the underprivileged, criminal-jail staff nexus and children of prisoners. The authors also mentioned historical perspective of prison reform, rights of prisoners and the various contemporary issues about Prison that are not in tune with the reforms made in Indian prisons.

Ram Ahuja, *Criminology* (Rawat Publications, Jaipur & New Delhi, 1st edn., 2000) - the author stated that with the changes in society, the functions of Prisons have also changed from custodial, to coercive, to correction. He suggested that positive use of Open Prison is necessary for achieving reformation and rehabilitation of prisoners. Converting Prisons into corrective centers will involve extra expenditure. However, it is important to strengthen correctional centers because in long run the result will be real cost savings and a reduction in crime.

Dr. S.R. Myneni, *Crime Criminology & Penology* (Allahabad Law Agency, Faridabad, 2nd edn., 2023) the author specifically mentioned the development of prison system in India. He stated in the early days Prisons were only place of detention where the offender was detained awaiting trial and judgment and the execution. With the development of time, now the objective of Prison is to rehabilitate the offender and to prepare them for normal life. The objective of prison is not to have retribution against the offender. It should aims to make a prisoners a better human being and a useful person for the society in future.

Rakhi Mane, "The New Era of Criminal Justice in India: An Overview" 6 (4) *International Journal of Legal Science and Innovation* 156 (2025) – The author stated that with the introduction of three new criminal laws, the criminal justice system in India is undergoing a

significant reforms. The new laws seek to achieve timely and effective response to the changing circumstances and challenges of crime. It seeks to modernize the criminal justice system with the integration of modern technologies in justice delivery. Key reforms in the Bharatiya Nagarik Suraksha Sanhita includes speedy disposal of cases, E-FIR, use of audio electronic records in arrest, search, seizure and disposal of seized article, the use of forensic technology and data analytics in criminal investigations, specific timeline for legal proceeding, introduction of preliminary inquiry in some cases, enlargement of bail provisions etc. With the new changes Prison reforms could also be achieves as there would be reduction of overcrowding in Prison.

Indian Prison Scenario: Overcrowding

The subject of Prison is covered by Entry 4 of List II of the 7th Scheduled of the Constitution, the management and administration falls exclusively within the domain of the State. The primary function of criminal justice system is to administer criminal justice with a view to prevent and control crime in the society and to reform the criminal. The pendency of cases in India is huge, a total of 18,06,823 inmates were admitted in various jails of the country in 2021 and the admission of inmates has increased by 10.8% over 2020 (16,31,110 inmates), a total of 5,54, 034 prisoners were confined as on 31st December, 2021 in various jails across the country, the number of Under-trial inmates were reported as 4,27,165 accounting for 77.1% at the end of 2021¹. As per Prison Statistics 2022, there were 1330 Prison across the country with sanction capacity of 4,36,266 prisoners. The actual occupancy is 5,73,220 i.e 131.4 % of occupancy rate. Out of the total population of prisoners 4,34,302 were under-trial prisoners i.e 75 % of the prisoners. Looking into the prison population there is overcrowding in Prison and delay in disposal of cases is one of the reasons for over-crowding in Jail. Among the various functionalities of criminal justice system Prison represent the tail end. Prisons have existed since time immemorial; earlier Prisons were used as mere detention house detaining prisoners awaiting trial and execution of sentences. But now in modern era wherein crime is treated as a social disease, the idea of correctional institution has taken place aiming correction, rehabilitation and reformation of the prisoners and this constitute the vital aspects of prison administration. The existence of prison is not only sufficient the present day penology center around imprisonment as measure rehabilitation of offenders, the prison are no more mere

¹ https://ncrb.gov.in/sites/default/files/PSI-2021/PSI_2021_as_on_31-12-2021.pdf

detention houses for the offender but they seek to reform them for future life. To achieve Prison reform, the major defect i.e over-crowding in Jail needs to be address.

Bharatiya Nagarik Suraksha Sanhita vis –a-vis Prison reforms :

The Bharatiya Nagarik Suraksha Sanhita replaced the Criminal Procedure Code (CrPC) of 1973. With the new laws, several changes were introduced which will serve as an effective tools for reducing over-crowding in Prison. Now a days the existence of prison is not only sufficient the present day penology center around imprisonment as measure rehabilitation of offenders, the prison are no more mere detention houses for the offender but they seek to reform them for future life. Internationally, it becomes a well-accepted rule that the correctional mechanism in criminal justice administration should comply with reformatory policies². It is also declared that all prisoners shall be treated with respect due to their inherent dignity and value as human beings³. Therefore, reducing the number of Prisoners will the make the administration of prison easier which will be a great step towards prison reforms. Not only that as mentioned above the administration of Prison is State subject, therefore, all the expenses and management of Prison and Prisoners are under the State budget. If there is reduction of number of prisoners in Prison the expenses incurred will also be reduced. The new law takes a lenient view with respect to some procedural issues. Some of the provisions under the Bharatiya Nagarik Suraksha Sanhita that may serve as a tool for reducing over-crowding in Prison may be highlighted as under –

1. Section 35 – When Police may arrest without warrant – Under the old laws in warrant cases the Police were empowered to arrest without warrant in warrant cases. With the new law, in case of warrant cases relating imprisonment of less than three years no arrest can be made without prior permission of an officer not below the rank of Deputy Superintendent of Police if such person is infirm or is above sixty years of age. This provision limits the arrest law in warrant cases. If the provision is employed in some cases, the number of arrested person will surely be reduced.
2. Summons - Summons is a legal documents issued by the Court mandating a person to appear before the Court. Unlike traditional communication of serving summons

² International Covenant on Civil and Political Rights, 1966, Art. 10 (3) mandates that the essential feature of correctional system should be reformation and rehabilitation of Prison.

³ Basic Principles for the Treatment of Prisoners, 1990. Principle 1

through face to face and letter conversation, serving of summons in electronic forms is recognized by the new laws. This will achieve a faster case resolution, reduced paper work, reduce delay in case disposal and broaden access to justice through modern technology. There are multiple causes of delay in serving summons. The person summons refuses to receive or cannot be found, outdated addresses, lack of intermediate communication between Court and the party serving the summons. Because of all these reasons, there was delay in dealing with cases which effect in the delay in disposal of cases. If there is pro-long delay in disposal of cases the number of under-trial prisoners are increasing day by day leading to over-crowding in Prisons. Therefore, with the recognition of serving of summons by electronic communication will enhance the justice delivery system.

3. Preliminary inquiry - Section 173 (3) has given statutory recognition of preliminary inquiry by the Police officer. The provision was not seen in the old laws. It provides that on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer in-charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence,—
 - (i) proceed to conduct preliminary enquiry to ascertain whether there exists a prima facie case for proceeding in the matter within a period of fourteen days; or
 - (ii) proceed with investigation when there exists a prima facie case

This provision empowers the Police officer to conduct preliminary inquiry in some cases. The option of conducting preliminary inquiry is available when the offence is punishable for 3 (three) years or more but less than 7 (seven) years. The goal is to first check whether there's enough initial evidence to support the claim before going ahead with a full investigation. This marks a shift from the older legal approach. If the provision is applied, number of cases could be settled at the Police Station without reaching the Court. It will reduce unnecessary arrest if there exists no prima facie case. This provision makes a departure from mandatory requirement of registration of FIR by Section 173. The Supreme Court in *Imran Pratapgadhi v. State of*

*Gujarat*⁴ held that after holding a preliminary inquiry, if the officer comes to a conclusion that a prima facie case exists to proceed, he should immediately register an FIR and proceed to investigate. But, if he is of the view that a prima facie case is not made out to proceed, he should immediately inform the first informant/complainant so that he can avail a remedy under sub-Section (4) of Section 173.

4. The new law provides that not more than two adjournments may be granted by the Court after hearing after hearing the objections of the other party and for the reasons to be recorded in writing. This system will result in quick disposal of cases.

5. First-time offender – Proviso to Section 479 provides first time offenders who are under-trial to be released after serving one-third of the maximum sentence for their offence. However, it excludes offence punishable by death or life imprisonment from this benefit. In *Re- Inhuman Conditions In 1382 Prisons v. Director General of Prisons and Correctional Services and Ors*⁵– a letter from the former Chief Justice of India, R.C Lohati raised concerns regarding the pathetic conditions of prisons. The critical issue in prison includes overcrowding, custodial death, inadequate Prison Staffs and training given to existing Staffs. He also raise concerned about lack of reformative activities provided to prisoners and the State's duty to uphold the rights of prisoners. In a recent order issued by the Court, the Court directed the State government for immediate implementation of Section 479 of the BNSS urging the concerned authority to identify under-trial prisoners detained in custody serving one-third imprisonment provided for the alleged offence. The Court further directed to expedite their application and release them on Bail. The introduction of this provision is to eliminate over-crowding in Jail as majority of prison population were under-trial prisoners. This system will also impose an obligation on the Court to dispose the case within a reasonable time.

Conclusion:

The new criminal laws mark a significant step towards transforming India's criminal justice system. It aimed to create a more efficient, just and modern legal framework by introducing the contemporary needs and technological advancement. Prison represent the tail end of the criminal justice system but on the whole it plays the most important role and almost the whole trust on bringing reformation, rehabilitation and re-integration of the offenders lies with it, as

⁴ Criminal Appeal No.1545 of 2025.

⁵ Available at <https://indiankanoon.org/doc/4389693/> last visited June 20, 2025.

the offenders interaction first begin with the prison official after he is found guilty by the Court. So long as we are in a society one cannot expect that crimes as such will be eliminated from modern society. Crime will be there, but the task of those who are concern with the well-being of the society is to see that human resources of the nation are not wasted away i.e. a man sent to jail for having gone astray on some occasion shall not be considered either by himself or by other members of the society to be lost to the society for ever. Therefore, one of the most important steps in prison reform i.e reducing over-crowding is expected to be achieve through the new provisions added in the Bharatiya Nagarik Suraksha Sanhita.