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The Need for Prison Reform throughout the world

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The paper aims to analyze the situation of prisoners in different parts of the world, namely India, the USA, Europe, the Middle East, and Africa, and how reforms of the Prison system can contribute to the well-being of the incarcerated. Issues like overcrowding of prisons and insufficient resources contribute to the stunted quality of life in prisons. There also have been instances of human rights violations in many prisons across the world. Many initiatives have been taken by various organizations that specialize in human rights issues such as the PRI (Penal Reform International) in Africa and countries have their laws concerning the administration of prisons such as the Prisons Act of 1894¹, the Prisoners Act of 1900², and the Transfer of Prisoners Act of 1950³ in India. This paper will further delve into the complexities of the criminal justice and prison system across the globe.

Keywords: *prison, reform, penal reforms, prisoners.*

INTRODUCTION: PRISON REFORM IN INDIA

‘Prisoners’ refers to individuals who are confined in specially made institutions called prisons and are excluded from the outer society because they are considered a threat to the public at

¹ Prisons Act 1894

² Prisons Act 1900

³ Transfer of Prisoners Act 1950

large. These prisoners are therefore looked at through a very skeptical and negative lens and are treated harshly in prisons. The concept of a place like a prison was based on the idea of providing rehabilitation to these law-breaking citizens so that they end up being better individuals and citizens of the country who pose no harm when they get reinstated into society. However, this concept is prevalent only in theory. In reality, these prisoners suffer immensely because they're viewed by society as monsters and are therefore treated inhumanely and brutally. The National Human Rights Commission reported over 2150 cases of judicial custody and 155 deaths in police custody in 2021-22. One of the most horrifying cases of custodial torture that India witnessed has to be the Bhagalpur Blinding case wherein the Bihar police blinded about 33 under-trial prisoners by pouring acid into their eyes.⁴ The petitions that were filed in the Supreme court for this case were heard in *Khatri &ors. v the State of Bihar*. The court reasoned that justice needs to be served to those prisoners through monetary compensation. 'One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation.'⁵

The prison act of 1894 is over a hundred years old and is mainly focused on the functioning of the prisons rather than the rehabilitation of prisoners. Prison is a subject covered under the state list in the seventh schedule of the Indian constitution. The day-to-day administration of prisoners rests on principles incorporated in the Prisons Act of 1894, the Prisoners Act of 1900, and the Transfer of Prisoners Act of 1950.⁶ In recent years, the Supreme Court has passed many judgments advocating for prisoners' rights keeping in mind the growing number of prisoners in India and the lack of basic facilities offered to them. These developments have outworn The Prison Act of 1894 and have also modified it by rendering physical punishments illegal and

⁴ Nilisha Kumari, 'The Bhagalpur Blinding Case' (*Lords of Law*, 27 August 2021) <<https://lordsoflaw.com/the-bhagalpur-blinding-case/#:~:text=The%20Indian%20conscience%20was%20taken%20aback%20by%20the,and%20soul%20of%20the%20Indian%20constitution%20%28Article%2021%29.>> accessed 17 February 2023

⁵ *Ibid*

⁶ 'Indian prison information' (*Foreign Prisoners*) <https://foreignprisoners.com/pris-india.html?_cf_chl_rt_tk=oFIS1n3PXQATWID7i28u0rFbPPjiAlbMdqCV7TYrc9Q-1676886618-0-gaNycGzNCqU> accessed 17 February 2023

strictly prohibiting custodial violence.⁷ The Legal Service Authority Act, of 1987 provides free legal aid to people who are in custody.⁸

Prisons in India face many serious problems that call for immediate action. For example, Indian prisons are heavily overcrowded. In total, the country has over 488500 prisoners across only 410 district jails. According to a study by Commonwealth Human Rights Initiative (CHRI), prison occupancy increased from 115% to 133%.⁹ A reason for the same is the long duration of the trials that these prisoners are put under. While on one hand, the trial time needs to be reduced, on the other, this could generate even more pressure on the courts and could lead to hasty and improper decision-making, therefore challenging the legitimacy of judicial justice. These issues further give rise to other significant problems like discrimination and power play among the inmates, severe fights breaking out resulting in serious injuries, and further, the lack of basic mental and physical healthcare which worsens the condition of the inmates, making it very difficult to view prison as a place of rehabilitation. Most of these issues were identified by the Supreme Court in the case of *Ramamurthy v the State of Karnataka* in 1997 and in 2013, nearly twenty years later, the court expressed regret and disappointment about the fact that the identified issues remained unresolved.¹⁰ Another important judgment was made by the Hon'ble supreme court of India in 1980 in the case of *Prem Sankar Shukla v Delhi Administration* wherein the practice of using handcuffs on prisoners was abolished and the classification of prisoners based on their backgrounds was also rendered invalid.¹¹ Over time, many important committees have been set up by the court to look into the ways India can develop its prison administration, particularly keeping in mind the well-being of the prisoners. One of the most recent ones dates back to 2018, the Justice Amitava Roy Committee, which suggested measures like the setting up of special fast-track courts to deal with petty offenses, a healthy lawyer-to-

⁷ P S Bawa, 'Towards prison reform' (2000) 27(2) *India International Centre* <<https://www.jstor.org/stable/23005498>> accessed 17 February 2023

⁸ Legal Service Authorities Act 1987, s 12(g)

⁹ Murali Krishnan, 'Why are India's jails so overcrowded?' (*DW*, 3 September 2022) <<https://www.dw.com/en/why-are-indias-jails-so-overcrowded/a-61063696>> accessed 17 February 2023

¹⁰ Murali Karnam, 'Why We All Need a Reminder About Prisoners' Rights' (*The Wire*, 27 September 2016) <<https://thewire.in/rights/why-we-all-need-a-reminder-about-prisoners-rights>> accessed 17 February 2023

¹¹ Daman Preet Kaur, 'PREM SHANKAR SHUKLA v DELHI ADMINISTRATION' (*Jus Corpus*, 18 October 2022) <<https://www.juscorpus.com/prem-shankar-shukla-v-delhi-administration/>> accessed 17 February 2023

prisoner ratio, reduction in adjournments, use of video-conferencing for speedy trials, encouraging courts to use their discretionary powers by awarding sentences like fines instead of sentencing them with jail time in appropriate situations¹². In the past also, many committees have been set up to identify and deal with such prison relating issues, for example, the Mulla Committee 1983 wherein one of the most important suggestions of sending mentally ill prisoners to a mental asylum for rehab was made. Krishna Iyer Committee, 1987 revolved around admitting more women into the prison administration for fluent tackling of women and child offenders.¹³

India has also undertaken some steps forward that have helped develop India's prison system. The E-Prison project aims to digitalize all things related to prison and prisoner management for the smooth functioning of the system. This application provides vital information about the inmates, lodged in the prisons, in real time environment to the prison officials and other entities, involved in Criminal Justice System. It encourages buying and selling of products made by the inmates. It also takes care of the Hospital Management system, Legal aid management system, and Visitors management system.¹⁴ The government of India launched a "Modernization of Prisons" scheme in 2002-03 that mainly focused on constructing more prisons to prevent overcrowding, improving the quality of basic amenities like sanitation and water supply, and initiating renovation of existing prisons.¹⁵ In 1999, the Ministry of Home Affairs circulated a draft Model Prison (Management) Bill to replace the Prison Act 1894 however, it hasn't been finalized yet. Despite these developments, India is still lagging when it comes to the situation of prisons and the welfare of prisoners residing in them. Many more reforms need to be undertaken by India to develop a healthy Prison system.

¹² Krishnadas Rajagopal, 'Supreme Court panel recommends several prison reforms' (*The Hindu*, 06 February 2020) <<https://www.thehindu.com/news/national/supreme-court-panel-recommends-several-prison-reforms/article61635639.ece>> accessed 17 February 2023

¹³ 'PM calls for Prison Reforms and Repeal of Obsolete Laws' (Civildaily, 23 January 2023) <<https://www.civildaily.com/news/pm-calls-for-prison-reforms/#:~:text=PM%20calls%20for%20Prison%20Reforms%20and%20Repeal%20of,4%20%284%29%20Justice%20Amitava%20Roy%20Committee%2C%202018%20>> accessed 17 February 2023

¹⁴ 'National Prison Portal' (*Eprisons*) <<https://eprisons.nic.in/public/About>> accessed 17 February 2023

¹⁵ 'Scheme of modernisation of prisons' (MHA) <https://www.mha.gov.in/sites/default/files/SchemeMP-131011_0.pdf> accessed 17 February 2023

Prison Reforms in the United States and Europe

Prison reform is any measure taken to better the lives of prisoners, the people affected by their crimes, or the effectiveness of incarceration; it is important because it creates safer conditions for both people living inside and outside of prisons. In the 1970s, the United States had an incarceration rate that was comparable to that of Canada and Europe. Yet, by the 2010s, the United States has acquired the unfortunate distinction of housing 5% of the global population but roughly 25% of the global prison population. In 2010, however, for the first time in four decades, the U.S. prison population began to decline though it wasn't a great decline it was remarkable because it reflected a true moment of bipartisanship. But the question is, how long will it last? Many who support the reform are motivated by a desire to save money, but the problem that is now being highlighted is that not much money is being saved. First off, shockingly little money is spent on prisons, and reducing the number of prisoners won't do anything to help. Second, the private prison companies working on prison reforms have an incentive to maintain large inmate numbers since they can make money from such numbers.

According to research, the jail expansion over the last three decades has had a negligible effect on crime now and will continue to do so in the future, accounting for just around 20% of the drop in crime since the early 1990s¹⁶ Several European and North American criminal justice systems eventually abandoned public punishments, such as hanging, whipping, branding, and other forms of deformity and disgrace, under the leadership of reformers from the northeastern United States, and established imprisonment as the new norm. The initial wave of reforms made promises to rationalize and humanize the criminal justice system as well as to reimagine jail as a place for introspection and recovery. The reformers referred to their facilities as "houses of correction" or "penitentiaries" to underline these new objectives. ¹⁷Between 1975 and 2000, the total number of inmates in U.S. facilities jumped from just under 380,000 to almost two million, an increase of more than 500 percent, driven largely by harsh, racially targeted sentencing laws

¹⁶ Jeff Bleich, 'The Politics of Prison Crowding' (1989) 77(5) California Law Review

<<https://www.jstor.org/stable/3480644>> accessed 17 February 2023

¹⁷ John F. Pfaff, 'The Complicated Economics of Prison Reform' (2016) 114(6) Michigan Law Review

<<https://www.jstor.org/stable/24770892>> accessed 17 February 2023

for drug offenses. Most agree that the rise of mass incarceration was not primarily a response to a rise in crime, but each has its account of what the prison has become. With more than one in every 104 American adults in prison or jail, the U.S. has the highest incarceration rate in the world – at 716 per 100,000 residents.

The proportion of criminals sentenced to jail and community supervision and the rate of incarceration vary from state to state within the United States. In reality, there are 147 state prisoners for every 100,000 people in Maine and 865 for every 100,000 people in Louisiana in the United States. In the United States, there are 716 prisoners for every 100,000 citizens, including those in prison and those employed by the federal government. It is shocking to see how the rates in Europe compare: 79 per 100,000 people in Germany and 82 per 100,000 people in the Netherlands are imprisoned.¹⁸ While the prevalence of criminal behavior and the rate of arrest may be quite different from country to country, what these numbers demonstrate is that Germany and the Netherlands incarcerate proportionately far fewer people than the United States.

Incarceration is used less frequently and for shorter durations of time in Germany and the Netherlands. Only a small portion of those found guilty in both nations are given prison sentences; instead, they depend largely on non-custodial punishment and diversion. The use of incarceration, in contrast, is more common and lasts longer because incapacitation and punishment are the main aims of sentencing in the United States.¹⁹ The duration of the prison sentence given is another obvious distinction in sentencing procedures. In Europe, punishments for a given offense are often significantly less severe than in the US and extended mandatory jail terms are rarely used, resulting in overall shorter sentences.²⁰

¹⁸ Ram Subramanian and Alison Shames, 'Sentencing and Prison Practices in Germany and the Netherlands Implications for the United States' (2013) 27(1) Federal Sentencing Reporter
<https://www.jstor.org/stable/pdf/10.1525/fsr.2014.27.1.33.pdf?refreqid=excelsior%3A4da92486e0c93b7099430c130782ab23&ab_segments=0%2FSYC-6744_basic_search%2Ftest-1&origin=&initiator=> accessed 17 February 2023

¹⁹ Christopher Moraff, 'Can Europe Offer the U.S a Model for Prison Reform' (*Next City*, 19 June 2014)
<<https://nextcity.org/urbanist-news/us-prisons-reform-european-prisons-model>> accessed 17 February 2023

²⁰ Nicola Lacey, 'American imprisonment in comparative perspective' (2010) 139(3) *Daedalus*
<<https://www.jstor.org/stable/20749845>> accessed 17 February 2023

Consistent with the principle of normalization, offenders in Germany and the Netherlands who serve time in prison are not stripped of their rights as members of society. They do not suffer the collateral consequences of conviction that many offenders in the United States face after release, such as restrictions on housing and professional licensing, limited access to social benefits, and suspended driver licenses. They are also given opportunities to spend time outside of prison.

Is the US making careful use of imprisonment as a means not only of repressing crime but of reforming criminals?

More than 14,000 of the prisoners committed in 1904 were under twenty years of age, and 685 were under fifteen years. As the reformatories in the country would not even hold such a number and besides receiving many who are over twenty-one years of age, it is evident that we annually send thousands of youthful offenders to penal institutions primarily designed for the safekeeping of the offender, and not for his reform.²¹

Prison reform in the Middle East and Africa

Prisons throughout the MENA (Middle East and North Africa) region have a reputation for having deplorable living conditions. Some of the major issues faced by the inmates are poor ventilation, appalling hygiene conditions along with lack of sufficient food and water. Overcrowding and systemic prison abuse also contribute to the uninhabitable conditions of the prison system.²² Inadequacies in proper living facilities in prisons call for serious introspection of the standards of the prison system, owing to the basic, fundamental rights which every human being deserves. Human rights activists, social reformers, and criminal justice experts, all condemn the ignorance shown towards the fact that inmates and prisoners go through deprivation of basic human rights when they are denied the right to live in habitable conditions.

²¹ John Koren, 'Some Facts about the Prison Population in the United States' (1907) 10(79) Publications of the American Statistical Association <<https://www.jstor.org/stable/2276308>> accessed 17 February 2023

²² 'Middle East and North Africa Regional Overview: 2021' (*Amnesty International*, 2021)

<<https://www.amnesty.org/en/location/middle-east-and-north-africa/report-middle-east-and-north-africa/>> accessed 14 February 2023

Multiple reports of deaths surface time and again resulting from torture and other modes of punishment such as food being withheld from them on purpose.

Historical analysis suggests that in the Middle East, the criminal justice system has always been used by rulers to ensure that order is maintained and to also establish power in such a way that it preserves the values and interests of their regime and all those who supported it.²³ This could be the reason for the continuing trend of the conservative criminal justice system in the Middle East where prisons are overcrowded with not enough resources to support each prisoner's needs. Overcrowding is the biggest issue in any prison system which thoroughly contributes to the atrocious conditions that inmates live in. In the Middle East, the number of prisoners in central jails in Makkah, Riyadh, and Jeddah was nearly three times their capacity.²⁴ Around 6300 prisoners were serving time in Riyadh's central prison even though the prison could only accommodate about 1,800. There were about 2,500 and 7,400 inmates at the central prisons of Makkah and Jeddah although they had a maximum capacity of 700 and 2,000 respectively.²⁵

Poor coordination among departments and a lack of reliable data concerning the penal system are the biggest hurdles in the path to achieving a prison system that meets the standard of the fundamentals of human rights.²⁶ In Israel, a vast number of Palestinians were detained and were being held against their will. Additionally, 20% of the detainees were children. These children, on most occasions, have to go through torture while they are detained and spend about a maximum of 20 years in prison for a crime as minor as stone-throwing, which is a serious offense in Israel. Israel prosecutes more than 500 children in military courts annually. In relatively young and frail democracies like Egypt, people with professions like journalism are often

²³ Jill Crystal, 'Criminal justice in the Middle East' (2001) 29(6) *Journal of Criminal Justice* <[https://doi.org/10.1016/S0047-2352\(01\)00110-6](https://doi.org/10.1016/S0047-2352(01)00110-6)> accessed 13 February 2023

²⁴ Irfan Mohammed, 'Prisons overcrowded' (*Arab News*, 17 May 2013) <<https://www.arabnews.com/news/451896>> accessed 14 February 2023

²⁵ *Ibid*

²⁶ Daniel John Diaz et al., 'PRISON REFORM IN THE MIDDLE EAST' (*MEI*, 2021) <<https://www.mei.edu/sites/default/files/2021-07/Prison%20Reform%20in%20the%20Middle%20East.pdf>> accessed 12 February 2023

arrested and tortured. The same trend is followed in other Middle Eastern countries like Lebanon, Iraq, and Saudi Arabia.

While prison overcrowding remains one of the most important issues in prisons worldwide, in Africa especially, it is the biggest issue facing their prison system which is coupled with a lack of sufficient resources. With inadequate food allocations, insufficient hygiene, exiguous clothing, and other amenities, it can be said that the prison system in North Africa is at odds with the standards of human rights that should be procedurally followed throughout the world. The shortage of police and judges attributes to the overcrowding of prisons because these shortages lead to an increase in pre-trial detainees. The most detrimental impact of overcrowding in prisons is that it leads to sexual assault and suicide. Recent prison studies have shown that there is an association between overcrowding and self-harm; and also between overcrowding and violent misconduct.²⁷ Depleting mental health and sexual exploitation in prisons is a cause for grave concern because these conditions highlight the level of ignorance towards inmates. The African Commission on Human Rights condemned the situation - The conditions of prisons and prisoners in many African countries are afflicted by severe inadequacies including high congestion, poor physical, health, and sanitary conditions, inadequate recreational, vocational and rehabilitation programs, restricted contact with the outside world, and large percentages of persons awaiting trial, among others.

In 2021 the United Nations reaffirmed the need for prison reform and how prison reform and the treatment of offenders should be viewed as an integral part of the 2030 Agenda for sustainable development. After the outbreak of Covid-19 in 2020, the world saw an increased awareness concerning issues such as prison reform due to a lack of personnel and resources. An example of reform in the Middle East is the prison reforms in Saudi Arabia.

Saudi Arabia announced new judicial reforms in 2021 and that led to the country acquiring a codified legal system. A country as deeply conservative as Saudi Arabia, whose legal system was based on Islamic Law, saw unprecedented, positive growth concerning reforms of prison

²⁷ Stéphanie Baggio et al, 'Do Overcrowding and Turnover Cause Violence in Prison?' (2019) 10 Front Psychiatry <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6992601/#B4>> accessed 13 February 2023

and criminal justice. With the advent of the rule of the new 35-year-old crown prince, who aims to modernize the kingdom, there have been a lot of changes in their criminal justice system.²⁸

In Africa, the PRI (Penal Reform International) works towards innovation in the criminal justice system. They seek to encourage and advance the scope for using human rights as an instrument on issues like law enforcement and prison conditions, to minimize the use of imprisonment all over the world, to eradicate discrimination in all penal measures which are not only unfair but also unethical, to work towards the abolition of the death penalty, to promote the use of constructive non-custodial sanctions which support the social reintegration of offenders whilst taking into account the interests of victims.²⁹

The world is slowly but steadily moving towards becoming more aware and sensitive towards issues relating to Human Rights and realizing that every human being deserves respect and to live a life full of dignity, even if that person is a prisoner or somebody convicted of a crime. There is still a lot of scope for growth and improvement in the Prison Reform System and we can only hope that we continue to move in the right direction.

²⁸ Natasha Turak, 'Saudi Arabia announces major legal reforms, paving the way for codified law' (CNBC, 9 February 2021) <<https://www.cnbc.com/2021/02/09/saudi-arabia-announces-legal-reforms-paving-the-way-for-codified-law.html>> accessed 14 February 2023

²⁹ Penal Reform International, 'Africa's recommendations for Penal Reforms' (*Penal Reforms*) <<https://cdn.penalreform.org/wp-content/uploads/2013/05/rep-2008-AfricasRecommendations-en-1.pdf>> accessed 13 February 2023