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The Requisition to Reform the Indian Prison System via Enacting the Model Prison Act 2023

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The history of the Indian jail system is extensive. After Lord Macaulay's proposals were taken into consideration and the dreadful state of the country's prisons was noted in the year 1835, the first jail reformation or the act known as 'The Prisons Act 1894', was enacted in India.¹ This law placed more emphasis on prison management than on the care of inmates. This law emphasized prison administration over prisoner treatment. Its principal purpose was to ensure that the jail system worked smoothly and efficiently. Thus, India's existing prison system is a relic of British rule. Currently, India has a federal government and only the State Governments have exclusive authority on Prisons as it's a subject mentioned in the State List. As a result, the only governments with jurisdiction over prisons are the State governments. With 130 years on its clock, the Prisons Act of 1894 has become outdated. Although there have been some changes over the years to prison administration, laws and prisoner treatment; these have been minimal as most Indian states yet face problems with decaying prison structures, overcrowding, congestion and more. Also, fundamental rights are granted to prisoners subject to reasonable limitations but the rights that prisoners have in practice in reality are vastly different; for their rights are constantly violated by other prisoners or jail authorities. Thus, it has become crucial to enact a central law that will guarantee a uniform national policy regarding prison administration, laws and

¹ Dr. Shikha Mishra and Dr. Uday Veer Singh, 'Prison administration in context with prisoner's rights in India' (2022) 5(5) INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY RESEARCH AND ANALYSIS <<https://ijmra.in/v5i5/Doc/18.pdf>> accessed 27 February 2024

prisoner treatment. It has become critical to review and modernize Indian jail management while taking into account prisoner reform and rehabilitation. Thus, the enactment of The Model Prison Act, 2023 has inevitably become the need of the hour.

Keywords: *prisoners, prison administration, fundamental rights, prison reforms, fundamental rights, rehabilitation.*

INTRODUCTION

It is crucial to administer criminal justice, which is accomplished by punishing offenders or individuals who break the law, to preserve peace in society and to ensure law and order as well as stability in the nation. Therefore, the jail system is quite important in all the countries. In simple terms, a jail is a suitably designed location where criminals or others who have broken the law are housed securely while they await trial or other legal proceedings. However, in contemporary times, the doctrine of punishment for a crime has been significantly altered by the development of modern human rights jurisprudence. Reformation has emerged as the motto of the prison administration.

Human rights law prohibits cruel, inhumane and degrading punishments for crimes and states treat convicts with respect as they possess inherent dignity and value as human beings.² Conversely, it's contended that any penalty that qualifies as inhumane, harsh or degrading ought to be considered a crime unto itself.³ The transition caused by the criminal justice system and its correctional mechanism has been adopted worldwide. Globally, it has become widely acknowledged that the criminal justice system's correctional mechanism should follow reform-oriented concepts.⁴ Prisoner rights in India were long suppressed under British control and have only recently resurfaced in public discourse. India's Constitution grants certain fundamental rights to every citizen. The Supreme Court has ruled that laws should be evaluated on the grounds of reasonableness and non-arbitrariness. In India, prisoner's rights have grown greatly

² P. C. Harigovind, 'The Indian Jurisprudence on Prison Administration and the Legislative Concerns' (2013) 9(5) IOSR Journal of Humanities and Social Science <<https://www.iosrjournals.org/iosr-jhss/papers/Vol9-issue5/F0952429.pdf>> accessed 27 February 2024

³ *Ibid*

⁴ *Ibid*

as a result of case laws in which the Hon'ble Supreme Court liberally interpreted fundamental rights such as Article 21 of the Indian constitution.⁵

HISTORY OF PRISON ADMINISTRATION IN INDIA

Ancient India: During this time, penology became known as 'Danda-niti', which literally means 'Principles of punishment'. During the time of Arthashastra, justice was administered according to the statutory provisions that fell under the following categories:

- Dharma (Law which was sacred)- Personified truth;
- Vyabhara (Secular law)- Relied on evidence;
- Charitra (Custom law)- Based on public opinion;
- Rajasasana (Commands given by the royal)- Constituted laws regarding administration.⁶

In accordance with the preceding Indian history, 'Manusmriti' stated a prison as a place, where mostly all of the immoral and culprits were kept.⁷

Medieval India: During this period, India was governed by the Quran and only Islamic law was in effect. Prison sentences were not as widespread under this administration as they were in Ancient Indian times. Additionally, jails held criminals who had been found guilty but were still awaiting trials to be held. Regular jails did not exist throughout the Sultanate era. Prisons were only located in abandoned castles and forts. Prisons were utilized at this time to house and punish criminals. In this period, prisons were used for detention as well as to punish the convicts. Islamic law distinguishes between two types of punishment:

- **Hadd (The right of God):** It was seen as God's will and served as a deterrent to those who might commit similar crimes. This category comprised death by stoning for adultery, amputation of the right hand for theft, and other severe punishments.

⁵ *Maneka Gandhi v Union of India* AIR 1978 SC 597

⁶ Mishra (n 1)

⁷ Abhinav Jindal, 'Fundamental Rights through the Lens of Prisoners' (2024) 6(1) GLS Law Journal <<https://glsjournal.in/index.php/glsjournal/article/view/130>> accessed 27 February 2024

- **Tazir:** It meted out for offenses for which there was no hadd punishment, it was a means of reforming the offender. It manifested as Tajib or public condemnation/threats, taking the perpetrator to the door and subjecting him to mockery, jail or banishment, boxed on the ear, scouring and more.
- **Quisas (Retaliation):** It was based on personal acts like murder.
- **Tash-hir (Public Degradation):** It was a widely used form of punishment that was prevalent throughout Muslim rule as well as in Hindu India and medieval Europe. The punishments included having the perpetrator's head shaved, riding a horse with his face turned to its tail and his body covered in dust; occasionally, a garland of old shoes was placed around his neck; the offender was then paraded through the streets while loud music played, and eventually, he was driven out of the city.⁸

The period of European Colonialism in India (Modern Indian Timeline) - During this time, European nations arrived and began to govern different parts of India. The British Empire ruled India when the modern Indian prison system first emerged. In 1835, Lord Macaulay started the first jail reform movement in India by drawing the Indian Legislative Council's attention to the appalling conditions that existed in Indian prisons.⁹ In addition, he supported the creation of a panel to investigate the state of Indian prisons and create an updated prisoner discipline plan. After Macaulay's plan was approved by the Council, Lord William Bentinck established the Prison Discipline Committee. The committee's 1838 report highlighted the shortcomings of the Indian prison system at the time. In-depth talks regarding prisoner housing, discipline, health, diet, pay, fines, education, and labour were held by the group. The committee advised that inmates be divided into categories and kept apart based on their classification.¹⁰

The second committee was established in 1864. It examined juvenile delinquency, female prisoners and diet. This committee examined female inmates, youth misbehaviour and nutrition. A third jail committee was formed in 1876 to implement more standardized rules and strengthen the deterrent effect of short sentences. The committee was created by Lord Dufferin

⁸ Mishra (n 1)

⁹ *Ibid*

¹⁰ *Ibid*

in 1888, and its work was supported by the suggestions made by the All India Committee in 1892.¹¹ It reevaluated India's whole prison system and made recommendations on offences and sentences. The Indian Government adopted this report as a manuscript and it was later enacted as the 'Prisons Act of 1894'. It attempted to ensure that all criminals in jails received equal treatment by classifying various offenders. The deterrence principle served as the foundation for this Act.¹²

The 'All India Jail Committee' (1919-1920) was headed by Sir Alexander Cardew and was tasked with investigating prison reform strategies. It's a major turning point in India's history of jail reform and is appropriately referred to as the foundation of the nation's current reform initiatives. Prisons ought to reform inmates in addition to deterring them. It promoted the reintegration of prison inmates via productive employment. The Committee also stressed that to aid in the rehabilitation of newly released prisoners, a comprehensive after-care system is essential.¹³

21st century (Presently) - India has a federally structured Government, that's to say, the powers in India are distributed between the Union Territories or the Centre and the States. Prisons in India are listed in List-II in the Seventh Schedule of the Indian Constitution, indicating that it is a state subject. As a result, Indian State governments have the primary role, obligation and authority to amend existing jail laws, rules and regulations. Thus, the jail is solely the responsibility of the State governments and is currently administered by the Prisons Act enacted in 1894 and the different state governments' prison manuals.¹⁴ Additionally, prisons in India are classified into eight categories:

- **Central Jails:** These prisons hold convicts sentenced to over two years while also having rehabilitation centres.

¹¹ *Ibid*

¹² *Ibid*

¹³ Mishra (n 1)

¹⁴ Mudasir A. Bhat, 'PRISON LAWS IN INDIA : A SOCIO-LEGAL STUDY' Uttarakhand Judicial & Legal Review 93-108 <<https://ujala.uk.gov.in/files/Ch12.pdf>> accessed 27 February 2024

- **District Jails:** These jails are situated at district headquarters and are classified. District jails hold prisoners for 3-6 months.
- **Sub-Jails:** These are smaller prisons and are located at the subdivisional level. The offender serves time in jail for three or fewer months.
- **Open Jails:** These are minimum-security jails where well-behaved offenders can work for a wage.
- **Special Jails:** Since these prisons only imprison convicts who have committed offences that include terrorism, habitual offenders, violent crimes as well as major violations of prison discipline, they consist of the highest security.
- **Women’s Jails:** These prisons exist at all levels and are exclusively or only for female prisoners.
- **Borstal School:** These are correctional establishments for youth that only hold minors and juvenile criminals. These schools offer care, education and rehabilitation to provide them with aid to reintegrate into society.¹⁵
- **Other Jails:** This category includes all jails across the country that aren't included in the types listed above. Kerala, Maharashtra and Odisha are the only Indian States that have one ‘Other Jail’ under their supervision.¹⁶

Moreover, according to ‘World Prison Population 2009’, the United States had the world's greatest prison population (2,193,798), while India had the 5th highest jail population (3,32,112).¹⁷

RESEARCH METHODOLOGY

This journal article adopts a qualitative study as its research approach. To acquire credible information, the author has referred to research papers, journal articles and a range of websites

¹⁵ Pratyay Amrit et al., ‘Prisoner’s rights and prison reform in India: A legal critique’ (2022) *International Journal of Health Sciences* <<https://www.researchgate.net/publication/361792453>> accessed 27 February 2024

¹⁶ *Prison Statistics India 2020* NCRB (2020) <https://ncrb.gov.in/sites/default/files/PSI_2020_as_on_27-12-2021_0.pdf> accessed 27 February 2024

¹⁷ Amrit (n 15)

on the internet. Hence, the author has solely relied on secondary sources and no primary sources were used for this study.

REVIEW OF LITERATURE

Prison Administration in Context with Prisoner's Rights in India: The authors of this journal article have discussed and examined the types of prisons, officers of prisons, duties of the jail officials and particularly the history of Indian prison administration in detail. The article emphasizes prisoner rights and the Indian Judiciary's contribution to implementing remedial measures and delivering required directives to executive and legislative organs on prisoner treatment and rights over the years. Further, the authors support the view of Justice V. R. Krishna Iyer who remarked that '*Imprisonment does not spell farewell to fundamental rights*'. The article states the only method to guarantee proper and effective prison administration is through the implementation of reformation plans; as in the absence of adequate prison administration, the rights of convicts are useless. According to the authors, the goal of imprisonment is not just punitive but also restorative, that is, turning an offender into a non-offender; thereby stating rehabilitation to be a highly valued goal of imprisonment. Hence, prisons are meant for rehabilitation and reform highlighting the need for the reform of prison administration in India.¹⁸

Prison Laws in India: A Socio-Legal Study: The author most importantly addressed the problems of Indian prisons while also discussing the significance of prisons, the history of prisons, theories of imprisonment, provisions of several legislations governing prisons and prisoners in India as well as national and international documents on jail administration and prisoner treatment. Furthermore, the author has applauded the Indian Judiciary for its constructive and active involvement in the administration of prison justice. However, the author also has highlighted the need to reform the existing prison administration and prisoner treatment in India by making necessary amendments to the laws and revising Jail Manual systems; stating the problem of jail justice and rehabilitation of prisoners to only be a part of the larger problem of social regeneration.¹⁹

¹⁸ Mishra (n 1)

¹⁹ Mudasir A. Bhat, 'Prison laws in India: A socio-legal study' Uttarakhand Judicial and Legal Review 93-108 <<https://ujala.uk.gov.in/files/Ch12.pdf>> accessed 27 February 2024

Prisons in India: An overview of reforms and current situation: This article discusses Indian jail administration and structure, problems faced by Indian prisoners, the history of prison reforms in India and the following advancements. It also provides a comprehensive overview of international obligations and norms for the treatment of prisoners. The International Centre for Jail Studies, WHO SEARO, the National Crime Record Bureau and newspaper articles are among the sources the author has cited and referred to back up the statements made in the article on a range of topics and issues; that include the amount spent on prisons in Indian states, the distribution of expenditure on various items on Indian convicts and in particular highlighting the persistent problems faced by Indian prisoners.²⁰

Rights of Women Prisoners in India: This research paper focuses on the rights of women convicts in India, highlighting their status and the issues they confront in Indian jails. The paper also discusses how women are generally perceived by Indian society (then and now), the discrimination that women face, the provisions of The Indian Prisons Act 1894, statutory rights of women in India, rights of women prisoners concerning national and international provisions, the constitutional rights and status of women in India, remedial measures available for women prisoners in India and so on. According to the author, despite several legal provisions enacted to protect the rights of women prisoners in India, these laws are not implemented in reality. To support the statements, the author has also cited the Ministry of Women and Child Development's report which included 134 recommendations to enhance the lives of Indian women prisoners and bring The National Prison Manual 2016 up to international standards. Furthermore, the author has also referred to Prison Statistics India 2018, according to which the number of women prisons is less as compared to men and how this also has caused a problem for women prisoners in India, resulting in overcrowding, congestion, lack of sanitation; that adds up to the already existing problems like lack of nutritious food, torture, custodial violence, sexual harassment and more.²¹

²⁰ 'Prisons in India: An overview of reforms and current situation' (*Rajasthan Gov*) 31-53

<<https://home.rajasthan.gov.in/content/dam/pdf/StaffCorner/Training-Material/Useful-Presentations-And-Videos/Overview%20of%20prisons%20in%20India.pdf>> accessed 27 February 2024

²¹ Pamini Kaseria, 'Rights of Women Prisoners in India' (2020) SSRN <<http://dx.doi.org/10.2139/ssrn.3621467>> accessed 27 February 2024

FINDINGS & ANALYSIS

The Prisons Act 1894: The Act commenced on 22nd March 1894. It's one of India's most established pieces of legislation, governing laws that apply to Indian prisons. This Act was enacted under British administration in India and is still in effect. This legislation has been classified into XII chapters which comprise the definitions of prison, criminal prisoner, convicted criminal prisoner, civil prisoner, remission system, history ticket, Inspector General, medicine subordinate and prohibited article as well as discusses maintenance and officers of persons, duties of officers, admission removal and discharge of prisoners, the discipline of prisoners, food, clothing and bedding of civil and unconvicted criminal prisoners, employment of prisoners, the health of prisoners, visits to prisoners, offences in relation to prisons, prison-offenses and miscellaneous in detail. Further, the Act has been classified into 62 sections.²² According to this Act, 'Prisons' are structures run by State Governments to confine convicts. Additionally, the Act's Part II oversees prison authorities and support while also overseeing the placement of personnel such as the director, clinical officer, guard, and officials such as the controller general, who is responsible for ensuring that the prisons operate well. Hence, the supra-stated act is a thorough demonstration or a comprehensive illustration, comprising rules that specify how the prisons should be run.²³

SUBSEQUENT DEVELOPMENTS

The Government of India Act, 1935 resulted in a relocation of jails from the central list to the jurisdiction of provincial governments, decreasing the possibility of a consistent national prison policy implementation. As a result, each state has its own set of rules governing the daily operation of prisons, caring for and maintaining prisoners, and regulating procedures.²⁴ Later, The Transfer of Prisoners Act 1950 was enacted to facilitate the relocation of inmates from

²² The Prisons Act 1894

²³ 'ANALYTICAL STUDY OF PRISON REFORMS IN INDIA: AN OVERVIEW' (2023) RUSSIAN LAW JOURNAL

²⁴ Dr. Nitin, 'Prison reforms in India - with special reference to the major provisions of the prison act, 1894' (2023) 3(2) International Journal of Criminal, Common and Statutory Law 1-6

<<https://www.criminallawjournal.org/article/49/3-1-13-320.pdf>> accessed 27 February 2024

overcrowded jails to less congested jails within the state by authorizing them to move the offenders from one state to another for vocational training or rehab.²⁵

In 1951, the Government of India recruited Dr. W.C. Reckless, an expert from the United Nations in custodial work, to perform a study on jail management and advise policy reform, which became known as *The Reckless Report, 1951*. His research, titled 'Jail Administration in India' called for the conversion of prisons into rehabilitation facilities. He also advocated for the updating of outdated jail manuals.²⁶ Furthermore, in 1955, *The Prisoners (Attendance in Courts) Act 1955* was passed, which included provisions authorizing the transfer of convicts to a civil or criminal court to give evidence or answer to a charge of an offense.²⁷ However, taking into account The Eighth Conference of the Inspector Generals of Prisons in 1952 which supported the recommendations of Dr. Reckless about reforming the prisons, *The All India Jail Manual Committee, 1957* was established by the Government of India (in 1957) to develop a model prison manual. Strong recommendations for creating a unified policy and innovative practices for the administration of jails, probation, after-care, juvenile and remand homes, certified and reformatory schools, borstals and protective homes, and the repression of immoral commerce were included in the committee's 1960 report, which was submitted. The report also advocated changes to The Prison Act, 1894 to establish a legal foundation for correctional activities. However, it's significant to note, that from the period of 1987-2002, the state governments received a total amount of Rs. 125.24 crore in support. The Arunachal Pradesh government was also awarded Rs 10 crore by The Eleventh Finance Commission to construct jails.²⁸

The Committee prepared *The Model Prison Manual (MPM)* in 1960 and proposed it to the Government of India for use. It acted as the impetus for the creation of the current prison administration system in India. A jail working group was formed in 1972 by the Indian Government's Ministry of Home Affairs in compliance with the Model Prison Manual. Its study placed a strong emphasis on the need for a national prison policy. In addition, it established

²⁵ Abhinav Jindal, 'Fundamental Rights through the Lens of Prisoners' (2024) 6(1) GLS Law Journal <<https://glsjournal.in/index.php/glsjournal/article/view/130>> accessed 27 February 2024

²⁶ Dr Nitin (n 24)

²⁷ Bhat (n 19)

²⁸ Prisons in India: An overview of reforms and current situation (n 20)

principles and offered significant recommendations for the categorization and handling of perpetrators of law. A Committee on Jail Reform headed by Justice A. N. Mulla was constituted by the Indian Government in 1980; which went by the name as *The Mulla Committee* and its report was submitted in 1983. Studying laws, rules, and regulations to safeguard society and rehabilitate prisoners was the main objective of this committee.²⁹ After that in 1987, *The Krishna Iyer Committee* was set up by the Government of India with the mission of researching the appalling conditions faced by women detained in India. It promoted the hiring of additional female police officers because they specialized in handling female and juvenile convicts. The committee turned in its report to the Indian Government in 1988.³⁰ According to *The Prisons Act 1990*, references to jails, confinement, or incarceration include detention and reformatory schools for justice and reforming jails. Furthermore, it stated that any High Court might, in cases wherein it has suggested to the government the granting of a free pardon to any prisoner, allow him to be at liberty on his own cognizance. Additionally, it stated that the government is obligated to relocate any prisoner detained under any order or sentence of any court who is of unsound mind to a lunatic asylum or other place where the convict will receive proper treatment.³¹

In response to the Supreme Court's 1996 ruling in *Ramamurthy v State of Karnataka*³² which mandated the creation of a model prison manual and national uniformity in prison laws, the Bureau of Police Research and Development (BPR&D) evaluated the State's needs taking into account factors such as prison population and capacity.³³ With the Cabinet's assent, the *Non-plan Scheme on Modernization of Prisons (2002-2007)* was subsequently launched, with a total expenditure of Rs. 1800 crore to be executed for the period of 5 years from 2002-03 to 2006-07. Nevertheless, the program was extended (without new funding) until September 31, 2009. This scheme's main components included building new jails and more barracks, renovating and

²⁹ *Ibid*

³⁰ Dr. Nitin (n 24)

³¹ Bhat (n 19)

³² *Ramamurthy v State of Karnataka* IR 1997 SC 1739

³³ RPS Teji, 'THE PRISON, OBJECT AND REFORMS' (*Delhi Districts Court*)

<[https://delhidistrictcourts.nic.in/ejournals/RPS TEJI - PRISON OBJECT REFORMS.pdf](https://delhidistrictcourts.nic.in/ejournals/RPS%20TEJI%20-%20PRISON%20OBJECT%20REFORMS.pdf)> accessed 27 February 2024

repairing existing prisons, improving water and sanitation, and providing housing for prison staff.³⁴ Furthermore, it is noteworthy that the Indian Supreme Court has established three overarching concepts concerning incarceration and custody in its rulings on several facets of jail administration:

1. Prisoners are not considered as non-persons.
2. Prisoners have all fundamental rights within the confines of their detention.
3. There is no reason for exacerbating the already painful experience of incarceration.³⁵

The current jail administration and prison laws in India are: Indian Penal Code 1860, The Prisons Act 1894, The Prisoners Act 1990, The Identification of Prisoners Act 1920, Constitution of India 1950, The Transfer of Prisoners Act 1950, The Representation of People's Act 1951, The Prisoners (Attendance in Courts) Act 1955, The Probation of Offenders Act 1958, The Code of Criminal Procedure, 1973, The Mental Health Act 1987, The Human Rights Protection Act 1993, The Juvenile Justice (Care & Protection) Act 2000, The Criminal Procedure (Identification) Act 2022, The Repatriation of Prisoners Act 2003, Model Prison Manual, 2003, Model Prison Manual, 2016.³⁶

CRITICAL ANALYSIS OF THE PRISONS ACT 1894

Although the Prisons Act enacted in 1894 was the initial law governing prisons throughout the territory of India, the system of prison administration in our country is 130 years old and thus has become outdated in contemporary times. Dr. Amarendra Mohanty, the author of the 1990 book, 'Indian Prison System' made the following observation on the aforementioned act: *'This Act was largely based on deterrent principles reflected mainly the British policy on the subject. The legislators took little pains to look into the other side of the problem. They were concerned more with the prison work than with the treatment of the prisoners. This Prisons Act remained unchanged for more than one hundred years except for very minor change.'*³⁷

³⁴ Prisons in India: An overview of reforms and current situation (n 20)

³⁵ Teji (n 33)

³⁶ *Ibid*

³⁷ Bhat (n 19)

In hindsight, the modifications or amendments made during the years after the enactment of The Prisons Act 1894 in terms of jail administration, prison laws, and prisoner treatment have been minimal. Jail administration, despite being a crucial component of the Indian criminal justice system, has been neglected in some ways, with more attention placed on the duties of police and personnel in charge of jails and little on prisons and convicts.³⁸ Even though Justice A.N. Mulla's All India Committee on Jail Reforms published a report in 1983, the suggestions made by the committee have not yet come into effect, and as of present day, the 130-year-old British law The Prisons Act 1894 has not undergone any major or fundamental amendments. The Central Government's primary defense, which asserts that jails are a state subject and require State Government consent, is untenable and unacceptable since it demonstrates a lack of comprehension of the Mulla Committee's findings. However, in the modern day, both prison management and prisoner reformation have drawn fierce and sharp criticism at various public forums and have emerged as a matter of intense debate. Furthermore, putting light on the plight of the convicts and the increased widespread backing for the defense of human rights in all domains of society has made the predicament of convicts a critical issue of public policy.³⁹ Therefore, it is the need of the hour that prison rules, policies, and prisoner treatment be drastically altered.

Notwithstanding that using brutal methods to treat prisoners has been abolished and replaced with several other methods which include outdoor labour, higher education facilities, correctional and recreation plans, group work, wage payment and efforts to treat prisoners with less restrictive discipline and greater freedom, most Indian states yet continue to face problems with decaying jail structures, overcrowding consequently causing congestion, a rising number of prisoners awaiting trial, inadequate prison staff, inadequate care and treatment of prisoners, and more.⁴⁰ Furthermore, it's extremely disappointing that over the years, following the enactment of The Prisons Act 1894, no significant reforms to prison administration, rules, or prisoner treatment have been implemented in a way that conforms with the letter and spirit of

³⁸ *Ibid*

³⁹ Dr. Nitin (n 24)

⁴⁰ *Ibid*

the law. The Hon'ble Indian Supreme Court recently took a strong stand against the cruel and degrading conditions in prisons⁴¹, showcasing a shift in perspective regarding prisoner's rights and reforming prisons by treating them as correctional rehabilitative institutions. Despite the active and vibrant role, the judiciary has served over the years, the Central Government has not yet ensured and accomplished the implementation of these changes.

PRISONER'S FUNDAMENTAL RIGHTS IN INDIA

Certain fundamental rights are granted to humans since birth and cannot be revoked or taken away from individuals. Thus, human rights cannot be violated by someone who has been found guilty of a crime. While many legal rights are taken away from an imprisoned person, their human rights or fundamental rights are nonetheless protected. Although there are no specific provisions in the Indian Constitution regarding the protection of prisoners or jail justice, following part III of the Constitution of India, there are several fundamental rights that are attainable or accessible to convicts. Additionally, the International Human Rights Law protects against a host of injustices, such as racism, discrimination against the poor and privileged, torture, etc. They hold that no one ought to endure torture or be subjected to cruel, inhuman, or degrading treatment.⁴²

Articles 14, 19, and 21 of the Indian Constitution were ruled to apply to prisoners in the same way as they did to freemen in the year 1983, in *T.V. Vatheeswaran v State of Tamil Nadu*.⁴³

Article 14: *'The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.'*⁴⁴ Thus, the supra-stated article explicitly states that discrimination based on caste, class, race, religion, place of birth or sex is prohibited and every individual is equal in the eyes of the law. Also, putting light on the case of *Ram Krishna Dalmia v Justice Tendolkar*⁴⁵, the Indian Supreme Court permitted the classification test, wherein the

⁴¹ *Ibid*

⁴² Amrit (n 15)

⁴³ *T.V. Vatheeswaran v State of Tamil Nadu* (1983) AIR 361

⁴⁴ The Constitution of India 1950

⁴⁵ *Ram Krishna Dalmia v Justice Tendolkar* (1958) AIR 538

State makes differential classifications of subjects as long as such classification is based on intelligible differentia and has a rational nexus with the objective being sought to be achieved.

Article 19 guarantees six freedoms to the Indian citizens but it also imposes reasonable restrictions on the freedom of speech; under Article 19(a).⁴⁶

Article 21: *'No person shall be deprived of his life or personal liberty except according to procedure established by law.'*⁴⁷ Thus, it safeguards the people from arbitrary or unlawful detention, especially the prisoners from police encounters, custodial tortures and more.

Hence, it's evident that the prisoners in India have rights granted by the Indian Constitution, raising the prestige of the prison system. Prisoners do, however, have some rights, given reasonable restrictions, but they are also denied many other rights. Prisoner's rights are often abused by other inmates or jail authorities, resulting in a significant gap between what is promised and what is experienced in reality.

SHEDDING LIGHT UPON THE MAJOR PROBLEMS OF PRISONS IN INDIA

Procrastinated Court Trials: It's currently perched on extremely shaky ground. This issue has been raised by the Mulla Committee, the National Police Commission and Public Interest Litigation (in Hussainara Khatun's case); yet, no solution has been provided. Procrastination begins with the inquiry process itself.⁴⁸ Furthermore, according to the Law Commission of India (1979), in the 1970 Law Enforcement Assistance Administration National Jail Census, 52% of prisoners were awaiting trial. Charge papers are frequently filed by the police quite belatedly, which starts a drawn-out series of actions.⁴⁹ Despite the legal requirement that trials be held every day until they are finished, this is not always the case in reality. Delays are increased when cases are postponed for several months at a time.⁵⁰

⁴⁶ The Constitution of India, 1950

⁴⁷ *Ibid*

⁴⁸ Bhat (n 19)

⁴⁹ Prisons in India: An overview of reforms and current situation (n 20)

⁵⁰ Bhat (n 19)

Overcrowding and Inferior Living Conditions: Court trial delays lead to jail overpopulation and congestion. Therefore, to stop it, the number of people awaiting trial needs to be drastically reduced. This can only be done with cooperation from the Indian police and courts. In addition, jail overcrowding and congestion eventually lead to subpar or inferior living conditions. Despite some prior jail reforms that addressed difficulties with clothes, food and hygiene, many jails around the nation still have poor living conditions. Following the 1995 death of a well-known businessman in the country's high-security Tihar Central Jail, a special commission of inquiry was established. The commission concluded in 1997 that 10,000 prisoners there faced significant health risks, including overcrowding, appalling sanitary facilities, and a lack of medical personnel. According to the National Police Commission, 60% of all arrests were unwarranted or unjustified. Overcrowding as a result is responsible for 43.20% of jail expenses.⁵¹

Disparities and Inequalities in the Jails: According to a Human Rights Watch investigation, India's jails adhere to a strict class system. It stated that irrespective of the offenses committed by convicts or their behaviour while imprisoned, a small number of criminals from the wealthy and middle class are given special treatment under this system.

Insufficient Programmes in Prisons: Another issue in Indian jails is the lack of appropriate vocational training facilities and rehabilitation activities. Few jails have well-designed prison programmes that incorporate scheduled everyday activities, vocational training, pre-discharge supervision and post-release monitoring. The few rehabilitation courses that do exist are merely outdated.⁵²

Corruption and Extortion: Prisons throughout the world frequently see guard corruption and the less violent corollary of staff extortion. These concerns are expected given the guard's enormous authority over prisoners; however, they are worsened by the guards' relatively modest pay. Bribes are given by prisoners in exchange for drugs or special treatment.⁵³

⁵¹ Prisons in India: An overview of reforms and current situation (n 20)

⁵² *Ibid*

⁵³ *Ibid*

The plight of Women in the Prisons: To begin with, there aren't enough women's jails in India. Women face many difficulties in prison contemporarily; some arise from their lives outside of jail, while others are directly tied to their imprisonment. Hon'ble Justice Geeta Mittal stated, *'The marginalization and discrimination experienced by women in society does not stop at the prison entrance. Rather it continues to impinge on their lives even when in State custody, perhaps in its most aggravated forms'*⁵⁴ which depicts the appalling conditions endured by imprisoned women.

Women in prison have faced victimization, unstable family lives, educational and employment challenges, substance abuse, and mental health issues. One of the biggest issues faced by the women in prisons today is sanitation as they struggle with menstruation and lack access to basic facilities, leaving them vulnerable to different infections. Poverty, lack of social support, separation or single motherhood, and homelessness are among the social problems that limit women's participation in mainstream society and contribute to an increase in the number of women in prison. Women are *'unable to defend themselves, and ignorant of the ways and means of securing legal aid. They are unaware of the rules of remission or premature release, and live a life of resignation at the mercy of officials who seldom have an understanding of their problems.'* Lack of financial support social isolation and social rejection make life after release a veritable hell.⁵⁵

Furthermore, when compared to men, prison services are insensitive to the prompt diagnosis and treatment of women's mental health problems as well as to address their vocational and educational demands appropriately. Some pregnant women enter prison and this can be a particularly challenging time for them, physically and psychologically. Aside from the shame and humiliation, the women must care for their children, a few of whom give birth within the prison walls. The Hon'ble Supreme Court of India after reviewing numerous reports and affidavits from various State Governments, Union Territories and the Union of India, issued exhaustive guidelines for the protection of women's and children's rights within the confining walls of prison. However, women inmates who are mothers are unable to care for their children within the jail due to poor facilities and arrangements made for them. Pregnant inmates should

⁵⁴ Teji (n 33)

⁵⁵ Prisons in India: An overview of reforms and current situation (n 20)

be supplied with additional amenities that include nourishing food and a healthy atmosphere since the deficiency of nutritious food being provided to them is seriously harming the health of both mother and child.⁵⁶

Sexual assault against female prisoners is also a serious issue they face. According to the Asian Centre for Human Rights (ACHR), custody rape remains one of the most severe types of torture committed on women by law enforcement officers, with many custodial rapes occurring at regular intervals. Between 2006 and February 28, 2010, the NHRC registered 39 occurrences of rape in court and police custody. Putting light on a case wherein Maloti Kalandi, wife of Badal Kalandi, was rescued from trafficking along with her children and turned over to the Tamulpur police station in Assam's Baksa district for safe custody; instead of offering protection, Sub-Inspector Sahidur Rahman summoned the victim to his official quarters and raped her and in *Sheela Berse v State of Maharashtra*⁵⁷, a woman prisoner was tortured and assaulted by the police in the lockup in Bombay (a case relating to the custodial violence to women prisoners confined in the police lock-up.)⁵⁸ In fact, in a recent case, a report was submitted at the Calcutta High Court (by Tapas Bhanja) wherein it has been recorded and states that 196 births took place inside women's jails but the report doesn't make it clear how the women got pregnant and also it doesn't state the timeframe of the pregnancies. Furthermore, a plea has been made to prohibit the entry of male employees into female prisoner's enclosures. Also, it has been stated that the correctional home *thoroughly lacked proper medical infrastructure and was overcrowded*.⁵⁹

Other Problems: Staff shortage and poor training, lack of legal aid, insufficient funding or spending on the health and welfare of the convicts, mistreatment of prisoners, sexual abuse, violence, homosexual abuse, drug abuse, mental illness of prisoners, etc.

⁵⁶ Kasera (n 21)

⁵⁷ *Sheela Berse v State of Maharashtra* (1982) SC 1054

⁵⁸ Kasera (n 21)

⁵⁹ Subrata Chatteraj, 'West Bengal News: Women getting pregnant in WB jails, 196 babies born, Calcutta High Court told' *The Times of India* (09 February 2024) <<https://timesofindia.indiatimes.com/city/kolkata/women-getting-pregnant-in-west-bengal-jails-196-babies-born-hc-told/articleshow/107535758.cms>> accessed 27 February 2024

MODEL PRISON ACT 2023

To draft a Model Prison Manual, the All India Jail Manual Committee was established in 1957, as stated supra. The Model Prison Manual (MPM) was created by the Committee in 1960 and submitted for adoption by the Government of India. The present prison administration system in India was influenced by it. A working group on jails was established by the Indian Government's Ministry of Home Affairs in 1972, adhering to the Model Prison Manual. The necessity of establishing a national jail policy was stressed in the report. Along with developing ideas, it also provided significant recommendations for categorizing and treating criminals. Also, The Prison Administration and Treatment of Prisoners Bill, a draft Model Prisons Management Bill that the Indian Government sent to each state, in 1999, to replace The Prison Act 1894, was never passed.⁶⁰ Later, The Model Prison Manual 2003 emphasized having a national jail policy to rehabilitate and reintegrate prisoners into society through proper correctional treatment. In the end, it served as a guidebook from which Indian states could adopt and learn best practices. However, as time passed, it became necessary to revise and update the jail manual. Subsequently, the Model Prison Manual, 2006 was unveiled to standardize India's jail legislation and *to serve as a benchmark that all states should emulate and seek guidance from.*⁶¹

'Prisons today are not looked at as retributive deterrence but are considered as reformative and correctional institutions where the prisoners are transformed and rehabilitated back into society as law-abiding citizens', the Ministry of Home Affairs (MHA) declared on 12th May 2023. Therefore, to modernize prison administration and emphasize the reformation and rehabilitation of prisoners, MHA decided to enact The Model Prisons Act, 2023 in place of the 130-year-old British law The Prisons Act, 1894. The MHA argues that this is necessary since The Prisons Act, 1894 has several lacunae and a conspicuous omission of the act's corrective goal. Moreover, there are no mechanisms in place regarding prisoner reform or rehabilitation; instead, the focus of the legislation currently in place is only on keeping offenders behind bars and maintaining order and discipline in prisons. In India, prisons and the people incarcerated within them are subjects

⁶⁰ Teji (n 33)

⁶¹ Model Prison Manual 2016

of the state. The Model Prisons Act 2023 may serve as a model law that states with jurisdiction over the future adoption. The Model Prisons Act 2023 incorporates key elements of two decades-old laws, The Prisoners Act, 1990 and The Transfer of Prisoners Act 1950 to modernize the Indian jail system and bring it into compliance with international norms. Additionally, the MHA said that the following key elements will be included in the act:

- Guidelines for increasing transparency in the administration of jails through the use of technology, such as videoconferencing with judges and implementing scientific and technical interventions in prisons. Making sure that using prohibited technologies, including mobile phones, in jails results in consequences for both jail staff and inmates.
- Offering inmates legal assistance, parole, furlough, and early release as rewards for good behaviour.
- Building and operating both open and semi-open high-security prisons. In addition, it includes clauses that protect society from the illegal activities of repeat offenders and hardened criminals.
- Prison development board, personalized sentence planning, grievance redressal, security assessment, segregation of inmates, and provision of separate housing for female and transgender inmates, among other things.⁶²

CONCLUSION

In recent years, globally, prison jurisprudence has grown to protect prisoner's fundamental rights while also ensuring proper jail administration. Also, it's significant to never lose sight of the fact that the issue of prison justice and convict rehabilitation is merely a component of the more extensive issue of social rehabilitation. The administration of the institution is insufficient to adequately rehabilitate inmates. Its meek attempts to set the prisoners right will only be successful if our social institutions, education system, economy, and values are all correctly incorporated into a cohesive and harmonious totality that is founded on the understanding of

⁶² 'Home Ministry Prepares Model Prisons Act 2023 to replace British-era law' *The Hindu* (12 May 2023) <<https://www.thehindu.com/news/national/home-ministry-prepares-model-prisons-act-2023-to-replace-british-era-law/article66843951.ece>> accessed 27 February 2024

human institutions.⁶³ Justice V.R. Krishna Iyer opined on the prison to be: *A reformatory philosophy, rehabilitative strategy, therapeutic prison treatment and enlivening of prisoner's personality through a technology of fostering the fullness of being such a creative art of social defence and correctional process activating fundamental guarantees of prisoner's rights is the hopeful note of national prison policy struck by the constitution and the court.*⁶⁴ However, as of today still, The Model Prison Act 2023 has not been enacted. Indian Ministry of Home Affairs without any delay must take into account the enactment of the supra-stated act and further make efforts to ensure its implementation at the central level; as it's a high time and has become the need of the hour to replace the existing 130 years-old British law, The Prisons Act 1894, shifting its focus from retributive deterrence to reform and rehabilitation of the prisoners.

⁶³ Bhat (n 19)

⁶⁴ Mishra (n 1)