



PRISON LAW IN INDIA- NEED FOR REFORMATION WITH A VIEW TOWARDS REHABILITATION

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INTRODUCTION

Prisoners' rights and need for reformation of the law governing prisons in India is a topic that is not given much needed importance it deserves. It is imperative to note that India is a country that cares less for prisoner reformation in spite of guidelines that have been passed in recent years¹. There are various problems that concern the age-old prison system in the country. Socio-legal problems like overcrowding of prisons, societal view of prisoners after their release, lack of basic facilities in prison, offences by fellow prisoners and guards and legal problems like the Prisons Act of 1894.

The Indian prison system is governed by the Prisons Act passed in the pre-independence era. This act provides for rules and regulations that the guards have to follow with a view to maintain discipline in prisons. The act provides for solitary confinement². But the same act does not provide for prisoner reformation.

At this juncture, it is important to identify and bring out the purpose for which this act was passed. This act, since its

inception, never focused on prisoner rehabilitation but only on prisoner discipline. It is also important to note the time period in which the act was passed. It was passed at a time where India was finding its footing in its pursuit towards independence. But it has been more than 70 years since India attained independence. And yet, prison system in India is still governed by a pre-colonial era legislation.

This and more problems shall be discussed in this paper and possible solutions will also be provided.

PROBLEMS OF THE PRISON SYSTEM IN INDIA:

1. Socio-legal problems:

a. Overcrowding of prisons:

This is an important problem that requires immediate addressing. The Supreme Court recently expressed its concern over this issue and it blamed the governments of the states and union territories for their lack of commitment towards finding solutions to this problem³. "Prison overcrowding compels prisoners to be kept under conditions that are unacceptable in light of the United Nations Standard Minimum Rules for Treatment of Offenders to which India is the signatory", said the Supreme Court in response to a writ petition⁴. This is an alarming statistic that has not received much attention in recent times. This is, therefore, a problem that should be given relevance, if not importance.

b. Sexual abuse in prisons:

This is a problem that is rather unheard of and one that the society will view it with great

¹ . National policy on prison reforms and correctional administration.

² . Section 73 of Prisons Act, 1894.

³ PTI, Supreme Court shocked at over 600 per cent overcrowding in jails, Times of India, Mar 30, 2018.

⁴ WP No. 406/2013.



shock and angst. But it is true. Sexual abuse does take place amongst prisoners inside the prison. Indiscriminate mingling of prisoners leads to sexual abuse and homosexuality⁵. There, it seems, is no proper segregation of prisoner inside the prison which is a prime requisite of maintaining discipline and order amongst prisoner. Acts of sexual abuse leads to “forced homosexuality” among prisoners. This is a rarely discussed problem and it needs quick addressing.

c. Societal view on prisoners after their release:

This, like the previous problem, is a topic that is rarely discussed. It equally concerns the society as much as it concerns the prisoners who get out of prisons with a view towards self-reformation and a prerogative to start a new life with their families once outside prison. Society, unfortunately, do not provide, or attempt to provide, opportunities to prisoners who get out of prisons as their view on prisoners do not change even when they (the prisoners) have reformed. Society has a history of ostracizing people they don't like. And the same goes towards prisoners. Prisoners form a section of society which is shunned, secluded and seldom talked about⁶. If prisoners are continually being shunned and ostracized like this, it has a huge psychological effect on them. Their initial prerogative of self-reformation is made irrelevant with continual discrimination showed towards them in the society. There's a chance that they might relapse and get back to the life of crime that they best know of. This defeats the very purpose of “prisons”. If

the objective of a prison is to reform the prisoners serving their sentences there, it is massively defeated by the society's reluctance in welcoming the prisoners back and their lack of interest in reintegration of prisoners also serves as a cause that defeats the sole objective of a prison.

d. Lack of staffing:

This issue should concern only the governments of the states and union territories. Due regard is to be given to the guards who man the prison cells.

There is a lack of female staff in women prisons, which includes guards, doctors, etc.⁷ This puts the women prisoners in risk of sexual harassment by male prison guards (and sometimes female guards). This creates a question as to whether or not prisons in India are safe or not. This also creates a question as to whether or not guards are properly trained enough to man the prison cells filled with violent criminals and persons with a history of criminal offences.

To analyze as to how this problem is created, overcrowding of prisons is to be taken out as the cause of lack of employment of prison guards. The guards that are in prisons feel overworked due to massive overcrowding and are demotivated due to lack of support from the administration. Therefore, due consideration towards guards is also to be equally given as is given to prisoners.

2. Prisons Act, 1894:

As mentioned before, the Indian prison system is governed by a pre-colonial era legislation that is the Prisons Act of 1894.

⁵ A convict in the Central Prison of Thiruvananthapuram vs State of Kerala, 1993 CriLJ 3242.

⁶ Baljeet Kaur, Prisoners' rights and values of Indian democracy, Engage, Jul 27, 2019, <https://www.epw.in/engage/article/prisoners'-rights->

and-values-indian-democracy

⁷ Ministry of women and child development, Government of India, Women in prisons, Jun 5, 2018.



The purpose of the act is also mentioned before; the purpose which is not in tune with today's changing economic and social conditions. Though the act provides for employment of prisoners⁸, there is no provision as to making proper use of their skills. This act has colonial approach which deflects with the contemporary ideology of reformation of prisoners on humanitarian grounds in order to change their heart and mind to become responsible citizens rather than to advocate punitive and disciplinary measures of taming them in prisoners like animals in zoo⁹.

The act does not provide for basic needs like legal aid, mental health treatment, protection against punishments given without the orders of a court, etc.

This is a legislation that, somehow, is not given due importance in the legislatures of the states and the union. Given the magnitude of this issue, the lack of consideration shown by the legislature is baffling.

SOLUTIONS:

a. Amendments to the Prisons Act, 1894:

It is high time that the Prisons Act is brought out for discussion in the legislature. The time has come to unlock the colonial Indian prison system and amend the centurion old Prisons Act 1894 as its obsolete and not in tune with modern day and age where the reformation is required not only of prisons but also the prisoners who shall be equipped with basic fundamental rights which this nation grants to its every citizen¹⁰. India, in the economic and social sense, is changing rapidly and it is

imperative that every legislation that is governing the country is in pace with the changing times. And so, due consideration is also to be given to the law that governs the prison system of our country. A law that is passed with the purpose of disciplining the prisoners and not with a view of reformation of the same, it'd be difficult to reintegrate them into the society once they get out. Amendments and new additions to the act can be considered to be made with respect to sections that focus on reformation of prisoners as there are no sections in the act that provide for the same.

b. Commitment towards treatment of prisoners:

The Supreme Court expressed deep displeasure on finding out that governments of the states and union territories weren't giving due considerations to the problem of overcrowding of prisons and mistreatment of prisoners inside the prisons¹¹. This clearly highlights the fact that the governments of the states, union territories and even the Central government is simply disinterested in reforming the prison system of our country and attempting to solve the problems that surround the aforementioned system that governs the prisons of our country. This has an immediate psychological effect on the prisoners as they might feel that the government is not supporting them and probably would not support them in the near future. Problems like lack of prison guards would probably be solved by adding in more prison guards who are willing to guard the

⁸ Section 34 provides for employment to civil prisoners and Section 35 states the time limit a criminal prisoner shall work every day.

⁹ Shagun Bahl, Prison Laws in India- The Forgotten Law, ipLeaders, Aug 24, 2017, <https://blog.ipleaders.in/prison-laws-india/>

¹⁰ Shagun Bahl, Prison Laws in India- The Forgotten Law, ipLeaders, Aug 24, 2017, <https://blog.ipleaders.in/prison-laws-india/>

¹¹ PTI, Supreme Court shocked at over 600 per cent overcrowding in jails, Times of India, Mar 30, 2018.



prisons or by adding people who are simply looking for employment opportunities. This can result in more employment opportunities for young adults.

c. Open prisons:

This might solve the problem of overcrowding of prisons. Open prisons were first formed in 1891 in Switzerland. It was later followed up by the United States and the United Kingdom in the early part of the 20th century. Sir Alexander Paterson, a member of the Prison Commission from 1922 to 1947, played an important role in the creation of open prisons. His philosophy with respect to open prisons were as follows:

1. A man is sent to prison as a punishment and not for punishment.
2. You cannot train a man for freedom under conditions of captivity¹².

In *Dharambir v. State of U. P*¹³, the Supreme Court supported the institution of open prisons and was of the view that open prisons had certain advantages in the context of young offenders who could be protected from some of the well-known vices to which young inmates were subjected to in ordinary jails.

Open prisons do not restrict inmates much and unlike ordinary prisons, look to provide with more freedom of movement to prisoners in accordance with provisions of Article 19 (1)(d) of the Constitution that talks about freedom of movement anywhere in the country. And this includes freedom of movement inside the prisons of our country as well. Open prisons look to provide more of this freedom.

d. Employment opportunities to prisoners:

It is imperative to credit the Government of Telangana on providing with employment opportunities to 235 ex-prisoners in the state¹⁴. If, like the Government of Telangana, every government in the country looks to provide prisoners with employment opportunities that are in tune with their skill set, there'd be economic advantages that every government in the country can make full use of. As the economic principle goes, more employees mean more production means more sales means more revenue. Employment opportunities to prisoners can result in a chain reaction of this sort. It also helps in adding up of more human capital that employers can make use of.

e. Changing the views of the society:

This is a difficult, yet important problem that needs quick addressing. The only way prisoners and their families can reintegrate themselves into the society is if society accepts them irrespective of their past. The reason why it will be difficult for society to change their views on prisoners who have been released is due to the general fear they have towards the prisoners. The fear that the prisoners might get back to their usual criminal activities will be justified by the society by pointing out the sentences that the prisoners served.

In defense of the prisoners, they, once reformed, want to get into a normal life with a normal family in a normal city or town or village. They just want to experience the "normality" of life. And this can be achieved only if society has a broader outlook towards them and accepts them as fellow human beings. The reformation is not seen in prisoners when they get released out of jail cells as they become absolute misfits in the

¹² Ahmed Siddique, *Criminology, Penology and Victimology*, 7th edition, 2018.

¹³ (1979) 3 SCC 645.

¹⁴ Srinivasa Rao Apparasu, 235 ex-inmates offered jobs at Telangana prisons' department recruitment drive, *Hindustan Times*, Oct 1, 2018.



society after suffering from inhuman tortures and adding to their misery the social stigma they have to live with as they are never accepted by society¹⁵.

CONCLUSION:

Prison law and reformation of prison law is, as mentioned before, a topic that has not found relevance, if not importance in the legislature. It is a topic worthy of discussion. The Prisons Act of 1894 is one of the few pre-colonial era legislations that have not been amended after independence. It is high time that the aforementioned law is opened up again and to be considered for amendments for the purpose of reformation of prisoners.

Society and the media are not aware of the legislation governing the prison system of our country. Awareness of such a legislation is key. Furthermore, a change in the views of the society towards prisoners would be of immense help as it would result in reduction of crime rates in the country. Prisoners, if accepted into the society as fellow human beings, would not go back to the life of crime that they so want to get out of. They would be less tempted to become criminals again and this can result in a reduction of offences committed by repeat offenders.

Therefore, it should be of utmost importance that the legislature and the society come together to help in the process of reformation of prisoners in the country.

¹⁵ Shagun Bahl, Prison Laws in India- The Forgotten Law, ipLeaders, Aug 24, 2017,

<https://blog.ipleaders.in/prison-laws-india/>