

ANALYSING THE PRISON CONDITIONS IN UTTAR PRADESH: THE NEED TO RECOGNISE THE RIGHTS OF A PRISONER

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I- INTRODUCTION

Prison is mostly described as “*a place which is specifically equipped to cater to the needs of people who are deterred by the process of law, or who are awaiting trial.*”¹ It does not include any space that is in exclusive possession/custody of the police.² To the law, prison is perceived as a setting where criminals are kept and reformed and to the prisoners, prison seems as a vague hazard. The administration of prisons in India falls in the ambit of state governments, and is governed by the Prisons Act, 1984 and the respective manual of that particular state.

In the modern era, prisons are flooded with thousands who languish for justice. Some attain justice and are let free, while others rot in the cramped-up spaces. Various statistics have persistently shown the truth, and have reported that an alarming number of prisoners are yet to be convicted for a crime. A report of NCRB has stated that around 68 % of prisoners are undertrial, followed by convicts (that are almost half in number).³

Prisoners’ rights have become a salient feature in prison reforms. This is solely because of the recognition of the value of a prisoner, and a prisoner does not cease to become a citizen mainly because he/she is condemned.⁴ Landmark judgments have time-by-time necessitated the significance of constitutional rights. Attempts to modify the prison culture started from the post-independence phase. However, the real activism sparkled during the late 1970s and went on till 1990s. Many human-right groups, commissions and committees offered their precious solutions and sought to reform the prison administration.

¹ The Oxford English Dictionary, Vol. VIII, P.1385

² Sec 3, Prisons Act 1984 (ACT IX OF 1984)

³ M Rawat, “*Poor, Young and Illiterate: Why Most Indian Prisoners Fight Long Lonely Battles for Justice*” (*India Today*) <<https://www.indiatoday.in/india/story/undertrial-prisoners-indian-jails-ncrb-report-prison-statistics-supreme-court-1618588-2019-11-15>> accessed January 15, 2020

⁴ C.S Chakravarthy, ‘*Prisoners and Human Rights in India- An Analytical Study*’ [2015] ISLJ, 41

II- HURDLES FACED BY THE INDIAN PRISON ADMINISTRATION

The notable problems of Indian Prison system are: -

1. **Delay in Trials**- The procedure is itself equipped with flaws. Delay occurs at the very beginning only- commences from the investigation itself. Trials should be conducted on a day-to-day basis, in reality courts are adjourned for long and the cases are left pending. In the Apex court itself, 65,000 cases were found to be pending in the end of 2014. Justice T.S Thakur in a recent case expressed his angst over the failure of justice and right to liberty of an undertrial being curtailed. He stated that “*the true character of a democracy is adherence to the due process of law.*”⁵
2. **Overcrowding**- Over-crowding constitutes a startling percentage on the expenditure of jails. The bane of overcrowding is that it does not segregate convicts; therefore, hardened criminals can spread their influence amongst others. Segregation is important, and is in fact necessary between those who are convicted for serious offences and those who are punished for minor offences. Juvenile offenders are sometimes kept in jails due to the paucity of adequate rehabilitation measures. They are more likely to become professional offenders, as they come into contact with hardened criminals and thus adopt practices that are exhibited by the serious offenders.
3. **Curtailement of Basic Needs**- Free-choice is curtailed once a person enters into prison. However, this peril is aggravated when the conditions are not accommodative of a person’s basic needs. Overcrowding is perceived as the root problem that lays the foundation to other problems- like poor sanitation, poor health-care facilities and more.

Prisons are excellent venues for infectious diseases, given the conditions of drug addiction, overcrowding, poor sanitary facilities. There is complete dearth of published information regarding health problems in prisons.
4. **Ill-treatment and Degrading Punishment**- The exposure to the toxic environment of a prison opens up a pandoras box of torture, ill-treatment and repression. ***Veena Sethi***

⁵ Krishnadas Rajagopal, “*When the process becomes the punishment*”, Th Hindu (2015)

v. State of Bihar gave an insight on the violation of human rights.⁶ The prisoners were detained for a continuous period after medical dereliction of their sanity.

Prison officials sometimes exercise means to control the behaviour of inmates that is repressive in nature. Some kind of ‘convict officers’ are pressed into the administration in order to repress the ‘challenging and rebellious attitude of the inmates. These officers are often part of a circle named as the ‘*prison mafia*’ which establishes itself as an extra-legal source of control.⁷

Different incidents have taken place all around in reaction to the spreading culture of prison-violence. In Punjab, 32 prisoners escaped in 2017 whereas Rajasthan witnessed the escape of 18.⁸

III- CONDITIONS OF PRISONS IN UTTAR PRADESH

The conditions of prisons in India is rapidly deteriorating, especially in the state of Uttar Pradesh. There is a rampant menace of overcrowding, which is accompanied with understaffing- which in totality causes the condition to degrade.

Uttar Pradesh Chief Minister, Yogi Adityanath stated that the five central jails have 10,735 inmates, whereas their total capacity stands of just 8049.⁹ The situation in the district jails are much worse, as the 62 district jails hold about 89,944 prisoners against their capacity of just above 51,000. He replied in defence, that all inmates are provided facilities as per the jail manual. In reality, the facilities are shunned upon. After the Article 370 abrogation, many J&K detainees have been directed to be accommodated in UP Prisons. This has further added to the menace of overcrowding in jails.

a. Occupancy and Capacity

Prison establishments in India comprise of 8 categories. Central, District and Sub jails are the standardized form of jail institutions. The other types include Borstal Schools, Special Jails and Women Prisons.

⁶ *Veena Sethi v. State of Bihar* [1982] 2 SCC 583

⁷ K Jaishankar, *International Perspectives on Crime and Justice*, 330 (1st ed, 2009)

⁸ *Ibid*, pg. 331

⁹ Business Standard, “*UP jails overcrowded, says govt*” (2019)

https://www.business-standard.com/article/pti-stories/up-jails-overcrowded-says-govt-119072600932_1.html

Uttar Pradesh has 56 district Jails, which hold a considerable number of prisoners and higher capacity of female inmates were also reported (2,627 inmates). The district jails serve as the main prisons, and Uttar Pradesh has the highest amount of district jails, followed by Madhya Pradesh and Bihar.¹⁰ Uttar Pradesh has one women jail, and the capacity was declared to be of 420. Comparatively, Tamil Nadu and Kerala have 3 women jails each.¹¹ Uttar Pradesh has not been reported to have Borstal Schools in their respective jurisdiction, whereas 9 states are reported to have borstal schools.

b. Rapid Overflow of Undertrials

The problem arises when justice is not delivered fast enough. As mentioned earlier, more than two-thirds of the population of prisoners are undertrials. In absolute figures, Uttar Pradesh leads the way with 62, 669 undertrials, with Bihar and Maharashtra following behind.¹² There is lack of any effective systemic intervention. Cases continue to be pending, and the count of undertrial prisoners continues to stagger. Undertrial prisoners suffer the most, they are often subjected to psychological and physical trauma, and often perceived as a criminal until proven guilty. Social stigma gets attached to their well-being and they are criticised for going to prison. Their family-members, relatives and well-wishers all get attached to the social stigma, and sometimes face disgrace and humiliation.

c. Absence of a Robust Manpower System

An alarming percentage of vacancies in the total manpower required for prisons are left unnoticed. Uttar Pradesh, and other states like Bihar and Jharkhand have witnessed an astounding increase in vacancies among prison guards, jailers and more support-staff. Adequate prison staff is necessary for the enrichment of prisons, and the underlying objective of prisons is to provide rehabilitation to the captive. Extortion by prison staff is common. Corollary guard corruption has been on the rise, guards exercise their considerable power over the inmates and take bribes. Nowadays Inmates are starting off a trend which includes exchange of contraband substances or some kind of special treatment with bribes.¹³ Absence of a robust support staff leads to violence, drug abuse, homosexual abuses and the very opposite of its underlying objective.

¹⁰ *Ibid*

¹¹ *Ibid*

¹² “*Why We Need to Talk About the Condition of India's Prisons*” (*The Wire*)

<<https://thewire.in/uncategorised/india-prison-conditions>> accessed January 15, 2020

¹³ Chakravarthy (n4)

d. Frail Infrastructure

Prisons in Uttar Pradesh have symbolised overcrowding, which in turn sometimes results into poor sanitation, lack of reasonable space. Sometimes when the design or the infrastructure of the prison does not give way to desired conditions, then prisoners seek to find a solution. They resort to malpractices like abuse, corruption, violence.

However, recently the state government deployed a video analytics platform in 70 prisons.¹⁴ The platform 'Jarvis' seeks to analyse acts of violence, detection of prison breaches or unauthorised access. This initiative is named as an advanced solution to scrutinise all the activities, which take place between inmates, inmates-prison employees, and inmates-relatives. This kind of Artificial intelligence has never been adapted in Indian prisons before.

e. Persistent Discrimination

There is a presence of social hierarchy present in all jails. The structure embodies an inherent caste-ist attitude within its sphere. Vulnerable groups are placed at an even greater disadvantage. Prisoners are classified into different classes on the basis of their socio-economic and racial background.

IV- REFORMS SUGGESTED BY DIFFERENT COMMITTEES/COMMISSIONS

The modern prison system in India was originated by TB Macauley in 1835, after which a Prison Discipline Committee was established in 1836. This committee recommended increased rigorousness of treatment. Post this, central prisons were established in 1846.¹⁵ The Second Commission of Inquiry into Jail Management and Discipline made some suggestions regarding the improvement in clothing, and medical care.

Prison administration has been examined by different committees set up by the Government of India, in order to track and address the hiccups in the formulation of a systematic prison system. Mulla Committee comprehensively investigated and provided recommendations in order to reform the deplorable conditions.

¹⁴ A. Ahaskar, "Uttar Pradesh Prisons Turn to AI-Based Video Surveillance to Monitor Inmates" (Live mint November 8, 2019) <<https://www.live-mint.com/technology/tech-news/uttar-pradesh-prisons-turn-to-ai-based-video-surveillance-to-monitor-in-mates-11573196335267.html>> accessed January 16, 2020

¹⁵ "Social Defence Vision 2020 - Planning Commission" <http://www.planningcommission.nic.in/reports/genrep/bkrap2020/21_bg2020.pdf> accessed January 16, 2020

The different committees and commissions instituted post-independence are: -

1) **All India Jail Manual Committee** (1957) - This committee was established to prepare a model prison manual. The committee report suggested amendments in the Prison Act of 1894 to provide a legal base for correctional work. In 1960, the Central Bureau of Correctional Services was constructed, and was the first central agency to research on social defence. ¹⁶

2) **All India Committee on Jail Reforms** (1980-1983) - This committee was headed by Justice A.N. Mulla. It named the assorted types of remission, and its main aim was to streamline the remission system in all the states. ¹⁷

It recommended for the condition of prisons be improved by making adequate arrangements for food, sanitation and ventilation. It also mandated the proper training of the prison staff, and constitution of an all India service for Indian prisons and correctional service. The menace of undertrials was recognised, and it was recommended that their lodging should be reduced to bare minimum. They should be kept separate from the convicted prisoners. ¹⁸

The committee also focused on the stratification of prisoners and mentioned that this existing system should be abolished, as it is repugnant to *article 14* of the constitution. There should be a broad criterion, and it should include undertrials, convicts, the nature of crime committed, age, nationality, prison-term, security requirements, administrative requirements (if needed), correctional-educational needs and medical purposes.

However, the recommendations of the committee have not been followed and implemented. As several reports have shown that there has been very little development with regard to prisons. The principal cause for non-adoption/implementation of recommendations cited by the centre was that prisons are mainly *a state subject*.

¹⁶ *Ibid*

¹⁷ Paranjape NV. Criminology & Penology with Victimology, Central Law Publications, [2014] 16th edn, pg 482

¹⁸ *Ibid*, 483

3) 78th Law Commission Report

The 78th Law Commission Report suggested some measures in order to ease congestion in prisons. ¹⁹Liberalisation on conditions of release was the primary recommendation, whereas imposition of fines was also deciphered as an alternative punishment for imprisonment.

4) Krishna Iyer Committee on Jail Reform

The government appointed another committee in order to inspect upon the situation of women prisoners, and the recommended the induction of more women in the police force. This is because of their ability to tackle women-related issues and child offenders.

V- PROTECTION OF PRISONERS' RIGHTS

Several international documents are concerned with the rights of the prisoners, and the inherent protection from tyranny and oppression. *Universal Declaration of Human Rights* lays emphasis on some very basic principles of administration of justice. The organic document states that everyone has the right to life, liberty and security of person. ²⁰ No one should be subjected to torture or to cruel, inhuman degrading treatment or punishment. It also necessitated the avoidance of arbitrary arrest, detention or possible exile.

In 1966, *The International Covenant on civil and political rights* laid down grounds for the protection of the rights of prisoners. It is mainly viewed as a core treaty, and respects fundamental human rights. It states that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. ²¹ In 1975, the United Nations adopted a *Declaration on Protection from Torture*. Various important provisions regarded torture or other cruel inhuman treatment to be an offence to human dignity. These minimum standard rules have been adopted by many democratic countries in the world. The principle of equality is embodied, however complete separation on the grounds of civil and criminal prisoners is practicable.

The Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment was opened up for signature and ratification by the United Nations General

¹⁹ Ibid, 484

²⁰ Article 3, Universal Declaration of Human Rights 1948

²¹ Article 10, The International Covenant on Civil and Political Rights 1966

Assembly.²² The emphasis was placed upon the state actions, and that each state party should take effective legislative, administrative and judicial measures to prevent acts of torture, and enable liberty of its prisoners.

VI- JUDICIAL REFORMS

The constitution of India provides provisions for certain basic rights, which have been guaranteed in the Indian Constitution. These rights are available to prisoners, because prisoners should also be treated as a 'person'. The provisions in the Covenant on Civil and Political Rights are reflected in *part III of the constitution*, and the basic principles of the Universal Declaration of Human Rights have crept in our Constitution. Article 21 guarantees the right to personal liberty, which proscribes any degrading treatment, whether he is a prisoner or a normal citizen.²³ The administration of justice should be easily accessible, and especially to those who are out of its reach. *The Indian Judiciary has been very vigilant*, and have taken a stand against encroachments upon the prisoners' rights. It has played an essential role in advancing the concept of legal aid, and also help in expanding its scope. *Hiralal Mallick v. State of Bihar* started the trend, and the court stressed on the need for rehabilitation and reformation of prisons.²⁴ In *Sunil Batra v. Delhi Administration*, the Apex- Court held that "the fact that a person is legally in prison does not prevent the use of Habeas Corpus to protect his other inherent rights".²⁵ The court also recognised the right to meet relatives and friends, but this was subjected to certain rules and regulations which included reasonable search, and frisking. After this judgement, all judgments headed towards the direction of prison justice, and in favour of the rights of prisoners. In a following case, the right to fair treatment and right of judicial remedy were named as pre-requisites to reformation and rehabilitation of prisoners.²⁶

a. Right to Liberty and Dignity

The worth of a prisoner was held to be much more than mere animal existence, and an individual has a right to Articles 19 and 21, even if he/she is in a prison setting.²⁷ There must be some correlation between the legitimate functions of prison and deprivation of freedom. In *Prem Shanker Shukla v. Delhi Administration*, the petitioner was an undertrial prisoner and

²² Article 2, The Convention Against Torture 1984

²³ Article 21, The Constitution of India 1950

²⁴ AIR [1977] SC 2237

²⁵ AIR [1978] SC 1675

²⁶ *R.D Upadhyay v. State of A.P.*, AIR [2001] SC 437

²⁷ *Charles Sobhraj v. Superintendent Central Jail Tihar*, AIR [1978] SC 1514

was handcuffed while being escorted back to the court. The minimum freedom of movement provided under article 19 of the Constitution is restricted with the use of handcuffs.

The routine of handcuffing was held to be unconstitutional, stating that handcuffs should not be used unless absolutely necessary. This practice is said to be humanising, and mortifying.²⁸ Even during the last refuge, handcuffs are enforced upon a prisoner, the escorting authority should provide sufficient reasonable grounds and record the reasons for doing so. A rule cannot prescribe an arbitrary or unreasonable procedure that would be violative of the fundamental rights enshrined in the constitution (Articles 14 and 21 especially). This is with special focus to the regulation of the right of a detainee to have an interview with his/her legal adviser.

b. Right to Free Legal- Aid

The service of free legal services should be provided, and should be promoted by professional organizations recognised by the court.²⁹ In the case of *M.H Hayawadanrao Hosrot*, the court initiated the importance of right to legal aid. Court has the implicit authority to assign a counsel for an imprisoned individual unable to virtually exercise his statutory right of appeal. Even if the prisoner is disabled from engaging a lawyer (on reasonable grounds), the court has the power to assign competent counsel, provided the prisoner doesn't object to the decision. This should be done in order to meet the ends of justice, and is compliant with articles 142, 21 and 39-A of the Indian Constitution.

c. Right to Speedy Trial

A speedy trial serves public interest, as well as social interest provided it follows the domain of a reasonable, fair and just procedure. *Hussainara Khatoon v. State of Bihar* targeted the chief hurdle of prison administration, and remarked on the undue delay in commencement of trials. It declared that an alarmingly large number of prisoners were behind bars, and were awaiting trial. This had deprived their freedom, and were confined for periods for as long as nine years. The court valued the essence of speedy trial in criminal justice, and an expeditious trial is an integral part of the fundamental right to life and liberty.³⁰

²⁸ *Prem Shankar Shukla v. Delhi Administration* AIR [1980] SC 1535

²⁹ *Sunil Batra (II) v. Delhi Administration* AIR [1980] SC 1579; *MH Hayawadanrao Hoskot v. State of Maharashtra* [1978] 3 SCC 544

³⁰ AIR [1979] SC 1360

d. Right to Effective Representation

The security of women was also discussed in leading judgements. The Supreme Court issued special guidelines regarding pregnant prisoners and the children of women prisoners. Such children should be entitled to shelter, medicinal care, education and exposure to recreational activities. The courts should deal with such cases in an expeditious manner, and should ensure that the decision does not affect the liberty of the child.³¹

e. Right to Sociability

In **Rama Murthy v. State of Karnataka**, the right to sociability was recognised. A liberalized view relating to communication with near and dear ones should be adopted, as the inmate does not even know what is happening to their kith and kin.³² This gives rise to additional trauma, and the prisoner is segregated from social relations.

VII- SUGGESTIONS**a. Centre should take up Responsibility**

States have the principal authority to alter the current prison rules, laws and regulations. This doesn't mean that the role of central government ceases to exist, the centre has to provide assistance to the states to improve their prison conditions. It has to support the states in repairing and renovating their old prisons, improve their medical facilities and develop their borstal schools. The centre also has the responsibility to ensure security and vocational training, especially during this pandemic.

b. Prison Infrastructure should accommodate all facilities

Isabel Hight, a prison development scholar mentioned in her interview that prisons should be adequately designed, and design is crucial in creating an environment in which prisoners can live and not become institutionalised.³³ She emphasised on the need to take in local cultural values into consideration, such as eating arrangements i.e. eating together is mostly encouraged in order to prevent alienation and institutionalisation. Living spaces should not be decrepit, and should not be based on outdated plans on incarceration and should value habitable conditions. There should be a flow of movement between staff and prisoners, so

³¹ *Sheela Bharse v. State of Maharashtra* AIR [1983] SC 378

³² [1997] 2 SCC 642

³³“*Architecture and Prisons: Why Design Matters*” (*The Guardian* September 28, 2016)

<<https://www.theguardian.com/global-development-professionals-network/2016/sep/28/architecture-and-prisons-why-design-matters>> accessed January 17, 2020

that there is contact between them. Recently, the Telangana State Prisons Department garnered praise for being progressive, and setting a stellar example as to how prisons should be done up.³⁴

The basic infrastructural design should be able to accommodate all facilities for reformation and rehabilitation. It should provide simple provisions such as basic level of hygiene, adequate ventilation and proper ratio of washrooms.

c. Bail system should be satisfactory

The system of release on bail, probation or parole can be useful in tackling the menace of overcrowding in prisons. Jails should be placed under the social welfare department. One reason why there is continuous failure to provide speedy trial is our highly unsatisfactory bail system. It operates harshly against the poor, and the privileged are let loose. Even if the poor are given bail, they are trapped in the web of sureties and amount of bail which is unrealistically excessive.

d. Minimum standard of care should be maintained

Minimum standard of care should be maintained, especially in the case of women prisoners. Adequate medical facilities should be provided such as availability of a proper gynaecologist. Bal wadis and creches should be set up outside prison premises, and children should be sent to boarding school after attaining the age of 6-7 years. Recreational facilities should be provided, and this should be separated from the prison area.

The primary objective of Borstal schools is to ensure welfare of young offenders; however, this is in a different setting which is suitable for children. The juveniles receive various vocational training, and are also provided with education from trained staff. More Borstal Schools should be constructed in the state of Uttar Pradesh.

The concept of Open Prisons can be initiated, as it seems as a viable alternative to the harsh imprisonment system. The main purpose should be to reduce overpopulation, incorporate and appoint ethical prison staff, and not abridge the prisoners' fundamental rights.

³⁴Arikara A, "Prison Done Right: 5 Reasons Why India Must Learn from Telangana's Prisons" (*The Better India* January 12, 2018) <<https://www.thebetterindia.com/127560/prison-telanganas-prisons-india/>> accessed January 18, 2020

VIII- CONCLUSION

Prison administration in India has suffered lack of recognition and neglect from state governments likewise. Public attention needs to be shifted to this very vital sphere. Although various committees have paved way from reports, but they haven't paved reality yet. India has a long way to go, and there are a few measures which are moving towards the progressive phase.

The Uttar Pradesh State government must take more initiatives to protect the *fundamental rights* of its prisoners. It must first improve its prison backlog, and improve the conditions of under-trial prisoners by ensuring speedy trial procedure, simplification of bail procedure and periodic induce of causes. Segregation of prisoners should be maintained, in order to impede prison violence, discrimination and substance-abuse.

Developmental activities should be enforced, particularly in respect of welfare. The dire need for constant endeavour hasn't been this illustrious, especially amidst this pandemic.