

REHABILITATION OVER RETRIBUTION: REFORMING THE INDIAN PRISON SYSTEM

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Introduction

Jails, in the modern sense, are products of the last century. Our prison system was evolved by recommendation of numerous commissions and reports.

The idea of retribution—punishment as a way to prevent crime and maintain social order—has long served as the foundation of India's criminal justice system. However, this punitive strategy has drawn more criticism in recent decades due to its inability to turn criminals into law-abiding citizens. The severe structural and moral problems in Indian jails have been made clear by overcrowding, human rights abuses, a lack of educational and career options, and a lack of post-release assistance. The idea of rehabilitation, on the other hand, focusses on changing people via social reintegration, education, skill development, and psychological treatment. It sees convicts as human beings with the potential to develop and contribute to society, rather than only as criminals to be punished. For a democratic and compassionate society, a change from retaliation to rehabilitation is not only a matter of policy but also a moral requirement. India can turn its jails from places of despair into places of change and hope by emphasising restorative justice, community-based reintegration, and correctional measures. To ensure that incarceration results in reformation rather than estrangement, this transformation calls for a multifaceted strategy that combines legal reform, administrative efficiency, and societal sensitivity.

Lord McCauley Commission Report, 1835

In this report Lord McCauley expressed the idea that “the best criminal code can be of very little use to a community unless there be a good machinery for the infliction of punishment”.

The abolition of outdoor labor, general introduction of indoor work, the inauguration of separate system, better classification of convicts, careful separation of untried prisoners. Employment of inspectors of prisons were the main recommendations of this report.

The Prison Discipline Committee, 1836

The committee recommended increased rigorous treatment and rejected all notions of reforming criminals through moral and religious teaching, education or any system of rewards for good conduct”.

Notable recommendation of this committee is the request for establishing the 'office of Inspector General of Prisons'.

First Inspector General of Prisons was appointed in India in 1844. This post was made permanent in 1850.

In those days IG (Prisons) were medical doctors.

Commission of Jail Management and Discipline, 1864

A second committee was appointed in 1864 to reconsider the whole question addressed by the first committee. Sir John Lawrence's examination of the condition of the jails in India led Lord Dalhousie to appoint this Commission of Jail Management and Discipline.

The British regime was only interested in the prison from the point of view of administration and discipline. This commission made specific recommendation regarding the accommodation, improvement in diet, clothing, bedding, medical care of the prisoners and for the appointment of Medical Officers in jails.

The commission also recommended the separation of male prisoners from females and children from adults.

The Calcutta Conference of 1877

One of the major findings of this commission is that " the various laws relating to prisons have been passed are incomplete, imperfect and nowhere lay down great leading principles of prison discipline.' The remedy proposed by the conference of 1877 was the enactment of a new prison law, which could secure uniformity of system at least on such basic issues as the reckoning of the terms of sentence.

The 4th Jail Commission, 1888

This commission reviewed the earlier reports (reports of 1836, 1864, and 1877).

It was of the opinion that uniformity could not be achieved without enactment of a single Prisons Act". It also recommended the setting up of jail hospitals.

The Indian Jail Committee 1919-20

-The Indian Jail Committee 1919-20 made the first comprehensive study of these problems in the present century.

-a turning point of the prison reforms in the country.

-For the first time in the history of prisons, 'reformation' and 'rehabilitation' of offenders were identified as the objectives of prison administration.

-adequately trained staff, rejected the idea of excessive employment of convict officers and recommended the reduction of such excessive employment.

- establishment of children's court and the juvenile homes.

-Indian jail committee 1919-20 were not implemented.

-Still they serve as a guiding star for prison reforms in India.

-The constitution of India, which came into force in 1950, retained the position of Government of India Act, 1935, in the matter of prisons and kept prisons as a State subject by including it in List II- State List of the Seventh Schedule"

Reckless Commission Report, 1952

The government of India invited technical assistance in this field from the United Nations. Dr W C Reckless, a UN Expert on correctional work.

His report 'Jail Administration in India" is another landmark in the history of prison reforms. He made a plea for transforming jails into reformation centers and advocated establishment of new jails.

He opposed the handling of juvenile delinquents by courts, jails, and police meant for adults. The revision of outdated jail manuals and introductions of legal substitutes for short sentences were recommended by him.

The All India Jails Manual Committee 1957-59

The Government of India appointed the All India Jails Manual Committee to prepare a model prison manual to adopt uniformly throughout the country.

The report of the All India Jails Manual Committee and the model Prison Manual prepared and presented by that Committee to the Government of India in the year 1960 are commendable documents on Prisons.

They not only enunciated principles for an efficient management of prisons but also lay down scientific guidelines for corrective treatment of prisoners.

The Jail Manual Committee's major recommendations touched upon the following aspects"

Headquarters organization.

Diversification of institutions based on sex, age, criminal record, security condition, and treatment.

Architecture and building.

Accommodation.

Constitution of Advisory boards.

Recruitment, selection and training of prison personnel.

Discipline.

Basic facilities.

Daily routine and education of prisoners.

Vocational training.

After care and rehabilitation.

Categorization of prisoners (i.e.; U-T-P, women, life convicts, habitual offenders, lunatics, juveniles etc.).

All India Committee on Jail Reforms 1980-83

In 1980 Government of India constituted All India Committee on Jail Reforms under the chairmanship of Justice Anand Narain Mulla.

The removal of existing diarchy of prison administration at union & state.

Forceful use of probation of offenders act, 1958.

Alternative punishment – such as community service.

Special care to under-trial prisoner.

Segregation of mentally disturbed prisoner.

The Krishna Iyer Committee:

In 1987, the Government of India appointed the Justice Krishna Iyer Committee to undertake a study on the situation of women prisoners in India. It has recommended induction of more women in the police force in view of their special role in tackling women and child offenders.

ROLE OF LEGISLATURE

The existing statutes which have a bearing on regulation and management of prisons in the country are:

The Constitution of India:

‘Prisons’ have been included as Entry No. 4 in the State List (List II) of the Seventh Schedule to the Constitution of India. (Prison Reformatories, Borstal Institutions and other institutions of like nature and persons detained therein; institutions)

The Prisons Act, 1894:

Based on the 1888 Jail Commission's report, a consolidated prison bill was prepared. This bill was later passed. Thus came into being the Prisons Act, 1894 which is the existing law governing the management and administration of prisons in India. This Act, as it is, based on deterrent principles, concerned more with prison management than with the treatment of prisoners and gave more consideration to prison offences and punishments than to their effect.

The Prisoners Act, 1900:

The object of this Bill is merely to consolidate the several Acts relating to prisoners confined by order of a Court which are now to be found in different parts of the Statute book, and so to replace a number of separate enactments by a single Act. The same was enacted in the year 1900 as Act 3 of 1900.

This Act has provisions in part VI – A, as to constitution of parole board and temporary and short release and procedure for lunatic prisoner.

The Identification of Prisoners Act, 1920 -87th Law C report

This Act authorizes the taking of physical measurements and photographs of convicts & others. This piece of legislation provides provisions in respect of the following:-

- (i) Taking of measurement, etc. of convicted persons (section 3)
- (ii) Taking of measurement, etc. of non-convicted persons (section 4)

- (iii) Power of Magistrate to order a person to be measured or photographed(section 5)
- (iv) Resistance to the taking of measurements, etc.(section 6)
- (v) Destruction of photographs and records of measurements on acquittal (section 7)

The Transfer of Prisoners Act, 1950:

Section 29 of the Prisoners Act, 1900, inter alia provides for the inter-State transfer of prisoners between the States in Parts A, C and D of the First Schedule to the Constitution. There is no provision, however, either in the Prisoners Act, 1900, or any other law for the transfer of prisoners from prisons in those States to prisons in Part B States and vice versa. Cases may arise where the removal or transfer of prisoners from Parts A, C and D States to Part B States and vice versa may be considered administratively desirable or necessary. This Act is intended to provide legal sanction to such transfers or removals. This Act deals with the removal from one State to another of persons confined in a prison.

The Prisoners (Attendance in Courts) Act, 1955:

The Bill seeks to simplify the procedure for securing the attendance of prisoners in courts by repealing Part IX of the Prisoners Act, 1900 and re-enacts its provisions with suitable modifications as a separate law.

The Bill provides that any civil or criminal court may, if it thinks that the evidence of any person confined in any prison is material in respect of any matter pending before it, make an order in the prescribed form and send that order direct to the officer-in-charge of the prison who will be required to comply with it.

It will not be necessary, as at present to send such an order to the District or Sub-divisional Magistrate of the area where the prison is situated or to the Government of the State if the prisoner is in a different State.

No civil court may, however, make an order in respect of a person confined in a prison situate outside the State in which the court is held.

In such cases, a commission may suffice. The Bill also provides (as in section 43 of the Present Act) that in certain circumstances and subject to certain exceptions the officer-in-charge of the prison may abstain from carrying out the order, as for example, reason of sickness or other infirmity or is under committal for trial or is in custody for a period which would expire before the date on which he is required to be produced before the court.

The Probation of Offenders Act, 1958

An act to provide for the release of offenders on probation or after due admonition and for matters connected therewith.

The Repatriation of Prisoners Act, 2003

Long detention of foreign prisoners in Indian jails has been causing considerable concern to the Government of India and the foreign Governments concerned. It was, therefore, felt that if foreign convicted nationals were transferred to their home countries to serve their remaining

jail terms, it would take care of the humane aspect in as much as the said convicts would be near their families and have better chances of social rehabilitation.

Further, it would also take care of the problems which the Indian jail authorities are facing in keeping these prisoners. There is presently no legal provisions either in the Code of Criminal Procedure, 1973 or any other law under which a foreign prisoner could be transferred outside India.

The Bill proposes legislation, in conjunction with bilateral treaties to enable the Central Government to transfer foreign convicts persons to their country and vice versa.

Model Prison Manual (2003)

Honorable Supreme Court of India has issued directions in the case of Ramamurthy vs. state of Karnataka (1996) (1997 & 2 SCC 642) brought to the fore an urgent need for bringing uniformity in laws relating to prisons and directed the Central & State Governments to formulate a new Model Prison Manual. Earlier, the All India Committee on Jail Reforms (190-83) has also emphasized the need for a consolidated law on prisons.

In pursuance to the directions of the Honorable Supreme Court, BPR&D constituted a Model Prison Manual committee at the national level with the approval of Ministry of Home Affairs for the formulation of Model Prison Manual.

To develop prison system in the country as an affective instrument for the reformation and rehabilitation of offenders, the draft Model Prison Manual aims at: uniformity of law, sound custody & treatment, rationalization of prison practice, minimum standards of services, protection of human rights, Individualization of institutional treatment, scientific basis treatment of spl. Category, coordination between near institution, linkages between prison programs & welfare associations and flexibility in adaptation of rule.

This Manual has since been circulated by the Ministry of Home Affairs and the BPR&D to all State and UT administrations in January, 2004 after its acceptance by the Government of India. The Ministry of Home Affairs and the BPR&D have requested all the States/UTs to adopt this manual with such minor modifications as may be necessary to suit the ground situation in their states.

DRAFT BILL –GOVT & NHRC. - search

The Indian Prisons Bill, 1996,

The Prison Administration and Treatment of Prisoners Bill, 1998,

The Prison Management Bill, 1998.

Conclusion

It is imperative that the Indian prison system be changed from a punitive to a rehabilitative paradigm. A system based only on retaliation is ineffective at deterring crime or reintegrating criminals into society as contributing members. True justice must strive for healing, education, and reintegration rather than just punishment. Reforms focused on rehabilitation can assist end the cycle of crime by addressing the psychological, social, and economic factors that contribute to criminal activity. By adding educational programmes, vocational training, mental health

care, and post-release rehabilitation plans, India can transform its prisons into places of correction and social renewal. The emphasis should change from isolation to inclusion, from confinement to capacity-building. Additionally, every prisoner can be guaranteed fairness and dignity through the successful application of international norms like the Mandela Rules and court recommendations.

In the end, a country's moral strength is reflected in its humane prison system. Rehabilitating inmates is not just about making jail circumstances better; it's also about reiterating the principles of fairness, compassion, and human decency that underpin Indian democracy.