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AN ANALYSIS OF PRISON REFORMS IN INDIA AND THE WAY FORWARD

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ABSTRACT :

Prisons are places where people are cut off from the outer world. They are deprived of their freedom and personal contact with their families and friends. The main intent behind creating prisons is to transform individuals into law-abiding citizens. Prisons are crucial in defending society from criminals and crime. Prisons make sure that inmates are safely segregated from the general population until they undergo rehabilitation and are ready to reintegrate into society as law-abiding citizens.

The research work aims to investigate "Prison reforms in India" as one of the requirements for an integrated Criminal Justice system. The research begins with a brief discussion of the existing laws on prisons and prisoners.[1] According to the researcher, the concept of the prison as a place where therapy takes first over-incarceration is the cornerstone for Prison Reform.[2]

Thus, this further study examines the current situation of Prisons, recent judicial trends on Prison Reforms in India, and other steps taken till now for reforming prisons in India. It then analysis and identifies the existing challenges and way forward to prison reforms.

For the aim of preparing the essay, the researcher relied heavily on secondary sources such as websites and books.

INTRODUCTION :

Nelson Mandela once said, "A nation should not be judged by how it treats its highest citizens, but its lowest ones".[3] Mahatma Gandhi also quoted – Crime is the outcome of a diseased mind and jail must have an environment of a hospital for treatment and care.[4] Every society has

[1] Rishabh Bhargava BA LLB, Indore Institute of Law/ "A Critical Study of Prison Reforms in India"/ Volume 2/ Pen Acclaims / P. 1/p.1/ 2018 / http://www.penacclaims.com/wp-content/uploads/2018/08/Rishabh-Bhargava.pdf.

[2] Ibid.

[3] United Nations, "*Nelson Mandela Rules",* https://www.un.org/en/events/mandeladay/mandela_rules.shtml (Last Visited on 25 december, 2022)

[4] Sanjeev Kumar Chadha, "Prison Administration in India and USA : A Comparative Study", RESEARCH GATE (2018), p 233\ Rishabh Bhargava BA LLB, Indore Institute of Law/ "A Critical Study of Prison Reforms

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crimes and criminals and punishing such criminals is one of the important functions of civil societies. Imprisonment is one such punishment.

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The prison act of 1894 defines *"Prison"* as any jail or facility used temporarily or permanently under the general or specific orders of state government for the imprisonment of inmates, including building apartments and lands.[5]

PROVISIONS GOVERNING PRISONERS' RIGHTS :

Article 1 and article 5 of the Human Rights Declaration state that every person is born free and equal with respect to rights and dignity and no person shall be subject to torture, cruel treatment, and inhumane treatment or punishment.[6] Here, it is evident that every person and no person includes prisoners as well.

Article 21 of the Indian Constitution protects a person's right to life and dignity.[7] According to this article, even a prisoner has the right to live his life with dignity.

The Supreme Court in the case of Maneka Gandhi made a wide interpretation of this article in reference to prisoners' rights to include speedy trial, easy access to justice, protection against custodial harassment and torture, etc.[8]

Article 39A of the constitution deals with equal justice to all and it mandates the state to provide free legal aid. [9] This ensures that the people who cannot afford advocates due to their financial restraints are provided with advocates by the government without any charges.

in India"/ Volume 2/ Pen Acclaims / P. 1/p.1/ 2018 / http://www.penacclaims.com/wp-content/uploads/2018/08/Rishabh-Bhargava.pdf.

[5] The Prison Act, 1894

[6] United Nation, "*Universal Declaration of Human Rights",* https://www.un.org/en/about-us/universal-declaration-of-human-rights (visited on January 03, 2023)

[7] The Constitution of India, 1950

[8] Maneka Gandhi vs Union of India 1978 AIR 597, 1978 SCR (2) 621

[9] The Constitution of India, 1950

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Similarly, article 20 of the constitution provides protection against certain offenses. Article 22 which has been reiterated in various judgments provides protection to the people in detention.[10] The purpose of the Legal Services Authorities Act, of 1987, is to ensure that opportunities for obtaining justice are not denied to any citizen because of financial hardship or other needs. It also aims to organize Lok Adalats to make sure that the functioning of the judicial process helps promote justice on an equal opportunity basis.

The Authority's primary responsibilities include raising public understanding of the law, providing legal aid, and mediating disputes.[11]

The Prison Act of 1894 deals with the administration of prisons and regulates the prisons.[12] Being more than a hundred-year-old legislation, this act requires certain amendments to fulfill the needs of the present circumstances.

PRESENT STATUS OF INDIAN PRISONS :

The Prison Statistics India, 2016 published by National Crime Records Bureau (NCRB2019)[13] sheds light on the suffering of Indian prisoners. The report finds that India has the highest number of under-trials. According to the study, there were 4,33,033 prisoners incarcerated at the end of 2016; 68% of them were under trial. This raises the possibility that a high percentage of untried prisoners may be a result of arbitrary detentions and inadequate legal representation during remand hearings.

In accordance with Section 436A of the Code of Criminal Procedure, there is a discrepancy in the number of inmates who are actually freed and those who are eligible for release. If an undertrial has served half of the maximum sentence that would have been applicable had they been found guilty, Section 436A provides for their release on a personal bond. Only 929 of the 1,557 undertrials that Section 436A determined were eligible for release in 2016 were actually released. Furthermore, according to research by Amnesty India, jail staff members generally aren't aware of this clause and are unwilling to use it.

According to the Prison Act of 1894[14] and the Prisoner Act of 1900[15], each jail is required to have a welfare officer and a law officer, but these positions have not yet been filled. This

[10] ibid
[11] The Legal Services Authority Act, 1987
[12] The Prison Act, 1894
[13] Report of National Crime Records Bureau, Prison Statistics India, 2016 (updated onAugust 31, 2022)
[14] Prison Act of 1894
[15] Prisoner Act of 1900

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situation explains why jails haven't gotten high political or financial priority over the last hundred years.

The above data suggest the below-mentioned factors as the major reasons for the deplorable conditions of prisons and prisoners which have also been found out by the Supreme Court in its landmark judgment Ramamurthy v. State of Karnataka[16]:

- Overcrowding
- Delay in Trials
- Torture and other cruel treatment
- Ignorance of health and hygiene
- Poor administration of the prison

STEPS TAKEN FOR PRISON REFORMS :

In order to ensure safe and worthy living spaces, especially for women and children in general, the Department of Justice is continually working to provide the High Courts and State Governments with the necessary assistance in establishing Fast Track Special Courts (FTSCs for prompt trial and disposition of cases) a sample jail guidebook: In 2016, the Union Home Minister published a sample jail manual. It makes it apparent that the government has a responsibility to defend the residual rights of prisoners after they give up their freedom in accordance with a legal procedure.

Law Commission of India: In its 268th report, published in 2017, the Law Commission of India issued a slew of suggestions.

The Commission suggested that persons arrested for crimes carrying a sentence of up to seven years in prison be freed after serving one-third of that time and those charged with crimes carrying a longer sentence be released after serving half of that time.

Additionally, it was advised that the magistrates should not issue mechanical remand orders and that the police should avoid making unnecessary arrests.

It was proposed by the Justice Amitava Roy Committee that each new prisoner be provided with a free call to his family members each day for the duration of his initial week in custody.

[16] Ramamurthy v. State of Karnataka (1997) 2 SCC 642\ Supra 1

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This is one of the several suggestions made by a Supreme Court-appointed committee to modernize prisons, along with contemporary cooking facilities, canteens to buy necessities, and trial through video conferencing.

ROLE OF JUDICIARY IN PRISON REFORMS :

The Supreme Court and various High Courts at various stances have commented upon the wretched condition of prisons and prisoners which result in the violation of prisoners' rights. The Indian judiciary has interpreted various rights such as Articles 19,21,22,31 and 39A for the treatment of prisoners in a just and humane way. Various judgments have also been passed recognizing prisoners' rights as further steps to prison reforms.

In Hussainara Khatoon v Home Secretary, State of Bihar[17] The Supreme Court provided a wide definition of Article 21 which held that speedy trial is a fundamental right of every individual. It is a landmark judgment that recognizes the rights of prisoners. The SC ruled that the government should grant free legal aid services and speedy trials to administer justice to all citizens.

In another judgment, Sunil Batra v. Delhi Administration[18] The apex court held that the prisoner has all the fundamental rights which are consistent with incarceration. It said that prisoners should be treated in a just and humane manner and should not be tortured or discriminated against in any way.

In D. K. Basu v. State of West Bengal[19] it was decided that the friend or relative of the accused must be informed instantly of his arrest. The goal is crystal clear: through it, the accused's family members or friends can begin their efforts to learn the facts surrounding the case, seek legal counsel, mount a defense against a request for remand, and make the required preparations for bail.[20]

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CHALLENGES AND WAY FORWARD

First, prisoners do not have voting rights according to the current election laws. This leads to their exclusion from the vote bank for the political class. As a result, the leaders do not focus

[17] *Hussainara Khatoon v Home Secretary, State of Bihar* 1979 AIR 1369
[18] *Sunil Batra v. Delhi Administration* AIR 1978 SC1675
[19] D. K. Basu v. State of West Bengal 50 AIR 1997 SC 610
[20] Supra 1

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on the development of prisons. Prisoners should be given the right to vote for prison reforms as then only prisons would be a focus for the political class.

Second, there are around 1412 prisons in the whole country which have a capacity of 3,80,876 prisoners[21]. However, as of today, there are over 4.5 lakh prisoners. Among them, around 64% of them are undertrials. The infrastructure of the existing prisons needs to be improved. Budgets should be allocated for the development of prisons.

Third, as also mentioned above, around 64% of the total prisoners are undertrials. The main reason for such a huge number is the delay in the trial processes. The undertrials should be kept in different places other than the convicts. Computerization can be used for speedy hearings. Bails should be soon granted for less harmful offenses.

Fourth, Prison comes under the State list. This leads to a lack of uniformity in prison management. Prisons should come under the Union list. This would create uniform laws throughout the country and coordination between the states.

Fifth, the poor treatment, health, and hygienic conditions inside the prisons are pathetic. This causes a deterioration of India's image internationally as on several occasions, India's request for extradition has been declined due to the apprehension of poor treatment inside the Indian prisons.

Steps should be taken for the proper treatment of prisoners. Health and hygiene should be maintained.

Lastly, there is a grave human rights violations in the prisons. Sometimes, children use to accompany their parents in jail lodgings as there is no one to take care of them outside. These children grow up in prisons despite being innocent. A child-sensitive approach must be taken and policies must be formed for such children.

In a recent case of Stan Swamy (2021), the inmate asked for a sipper to drink the water due to his health conditions as he was not able to hold a glass of water for which he has to go to court for his basic need. This shows a great violation of human rights. The prison authorities should ensure that the basic needs of the prisoners should be fulfilled.

CONCLUSION :

A lot has been done but still much more needs to be done for the development of prisons in India. Prisons should be treated as more of a corrective place to change individuals into law-

[21] National Crime Records Bureau, "*Prisons Statistics India 2016 Table 1.1"* (visited on December 28, 2022)

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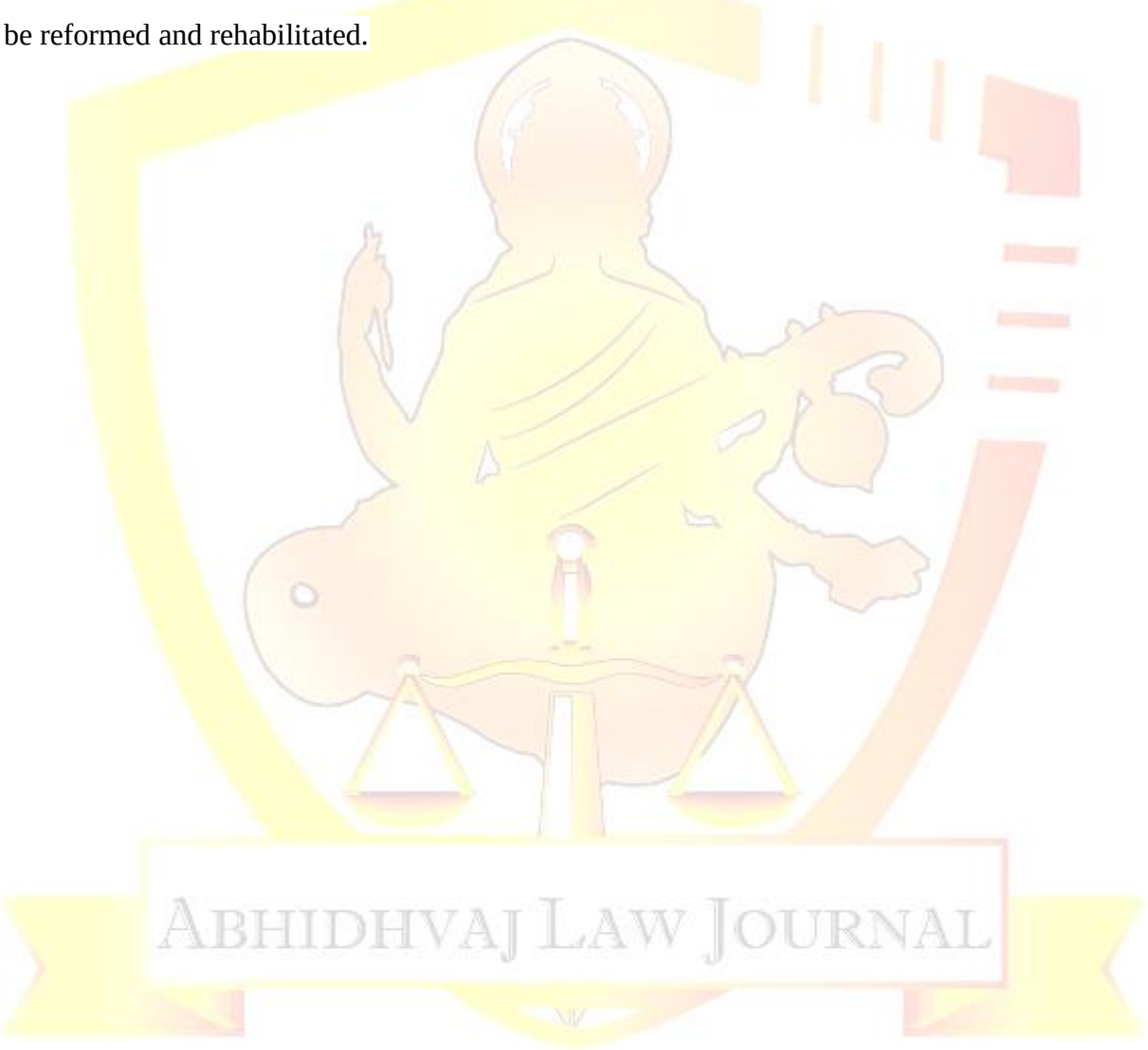
abiding citizens rather than a place to punish the individuals. Prison reforms should not be limited to only prison buildings. Reforms should be done inside the prisons regarding the living conditions of prisoners. They should be provided with facilities for their development. Prisons are merely one technique of reforming convicts; in the larger picture, education, economics, institutions, and social reforms must be implemented to bring about societal transformation. In India, the central government should constantly provide guidance to state governments on prison governance and reforms. Finally, only with decent conditions and affection can inmates be reformed and rehabilitated.



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