

## PRISON REFORMS AND INDIA

**Shashank Shekhar\***

### ABSTRACT

Reforms do not mean providing any sort of Amenities or facilities to the prisoners, but here it explicitly includes the kind of reforms that there should not be any sort of unnatural kind of behavior or atrocities to be done with them because eventually, they are humans and one of the most essential thing is that we have courts, and our constitution guarantees authority to the court to decide and to penalize the culprit or wrongdoer and this Article revolves around the pathetic condition of prisons, strikes for prison reforms, and the major problems faced by the prisoners like overcrowding and the violence and many more that are rapidly increasing in the prisons, the various committees to reform, the governance of prisons and the various rights of prisoners, it also puts light on Dr. Kafeel khan's story that what problems he faced in the prison and also about the pathetic condition of the cellular jail in Andaman and Nicobar Island.

**Keywords:** Article 21, overcrowding, Understaffed, Violence, Legal Aid.

### INTRODUCTION

All citizens have the right to life and liberty, but if they do not obey society's principles, they are subjected to consequences, which include the use of jails to carry out such punishments. Prisons and jails are two distinct entities, with jails serving a short-term purpose and being controlled by local law enforcement, while prisons serve a long-term purpose and are run by the state government.

### PRISON HUNGER STRIKE

**Bhagat Singh** and his comrades went on an indefinite hunger strike to protest the unfair treatment of whites and locals in prisons, and they demanded to be recognized as political prisoners. The hunger strike gained a lot of media attention and garnered a lot of public sympathy for their cause. Bhagat Singh ended his 116-day fast on October 5, 1929. **The cellular jail in Andaman and Nicobar Island** between 1896 to 1906 the British built the

\*BA LLB, FIRST YEAR, LLOYD LAW COLLEGE, GREATER NOIDA.

Prison, which was mostly used to expatriate Indian freedom fighters and political prisoners. It was cut off from society and the rest of the inmates. The torture in the jail was so severe that Savarkar brothers Babarao and Vinayak had no idea they were being held in separate cells in the same jail for two years. The island was conquered by the Japanese in 1941, and the jail was converted into POW camps. After India gained independence, the jail's wings were razed.

### A LIVING HELL INDEED

Dr. Kafeel Khan, a suspended doctor who'd been indicted for actively engaging in anti-CAA protests, wrote a letter to his family and friends titled "A living hell indeed" in which he describes the conditions of the jails he was experiencing, including the fact that there was only one toilet shared by 125 to 150 inmates, the scorching heat, and the stench of sweat and urine<sup>1</sup>. This all reveals information regarding jail conditions, overcrowding, sanitary issues, and much more. Isn't this a violation of human rights?

### CONCEPT OF PRISON REFORMS

Reforms are necessary for society to develop and adapt to shifting cultural norms. Prison reform is also one of the improvements that society requires to defend inmates' human rights. Despite being one of the world's greatest democracies, India still has problems with prison conditions. We frequently observe the level of abuse and the number of deaths in prison.

Journal of Legal Research and Juridical Sciences



### PROBLEMS FACED BY THE PRISONERS IN MOST OF THE STATES

**Overcrowding:** It is a big concern for Indian jails because most of them are overcrowded, which is adverse to those sentenced for little charges. As a result, habitual criminals may have control over those sentenced for minor offenses. There is also a backdrop to this, as the inadequacy of jails for juvenile offenders may cause them to develop their minds as professional criminals due to their confinement among habitual offenders

According to the prison statistics India 2019, Published by NCRB highlights the plight of prisoners in India, That there is an increase of 11 Prisons as 1339 in 2018 and 1350 in 2019 having an 0.82 percent increase, in 1350 prisons, Rajasthan was reported with the highest

<sup>1</sup> Navya Singh, "A living Hell Indeed": Dr Kafeel khan Letter from jail exposes poor conditions at Mathura jail, (THE LOGICAL INDIAN, 6 July 2020) <https://thelogicalindian.com/news/kafeel-khan-letter-mathura-jail-22125> accessed on 21 October 2021.

number of jails (144), followed by Tamil Nadu (141), Madhya Pradesh (113), Andhra Pradesh (106), Karnataka (104) and Odisha (91), and the number of prisoners in 2019 was 478,600 which was 466,084 in 2018, having an increase of 12,516 prisoners.<sup>2</sup>

## SUPREME COURT ON OVERCROWDING

During the pandemic, India's Supreme Court ordered the release of all eligible convicts, the injunction attempts to defend the prisoners' right to life and health. The Supreme Court has stressed the importance of following the rules it established in *Arnesh Kumar v. State of Bihar* (2014)<sup>3</sup>, in which the police were advised not to make unnecessary arrests for crimes that carry a sentence of less than seven years in prison, the Supreme Court also advised all district authorities to implement Section 496(A)<sup>4</sup> of the CrPC, which allows defendants who have served half of their maximum sentence to be released on personal bonds and also suggested the idea to place convicts under house arrest to avoid overcrowding of prisons.<sup>5</sup>

### Understaffed:

It is also one of the most serious issues in prisons. Prisoners' human rights are also infringed since jails are grossly understaffed, resulting in less care and protection for the inmates. The strength of staff in Daman & Diu, Nagaland, and Arunachal Pradesh has filled more than 90% of the sanctioned posts, But an analysis of in and posted staffs strength in jail shows that the actual strength of the jail staffs posts against the sanctioned strength in Jharkhand, Chandigarh, and Sikkim is much low than the all India average percentage, (69.390%).<sup>6</sup>

The staff in the prison are categorized into five categories that are executive, Medical, Correctional, Ministerial, and others. The report of prison statistic India 2019 stated that on the seat of 72,273 executive staffs, only 51,126 were posted in India, in which UP has reported the highest number of vacant seats (5,210), and on the seat of 1307 correctional staffs only 761 were posted, in which Bihar has reported the highest number of vacant seats (151), and a total number of 1,962 medical seats was posted against sanctioned strength of

<sup>2</sup> NCRB, 'Prison statistics India 2019' (ncrb.gov.in, 27 August 2020) <<https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>> accessed 21 October 2021.

<sup>3</sup> MANU/SC/0559/2014

<sup>4</sup> S. 496(A), CrPC

<sup>5</sup> Debayan Roy, Supreme Court orders re-release of all eligible prisoners to prevent COVID-19 spread in prisons [Bar and Bench, 8 May 2021] <https://www.barandbench.com/news/litigation/supreme-court-orders-states-to-release-all-prisoners-who-were-released-last-year-to-prevent-covid-19-spread> accesses 21 October, 2021.

<sup>6</sup> Ibid.

3,320 as of the end of the year 2019, Delhi has the highest number of vacant staff post (234) and If we put light on the ministerial staffs, there is the same problem that a total number of 2,368 Ministerial staffs was posted against the strength of 5,372 in which Tamil Nadu has reported the highest number of vacant seats(165).<sup>7</sup>

### **Violence:**

It is the other aspect of the bad conditions in prison. Whatever you want to call it, whether it's due to prison authority carelessness or anything else, a recent occurrence in Tihar Prison demonstrates how violent incidents in prisons are on the rise. A 25-year-old prisoner was beaten up by an inmate, and this was the 6th such event in a single month, prompting the national human rights commission to take Suo Moto notice of a media story on the rising incidents of violence among inmates at Tihar jail in Delhi.<sup>8</sup>

### **Lack of legal aid:**

This is a provision for those who cannot afford attorneys to seek help in court. According to P.N. Bhagwati, legal assistance is a means of delivering justice to poor and uneducated convicts so that they can reach the courts and that injustice does not occur because of their financial situation. Article 39A<sup>9</sup> of the Indian Constitution (DPSI) lays a duty on the state to offer free legal aid to the weaker sections of society. The legal service authority act of 1987 makes this obligation enforceable.

Journal of Legal Research and Juridical Sciences

### **Opinions of honorable court on Legal Aid-**

- In *D.K. Basu v. State of West Bengal*<sup>10</sup>, the supreme court observed that free legal aid at the state expenses is the fundamental right under Article 21<sup>11</sup> Constitution of India, same was reiterated in *Dipak Subhash Chandra Mehta vs. C.B.I.*<sup>12</sup> says " Detaining under trial prisoners for an indefinite time in the jail custody is a violation of the Article 21.

<sup>7</sup> NCRB, 'Prison statistics India 2019' (ncrb.gov.in, 27 August 2020)

<<https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>> accessed 21 October 2021.

<sup>8</sup> NHRC notice to Delhi government 'rising cases of violence among Tihar inmates(Hindustan Times, 28 Sept 2021) < <https://www.hindustantimes.com/india-news/nhrc-sends-notice-to-delhi-govt-over-rising-cases-of-violence-among-tihar-jail-101632849051863.html> accessed on 21 October 2021.

<sup>9</sup> Constitution of India, Article 39A

<sup>10</sup> MANU/SC/0157/1997

<sup>11</sup> Constitution of India, article 21

<sup>12</sup> MANU/SCOR/3242/2012

- A committee led by the former Supreme Court justice Amrita Roy analyzed data from 12 states and discovered that state authority provides free legal aid in 482 prisons, By NGO there were 97 prisons and individual level pro bono in 19 jails.

## COMMITTEES RELATED TO PRISON REFORMS

**Justice Mulla committee report:** It was set up to review the laws and regulations and to bring equilibrium between states and union territories concerning prison administration, Mulla committee was formed under the chairmanship of A.N Mulla, The committee focuses on the modernization of the prisons, it submitted its report in 1983.

Some basic recommendations of the Mulla committee are:

- It was suggested that the regulations of jail be changed from a state list to a concurrent list, allowing both the center and the states to pass legislation concerning prisons.<sup>13</sup>
- It is recommended to train the jail personnel and divide them into various cadres. There should also be an All-India service called Indian prisons and correctional services.
- The media and public should be permitted to visit the prisons regularly so that the public can learn about the conditions inside the prisons and be willing to co-operate with prison officials.
- Under trials should be kept separate from the convicted inmates because under trials constitute a big portion of the prison population, Liberalisation of bail rules and fast trials can lower the number of undertrials.
- The government should make a big effort to provide sufficient resources and funding for jail reforms.

**All India Jail Manual Committee:** The government of India appointed the All India Jail Manual Committee in 1957-59 to prepare a model prison manual, it was asked to examine the problems of prison administration and to make suggestions for improvements to be adopted uniformly throughout the country, it laid down its submission in the year 1960, it pleases to formulate a uniform policy relating to jail administration moreover it suggested amendments in the century-old Prisons Act of 1894.<sup>14</sup>

<sup>13</sup> Ibid.

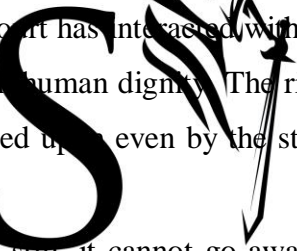
<sup>14</sup> West Bengal Correctional Services, 'Reckless Commission Report, 1952' ([wbcorrectionalservices.gov.in](http://wbcorrectionalservices.gov.in))  
<http://wbcorrectionalservices.gov.in/history05.html> accessed 22 October, 2021.

**Krishna Iyer committee:** Under the chairmanship of VR Krishna Iyer, the committee was formed by the government of India in 1987, to study Women prisoners in India.<sup>15</sup>

Some recommendations of the report are:

- There should be a concept of free legal aid to all women offenders because women prisoners experience helplessness as compared to males in defending themselves in court.
- Unconvicted women trials and bails should be fast, with facilities for women offenders to meet with their loved ones on trial.
- To prevent women offenders from neurotic disorders, there is a need for security, discipline, an adequate standard of prisons, and human rights.
- There should be a separate institution for women offenders as they are vulnerable to exploitation even inside prisons.

## RIGHTS OF PRISONERS

- 
- **Right to life and personal liberty:** The Supreme Court has interpreted with article 21 of the constitution by combining the right to life with human dignity. The right to life is a fundamental human right that cannot be infringed upon even by the state; it is a right that is guaranteed to everyone.<sup>16</sup>
  - **Right to free legal aid:** If the state is out of funds still, it cannot go away from its duty to provide free legal aid, it is given in Article 39A,<sup>17</sup> and the state has to provide free legal aid to those who cannot afford the cost of the courts and advocates.
  - **Right to reasonable wages for work:** If one should not be paid for their work it should be considered as bonded labor and will also violate article 21 of the constitution even inside the prisons, giving wages to the prisoners will also create a healing effect on the mind of prisoners.
  - **Right to a speedy trial:** It is the essential ingredient of article 21. Delay in the disposal of cases is a denial of justice, so the court is expected to adopt necessary steps for the speedy trials and disposal of cases, the court also has stated that when the

<sup>15</sup> Krishna Iyer Committee, 'Committee on Empowerment of women (wbcorrectionalservices.gov.in) [http://wbcorrectionalservices.gov.in/pdf/empowerment\\_of\\_women.pdf](http://wbcorrectionalservices.gov.in/pdf/empowerment_of_women.pdf) accessed 22 October, 2021.

<sup>16</sup> Constitution of India, article 21

<sup>17</sup> Constitution of India, article 39A



right to speedy trial of an accused has been infringed, the charges of the conviction shall be quashed.<sup>18</sup>

- **Right to health and medical treatment:** Article 21 also includes the right to medical care, it makes the state responsible to preserve life, this is a basic human right, and still, we find the negligence of healthcare in the prisons, which will be termed as a violation of one's fundamental right.<sup>19</sup>

## CONCLUSION

The condition of prisoners is growing towards a ray of hope for the betterment of prisons but it is still in its infancy stage. To be a reformative institution other than a custodial home of torture there are many hurdles to cross for the prisons. If we talk about the deaths and illness in the prison, we will find that a total number of 1775 deaths were reported in 2019 as 1845 in 2018, having a decreased percentage of 3.79% but it does not give a positive sign because the number of unnatural deaths is still on the rise, either it will be because of torture, mental condition or something else. We can see the increased number of unnatural deaths in prison by 10.74% from 149 in 2018 to 165 in 2019, in these 165 deaths, 115 inmates was the predominant cause followed by accidental deaths (20), Murder by inmates (10), Death due to negligence (1), Death due to assault by outside elements and death due to firing (1) and others (15)<sup>20</sup>.

These all show that what is the necessity to make reforms in prison, not only by the jail organization because it cannot effectively reform the prisoners, Attempts will be successful only when our economics and social institutions are appropriately coordinated to learn the human establishments.

<sup>18</sup> Constitution of India, article 21

<sup>19</sup> Constitution of India, article 21

<sup>20</sup> NCRB, 'Prison statistics India 2019' (ncrb.gov.in, 27 August 2020)

<<https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>> accessed 21 October 2021