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THE EVOLVING PHILOSOPHY BEHIND OVERCROWDED PRISONS: A LEGAL ANALYSIS

ABSTRACT

Congestion and overcrowding are dangerous and it strikes the most populated states terribly. Overcrowding, poor sanitation and nutrition, prisoner overstays, the shortage of prison staff, doctors and escorts to guide prisoners to court, the unavailability of timely, quality legal aid, poor mechanisms to review prisoner status, the absence of mandated statutory mechanisms of prison oversight, the near absence of correctional and aftercare services for released prisoners are the problems repeatedly raised by court of law. If this state continues, prisons will be the next Dharavi. This paper will provide an analysis of the conditions in prisons all around the country. For facilitating the same, this paper will also draw the reader's attention into decided cases that are of Indian origin and elsewhere. The ultimate philosophy behind the concept of punishment has been totally neglected by the prison facilitators. The reason that prisoners should be detained only for that particular time deemed necessary will also be analyzed by this paper. Finally, this paper will also suggest measures to overcome the threat of overcrowded prisons by taking other country legislations into consideration. The philosophical base for a constitutional right to uncrowded incarceration facilities remains unclear and is still evolving.

Keywords: Congestion, Health, Sanitation, Overcrowding, Punishment.

INTRODUCTION

The world's largest democracy is more than just a name. If the checks and balances of democracy are supposed to curb government lawlessness, something has gone wrong in our land¹. It will be very easy to sometimes think that the rights of prisoners have little or nothing to do with us. That

¹ Human Rights Watch publication, Prison Conditions in India.

they have somehow exchanged their rights for a life of crime. Every individual has the same rights and they can never be taken away. And just because someone is in prison, it will not mean that they are guilty of a crime. Before Indian Independence, the Criminal Justice System of India practiced deterrent measures. The rationale of holding detainees was to hamper the battle for autonomy and keep different political dissidents. Yet, post autonomy, numerous reformatory measures were presented. The Criminal Justice System saw an extraordinary change. The reason for discipline is currently more reformatory than impediment in nature. In any case, numerous escape clauses have yet imperiled such objectives. The issue emerges when we see the status and state of the jail local area. The whole thought process of reconstruction is defaced with regards to jail conditions. Jails in India are the same as real life detainment facilities, where a detainee is living under unhygienic and appalling conditions. A detainee is presented to such conditions which are disturbing to human norms. Steady openness to obtuse conditions causes numerous wellbeing risks to people.

In India, the terms 'prison' and 'jail' are often confused for the same meaning. This in turn reflects the fact that no significant effort has been made to separate those awaiting trials from convicts. Majority of the prisoners are mostly undertrials. The Supreme Court in *Charles Sobraj v Superintendent, Tihar Jail*², held that convicted persons go to prison as punishment and not for punishment.

The untouchability and discrimination factors will never be completely eradicated in India. Every luke and corner of the country still has the distinguishing factor in some aspect or the other. Special privileges within the prisons are often awarded to those from the upper or middle classes. These privileges are provided to even those engaged in violent crimes against the state. The Law Commission, in its 268th report had said it has become a standard in India that the ground-breaking, rich and powerful get bail quickly and effortlessly, while the majority/the normal/the poor grieve in correctional facilities³. It said this predominance puts human pride in question⁴.

Overcrowding is an outcome of criminal equity strategy and not necessarily of increasing crime percentages. And it subverts the capacity of jail frameworks to meet fundamental human

² *Charles Sobraj v Superintendent, Tihar Jail*, AIR 1978 SC 1514.

³ Government Of India, Law Commission report, <https://lawcommissionofindia.nic.in/reports/Report268.pdf>, last accessed on 09.02.21.

⁴ *Ibid.*

requirements, for example, medical care, food, and convenience. It additionally bargains the arrangement and adequacy of restoration programs, instructive and professional preparing, and recreational exercises. The inordinate utilization of pre-preliminary detainment, and the utilization of jail for minor, trivial offenses, are basic drivers of jail populace rates.

PRISONER'S SAFETY

We are well aware of the fact that every person who is arrested and is in custody of the police must be produced before the magistrate within 24 hours of arrest⁵. A report⁶ recently revealed that nearly 1,731 people died in custody in 2019 alone. These people mostly belonged to the vulnerable communities including Dalits and Muslims. Out of this, 1,606 people died in judicial custody and 125 people in police custody⁷. There have also been reports of missing individuals from custody of the police. This brings ambiguity as the common man is not aware of the reason for such disappearances. In the 1900s, the Andhra Pradesh government received a letter⁸ reporting 21 missing individuals. Sometimes, unjudgeably, just like how the movies portray, personal vengeance are also taken through punishments while in custody.

On the other hand, for women who are held under custody by the police, rape is still a serious threat. Prison is the place where the criminal value system put its entire assumptions. The remedial component, if falls flat will make the entire criminal methodology futile. The regulation behind discipline for a crime has been changed extensively by the progression of new human rights statutes. The possibility of change has transformed into the watchword for prison association. Human rights statutes advocate that no wrongdoing should be rebuffed in a coldblooded, defiling or in a merciless way. Regardless of what may be normal, it is held that any control that amounts to callous, mortifying or severe should be managed as an offense without anyone else. The change caused to the criminal value structure and its remedial instrument has been embraced around the globe and question of joining of the equivalent in Indian situation stays unanswered.

⁵ Section 56 of The Police Act, 1861 read with Article 22(2) of The Constitution of India.

⁶ India: Annual report on torture 2019, 26 June, 2020.

⁷ Ibid.

⁸ State of Civil Liberties in A.P.: An open letter to the Chief Minister, Andhra Pradesh Civil Liberties Committee, January 1990.

The International Covenant on Civil and Political Rights (ICCPR)⁹ calls upon nations to authorize laws to compensate those individuals for miscarriage of justice. India sanctioned ICCPR in 1968 however is yet to comply with its obligations and enact a law that grants such compensation to victims of miscarriage of justice.

In 2018, the Law Commission in its report on wrongful prosecution and legal remedies recommended authorizing a lawful arrangement that would give alleviation to survivors of unfair indictment as far as money related and non-financial compensation, (for example, advising, psychological well-being administrations, professional/business abilities advancement and so on)¹⁰. In *Bablu Chauhan @ Dablu v. State Govt. of NCT of Delhi*¹¹, the Supreme court expressed concern about the state of innocent persons being wrongfully prosecuted, incarcerated for crimes that they did not commit.

In *Thana Singh v. Central Bureau of Narcotics*¹², the Supreme Court observed that for the prisoner, imprisonment as an undertrial is pretty much as shameful as detainment for being a convict on the grounds that the "damning finger and opprobrious eyes of society draw no difference between the two".

REASONS FOR ACCELERATING INCARCERATION

In the late 1950s, the All India Jail Manual Committee's report¹³ stated that "almost all over India overcrowding in prisons has become a common problem. In some prisons the cells and barracks which were originally meant for accommodating inmates have been converted into store-rooms, godowns, work-shops, etc. Overcrowding has assumed the proportions of a major problem for the Correctional Administration." The Amnesty international has always tried to protect and ensure safety to those within prison limits.

⁹ International Covenant on Civil and Political Rights.

¹⁰ Government Of India, Law Commission Report, <https://lawcommissionofindia.nic.in/reports/Report277.pdf>, last accessed on 09.02.21.

¹¹ *Bablu Chauhan @ Dablu v. State Govt. of NCT of Delhi*, 247 (2018) DLT 31

¹² *Thana Singh v. Central Bureau of Narcotics*, (2013) 2 SCC 590.

¹³ Report of the All India Jail Manual Committee, 1957-9, paragraph 38.

In the 1980s another report¹⁴ shows that “prison barracks are so overcrowded that inmates have to sleep in shifts.” This commission also found that the holding the undertrials in the prisons was the major cause of overcrowding¹⁵.

Unnecessary detention of undertrials is the main cause of accelerating incarceration. However, another main cause of overcrowding in the Indian prisons is the influx of short-term convicts. A large number of these convicts usually are the first degree offenders involved in technical or minor violations¹⁶.

The National Crime Records Bureau in its report released in 2016 stated that more than 65%¹⁷ of the undertrial prisoners in India belong to the Scheduled castes, scheduled tribes and other backward classes. After 2016, the NCRB stopped releasing statistics of the caste profile of prisoners. Mentioning a blistering observable fact where the Supreme Court 40 years ago said that the high pervasiveness of undertrials in prisons is a "crying shame on the judicial system" as it licenses detainment of individuals for significant stretches even without preliminary initiating as a rule¹⁸.

INDIAN SCENARIO OF PRISONS

The Constitution of India provides that the management of each prison falls under the duty of the state government¹⁹. The senior ranking IPS officer acts as the chief of prisons under the state²⁰. Indian prisons usually face three stumbling blocks, including overcrowding, understaffing and underfunding. The inevitable outcomes of these constraints are sub-human living conditions, poor hygiene, and violent clashes between the inmates and jail authorities.

According to the National Crime Records Bureau²¹, the number of undertrial prisoners have increased from 3,08,718 in 2017 to 3,30,487 in 2019, which accounted for 69.05% while the convicted prisoners only were a 30.11%. Further, only 15 States & Union Territories have jails

¹⁴ Report of the All India Committee on Jail Reforms, 1980-83, Vol. I Para 3.17, p. 21.

¹⁵ Ibid.

¹⁶ Jaytilak Guha Roy, Prisons and Society: A Study of the Indian Jail System, Gian Publishing House, New Delhi, 1989.

¹⁷ Prison Statistics of India, NCRB, 2016, <https://flo.uri.sh/visualisation/926093/embed>, last accessed on 09.02.21.

¹⁸ Prison Reforms, Undertrial and Other convicted Prisons, Chapter XII.

¹⁹ The Constitution of India, Schedule VII

²⁰ Ibid.

²¹ Prison Statistics in India, 2019, <https://ncrb.gov.in/sites/default/files/Executive-Summary-2019.pdf>, last accessed on 8th November, 2020.

for women with a total capacity of 6,511 in India. The number of un-natural deaths in prisons has also increased by 10.74% from 2018.

With such pending cases across the nation, jails will remain overcrowded in the absence of any effective systemic intervention. As an issue of fundamental rights ensured by the Indian constitution, undertrials are assumed innocent until proven guilty. Yet, they are frequently exposed to mental and actual torment during detainment and presented to subhuman everyday environments and jail savagery. The myth of being in prison itself makes the individual very lonely, often encouraging the loss of family in its entirety due to social stigma and backbiting. Even the family and relatives of the inmates are exposed to such humiliations. Even after their vindication, undertrials discover their employability seriously imperiled for none of their shortcomings.

Even though the Constitution does not expressly guarantee rights to prisoners, the Supreme Court in *T.V. Vatheeswaran v. Territory of Tamil Nadu*²² held that the Articles 14 guaranteeing equality before and equal protection of law, 19 containing the 6 freedoms and 21, guaranteeing the right to life are accessible to the detainees just as they would be to free men. The Judiciary in every country has an obligation and a Constitutional role to protect Human Rights of its citizens²³.

The sanctioned strength of jail-staff was 87,599 while the actual strength was 60,787 in 2019²⁴. This clearly proves that the prisons have remained under-staffed all throughout. The total number of medical staff present for the benefit of the prisons has also been on shortage²⁵. The manpower requirement of the prisons has not been met. Some of the main places of the country like Delhi, Uttar Pradesh, etc, are the most affected jails in the country. In the absence of adequate prison staff, overcrowding of prisons leads to violence and other criminal activities within the jails. A

²² *T.V. Vatheeswaran v. Territory of Tamil Nadu*, 1983 AIR 361 1983 SCR (2) 348 1983 SCC (2) 68 1983 SCALE (1)115.

²³ Legal Services India, Role of Judiciary in protecting rights of Prisoners, <http://www.legalservicesindia.com/article/1616/Role-of-Judiciary-in-Protecting-the-Rights-of-Prisoners.html>, Last accessed on 8th November, 2020.

²⁴ *Supra* Note 12.

²⁵ *Ibid*.

total of 468 prisoners have escaped in 2019 alone²⁶. There were also reported cases of 20 jail breaks the same year.

Post independent India faced a lot of reforms with respect to prisoners' rights. A few are mentioned below,

i. All India Jail Manual Committee²⁷

The Government of India in the year 1957 accorded its consent to choose All India jail manual committee to set up a model jail manual. The report made intense requests for forming a uniform approach and most recent techniques with respect to prison organization, probation, aftercare, juvenile and remand homes, certified and reformatory school, borstal schools and defensive homes, concealment of corrupt traffic, and so on in addition, the report recommended changes in the exceptionally old Prisons Act of 1894 to give a legitimate base to restorative work.

ii. Model Prison Manual²⁸

This committee prepared the Model prison manual and presented it to the Government of India in 1960. The manual is the basis on which the current Indian prison management is regulated. The Model prison manual paved way for the Ministry of home affairs, Government of India in the year 1972, to appoint a working group on prisons.

iii. Working Group on Prisons²⁹

In 1972, the Ministry of Home Affairs, Government of India, appointed a Working Group on Prisons. This Working Group brought out in its report the need for a National Policy on Prisons. The features of this group are,

- (a) To make effective use of alternatives to imprisonment as a measure of sentencing policy.
- (b) Emphasized the desirability of proper training of prison personnel and improvement in their service conditions.

²⁶ Supra Note 12.

²⁷ Report of the All India Jail Manual Committee, [http://jail.mp.gov.in/sites/default/files/All%20India%20Jail%20Manual%20Committee%20\(1957-59\)%20\(2\).pdf](http://jail.mp.gov.in/sites/default/files/All%20India%20Jail%20Manual%20Committee%20(1957-59)%20(2).pdf), last accessed on 09.02.21.

²⁸ Model Prison Manual, https://bprd.nic.in/content/423_1_model.aspx, last accessed on 09.02.21.

²⁹ Amarendra Mohanty, Narayan Hazary, Indian Prison Systems, (1990).

(c) To classify and treat the offenders scientifically and laid down principles of follow-up and after-care procedures.

(d) That the development of prisons and the correctional administration should no longer remain divorced from the national development process and the prison administration should be treated as an integral part of the social defence components of the national planning process.

(e) Identified an order of priority for the development of prison administration.

(f) The certain aspects of a prison administration are included in the five-year Plans.

(g) An amendment to the Constitution be brought to include the subject of prisons and allied institutions in the Concurrent List, the enactment of suitable prison legislation by the Centre and the States, and the revision of State Prison Manuals be undertaken.

iv. Mulla Committee

In 1980, the Government of India set-up a Committee on Jail Reform, under the chairmanship of Justice AN. Mulla. The basic objective of this Committee was to review the laws, rules and regulations keeping in view the overall objective of protecting society and rehabilitating offenders. The All India Jail Committee focuses on bringing equilibrium between States and Union territories on the legal framework concerning prison administration³⁰.

The Committee suggested setting up of a National Prison Commission as an enduring body to bring about modernization of prisons in India. The Committee also made a proposition that the existing dichotomy of prison administration at Union and State level should be removed and recommended a total ban on the atrocious practice of associating together juvenile offenders with hardened criminals in prisons. The Committee also recommended separation of mentally disturbed prisoners and their placement in mental asylums³¹.

Some of the recommendations of this committee are,

- The condition of prisons to be improved by providing adequate arrangements for food, clothing, sanitation, ventilation etc.

³⁰ Zubair Ahmed, "Jail reforms in India in- A study of Indian jail reform committees" 1 International Journal of Multidisciplinary Education and Research, Page No. 01-04, (2016).

³¹ P Diwan and P Diwan, Human Rights and the Law (Deep & Deep Publications 1996).

- The prison staff should be properly trained and organized into different cadres. It would be advisable to constitute an All India Service called the Indian Prisons & Correctional Service for recruitment of Prison officials.
- After-care, rehabilitation and probation should constitute an integral part of prison service.
- The media and public men should be allowed to visit prisons and allied correctional institutions periodically so that public may have first-hand information about conditions inside prisons and be willing to co-operate with prison officials in rehabilitation work.
- Lodging of undertrials in jail should be reduced to bare minimum and they should be kept separate from the convicted prisoners. Since under trials constitute a sizable portion of the prison population, their number can be reduced by speedy trials and liberalization of bail provisions.
- The Government should make an Endeavour to provide adequate resources and funds for prison reforms³².

v. Krishna Iyer Committee³³

The Government of India in the year 1987 appointed the Krishna Iyer committee to carry out a study on plight of the women prisoners in India. It has recommended the induction of more women in the police force with a view of their special role in controlling women and child offenders.

INTERNATIONAL PRECAUTIONS

The General Assembly of the United Nations started a movement in the form of the Universal Declaration of human rights in the year 1948. It lays down the principles of administration of justice. This forms the basis of International legislations on prison reforms³⁴.

The principal international human rights document protects the human rights of prisoners. Further the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibits

³² Ibid.

³³ Justice VR Krishna Iyer Committee on women prisoners, <https://www.gktoday.in/gk/prison-reforms-and-draft-national-policy-on-prison-reforms/>, last accessed on 09.02.21.

³⁴ Universal Declaration of Human Rights, 1948.

torture and cruel, inhuman, or degrading treatment or punishment, without exception or derogation³⁵.

The International Covenant on Economic, Social and Cultural Rights (ICESR)³⁶ states that prisoners have a right to the highest attainable standard of physical and mental health. They are also eligible to the called second-generation economic and social human rights as set down in the ICESR³⁷.

The UN General Assembly by consensus adopted a declaration³⁸ on the protection of torture. This declaration adopted by the UN General Assembly acts in tandem with the human rights principles of an individual and protects individuals from any kind of torture, inhuman and/or cruel behavior.

The UN standard Minimum Rule also made it mandatory to provide separate residence for young prisoners from the adult prisoners. Subsequent UN directives have been the Basic Principles for the Treatment of Prisoners (United Nations 1990)³⁹ for the Protection of All Persons under Any Form of Detention or Imprisonment (United Nations 1988)⁴⁰.

Internationally too, overcrowding in prisons is considered as one of the key factors in bad prison management criteria⁴¹. Prisons in over 124 countries exceed their maximum occupancy rate, often doubling their rates⁴².

In 2012, Ukraine faced a situation of overcrowded conditions in at least one detention facility which then compelled detainees to sleep in shifts⁴³. In Eritrea, severe overcrowding in prisons

³⁵ Human Rights Watch Prison Conditions, <https://www.hrw.org/legacy/advocacy/prisons/stdnrds.htm>, last accessed on 8th November, 2020.

³⁶ U.N. General Assembly, The International Covenant on Economic, Social and Cultural Rights, 1966, <https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>, last accessed on 09.02.21.

³⁷ Ibid.

³⁸ Articles 2 & 3, The Declaration on Protection from Torture, 1975.

³⁹ U.N. General Assembly, https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf, last accessed on 09.02.21.

⁴⁰ U.N. General Assembly, https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf, last accessed on 09.02.21.

⁴¹ Penal Reform International, <https://www.penalreform.org/issues/prison-conditions/key-facts/>, last accessed on 8th November, 2020.

⁴² Penal Reform International, Overcrowding, <https://www.penalreform.org/issues/prison-conditions/key-facts/overcrowding/>, last accessed on 8th November, 2020.

resulted in a situation where people were being held in irregular facilities, shipping containers or crowded basements without ventilation or sanitation.

In Sri Lanka, the prison is known to house three times its capacity contributing to the violent confrontation that occurred in November 2012⁴⁴. Many prisons in America are under the direct supervision of the military or local national police force organizations which generally lack expertise in prison operations and management⁴⁵. Such situations is not prevelant only in the American countries, but are also faced by the European nations. Inspite of all the measures to prevent overcrowding in prisons, America and other nations across the globe have been reporting incarceration rates to consistently increase over the past few years. In addition to the work of the United States and international organizations, a wide array of foreign governments is striving to uphold their own domestic legal responsibilities and working to follow international guidelines such as the Standard Minimum Rules for the Treatment of Prisoners⁴⁶.

CONCLUSION

On the off chance that an expert hoodlum or a white-collar criminal is happy to oil the palms of the jail official, he can have cell phones, alcohol and weapons inside the prison premises. Then again, the socio-financially hindered undertrials can be denied of their fundamental human nobility because of the state apparatus.

No big surprise the division of detainment facilities has consistently been a searched after portfolio for a portion of India's chosen delegates or politicians with scores of criminal arguments enrolled against them. If the country's situation travels in the same path, the big shots will keep enjoying being over crowded within prison limits while those who are economically hit will have a bad time in prisons. The difficulty in dealing with abuses in police detention and in the prisons has worsened by the decentralization of authority in India.

There is no pin-pointed answer toward the difficult which lies in the construction and working of the whole equity conveyance situation, directly from the police to the courts and correctional

⁴³ Reports of International Prisons, 2013, <https://2009-2017.state.gov/j/drl/rls/209944.htm>, last accessed on 8th November, 2020.

⁴⁴ New York Times, November 11, 2012, http://www.nytimes.com/2012/11/12/world/asia/sri-lanka-opposition-says-27-prisoners-died-in-a-massacre.html?_r=0, last accessed on 8th November, 2020.

⁴⁵ Supra Note 21.

⁴⁶ Ibid.

facilities. Countries like the US, the UK and Germany have enacted laws under which the State is made to compensate a person for miscarriage of justice. In reality prisons often do not meet even the most basic standards laid down by various legislations. Many prison staff are of the view that harsh treatment is the legitimate way to deal with those they supervise. Adding fuel to the fire, the COVID-19 pandemic has exposed the dire need to reduce prison overcrowding and improve prison conditions globally⁴⁷.

Even though international assistance is available worldwide, to all nations, only 25 countries avail such benefits, including, Afghanistan, Bangladesh, Benin, Brazil, Burma, Cambodia, Chad, Democratic Republic of the Congo, Ethiopia, Georgia, Haiti, Honduras, Iraq, Lebanon, Liberia, Mexico, Pakistan, Panama, Saudi Arabia, Serbia, South Sudan, Sri Lanka, Ukraine, Uzbekistan, Vietnam⁴⁸. Others including India do not take the benefit of such prevailing measure.

Jail is the significant wing of organization of wrongdoing and criminal science in the country. Incidentally the examination in its improvement is as yet in early stages. There are numerous obstacles to cross for the jails to be a reformatory organization than a custodial home of torment. The advancement is fundamentally upset by elements, for example, asset distribution, obstruction elements of discipline and restoration approach. Detainment facilities in the nation will attempt to change and re-acclimatize wrongdoers in the social milieu by giving them fitting restorative treatment. Despite the fact that there have been proposals and suggestions by different boards of trustees, the significant worry in India stands to be that of genuine authorization.

All in all it should not be ignored that the issue of jail organization and reconstruction of detainees is only a piece of the master plan of social recuperation. The prison association alone can't adequately change the detainees. It can simply attempt its humble undertakings to fix the detainees; notwithstanding, tries will succeed just when our financial aspects, training, social foundation and qualities are properly planned into a pertinent and suitable entire considering the learning of the human foundation.

⁴⁷ Penal Reform International, <https://www.penalreform.org/issues/prison-conditions/issue/>, last accessed on 8th November, 2020.

⁴⁸ Supra Note 21.