

Prison & Reformation: The Faded Story

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An argument to promote prison reforms is a human rights argument, on which the variance of United Nation's standards has put forth for the society to be developed but the juxtapose is that these are considered to be insufficient to encourage prison reform programmes in countries with scarce human and financial resources. The torment of this is not only limited to the prisoner but also equally to the families and community at large in the perspective of social, economic and emotional. Thus there is a dire need to consider the prison reformation across the globe. .

Generally the sentence to a prisoner is a deprivation of his liberty and restriction on freedom of movement in a sense, whereas it does not restricts the basic tenants of the human rights except as per the procedure established by law. The prison reformation is essential for blossoming of the insertion of respect towards the UN principles and for the compliance, respect and protection of the human of the prisoners. This paper will try to showcase the basic elements of the prison reform, its needs and the present situation and will try to hammer on the existing lacunas related to prison reformation and will suggest the necessary changes for the present system.

Keywords: Prison reforms, UN principles

Introduction

Administration of prisons and reformation of prisoners has been a matter of intense debate and sharp criticism at various public forums. Hon'ble Supreme Court of India in the recent years has come down heavily on the inhuman and degrading conditions in prisons. In many states, the problems of dilapidated prison structure, overcrowding and congestion, increasing proportion of under trial prisoners, inadequacy of prison staff, lack of proper care and treatment of prisoners, etc., have been engaging the attention of the press and social activists. With a growing advocacy for the protection of human

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rights in the various walks of lives, the plight of prisoners has emerged as a critical issue of public policy.²

International law stipulates that imprisonment should not be limited to the deprivation of liberty alone. Rather, it should include opportunities for prisoners to obtain knowledge and skills that can assist them in their successful reintegration upon release, with a view to avoiding future offending. As imprisonment, in itself, is incapable of addressing prisoners' social reintegration issues, the International Covenant for Civil and Political Rights (ICCPR) requires that "the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation".³ While such treatment should be provided for all sentenced prisoners, pre-trial detainees should equally be offered opportunities for purposeful activity. In many countries, pre-trial detainees comprise a large part of the prison population, but are excluded from rehabilitation activities.⁴

The system of prison administration in our country is more than 100 years old. If one looks back one cannot but be impressed with the vast change made during this period. The innovation, while still halting and employed only in some and not in all the prisons of the country, nevertheless give promise of the system of treating offenders. Gone are now many of the brutal methods of treatment yielding place to several new methods including outdoor labor, facilities for higher education, recreational and correction plans, group work and payment of wages. Attempts are now being made to treat the prisoners under less repressive discipline and with greater freedom.⁵

Broadly speaking, the existence of prisons in our society is an ancient phenomenon since Vedic period where the anti-social elements were kept in a place identified by the rulers to protect the society against crime. Prisons' were considered as a 'House of Captives' where prisoners were kept for retributory and deterrent punishment.⁶

PRISON: A CONCEPT

² Model Prison Manual for the Superintendence and Management of Prisons in India, prepared by Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, New Delhi, (2003), p. I

³ International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI), Art. 10(3)

⁴ https://www.unodc.org/documents/middleeastandnorthafrica/2018/Roadmap_for_the_Development_of_Prison-based_Rehabilitation_Programmes_ENG.pdf

⁵ Vidya Bhushan, Prison Administration in India, S. Chand & Co., (1970), p. 246

⁶ <http://www.bprd.nic.in/WriteReadData/userfiles/file/5261991522-Part%20I.pdf>

The term prison was defined by the Prison Act of 1894 in a comprehensive manner.⁷ Prison can be anywhere by virtue of a government order used for the detention of prisoners. Therefore, even a prison will fall within the definition of prison according to this definition. A similar definition was given by the Prisoners Act of 1900 since "Prison" includes any place, which was declared by the state government, by general or special order, as a controlled prison. These two laws remain the fundamental premises for which the administration of the prison was regulated. The Prison Law excludes police custody and subsidiary prisons from the meaning of the word prison. International human rights law has also developed its own concept for the term prison, according to them, the prison can only be a place for the treatment of convicted persons. According to the human rights law for the protection of the incarcerated person, the person incarcerated means a person deprived of liberty because of his conviction for any crime and imprisonment means such a condition of a person in prison.⁸ This will help to give a clearer idea of the problems faced by an inmate in general, by a prisoner on trial and by an inmate.

The modern idea of the prison was foreseen by the judges through the decision-making process. The concept of open prisons has also developed over time. You can no longer call prisons like an institution offering negative experiences. Krishna Iyer, J has judged prison as:

A philosophy of reform, rehabilitation strategy, therapeutic treatment in prison and animation of the detainee's personality through a technology that promotes the fullness of being a creative art of social defence and corrective process by activating the fundamental guarantees of the rights of prisoners, the constitution and the court. Therefore, now all the dignity that human beings possess can be exploited even within the four walls of the prison. The traditional definition and the concept of prison are not suitable at the moment. Life in prison takes away a lot of freedom from a prisoner like; freedom, heterosexual relationships, security autonomy, etc.⁹

Human rights jurisprudence has greatly contributed to criminal reforms and has had an impact on India. Crime reforms all over the world also have an impact on India. The

⁷The Prisons Act, 1894, s. 3 (1).

⁸Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988.

⁹Gresham Sykes, "The Pains of Imprisonment" in Norman Johnston, Leonard Savitz et al. (ed.), The Sociology of Punishment and Correction, John Wiley & Sons, Inc, New York, (1962)p.131.

concept of penal reform originated in the reformist theory of punishment.¹⁰ The time prison must have a meaning that incorporates the values of the reform in it. The reformer's appearance is about incorporating human values into the prison system and prison officials have to work to achieve it.¹¹ The level of protection guaranteed by the legal system for the reformatory treatment of prisoners must be carried out within a national legal framework and India does not have the same.

THE CONCEPT OF CORRECTIONAL PROGRAMMES

The institution of prison serves dual purpose of eliminating criminals from society and reformation and rehabilitation the offenders under institutional treatment by blanketing out conditions which in the first place turned them into law-violators.

Correctional program refers to a type of program to which the criminal offenders are submitted. It includes both supervision and educational training given to correct the criminal offenders. Sometimes the correctional program is given as part of the sentence. It is mandatory for juvenile delinquents.

Object of correctional program is to reform a criminal by helping the offenders to overcome their past mistakes and learn useful skills. Correctional program includes high-school equivalency training, mental health diversion, writing seminars and substance abuse education.

Torture in custody against Prisoners results in deprivation of the right to life, personal liberty, dignity, etc. in many cases, it results in unnatural deaths. Such a serious problem, which threatens fundamental human rights, has remained unexplored and no meaningful research has been conducted to examine the problem nationally and specifically in the State of Uttarakhand.

IMPORTANCE OF PRISONS AND ROLE OF CORRECTIONAL PROGRAMME

The primary object and function of criminal justice system is prevention of crime or at least reduction of crime rate. In every democratic society, prison has a unique role as a formal agency of the criminal justice system. The purpose of imprisonment as a punishment is plain enough - the person who has committed a wrong must suffer in

¹⁰Rupert Cross, Punishment Prison and The Public, Stevens and Sons, London, (1971),p. 43.

¹¹M.J. Sethna, Society and the Criminal, N.M. Tripathi Pvt. Ltd., Bombay, (3rd edi.,1971), p.352.

return. The state through the prison is entitled if not morally obligated to hurt the individual who has broken the criminal law. Since a crime is by definition a wrong committed against the state. Imprisonment should be punishment, not only by depriving the individual of his liberty, but by imposing a kind of painful condition under which the prisoner must live within the walls.

Today prisons serve main three purposes, which may be described as

1. Custodial
2. Coercive and
3. Correctional.

A prison as a place of correction historically is developing and new in conception. Earlier prisons served only the custodial function, where an alleged offender could be kept in lawful custody until he could be tried and if found guilty punished. The Digest of Justinian, in Roman law established the custodial principle with the statement that “a prison is for confinement, not for punishment” and in countries that followed Roman law the principle that imprisonment was not a legal punishment was dominant for many years. In England also the High Court judges went out to “deliver the goals” - to clear them not to fill them. The prisons of the middle ages were, therefore, concerned only with holding prisoners awaiting trial. Penal institutions were chiefly dungeons or detention rooms in secure parts of castles or city towers, used to detain prisoners awaiting trial or execution of sentence. The punishments imposed were torture, banishment, exile, death, branding, mutilation, but never imprisonment.¹²

The prisons, during the last three centuries or so have evolved to the status of an institution of social control and symbol of legitimate coercion. It is no more a resting ground in the legal process where death penalty, banishment, or life transportation may be the verdict. Rather, the institution of prison has imbibed and is influenced by the conventional norms, ideals and assumptions of humanitarianism, enlightenment and the welfare state. It not only carries the bearings of the ideals of the period, but is also impregnated with the expediencies of organizational science.¹³

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) are the single most important set of international standards that “set out

¹² Amarendra Mohanty, *Indian Prison System*, Ashish Publishing House, New Delhi, (1990), p. 2-3

¹³ Indra Jeet Singh, “*Indian Prison: A Sociological Enquiry*”, Concept Publishing House, Delhi, (1979), p.1.

what is generally accepted as being good principles and practice in the treatment of prisoners and prison management”.¹⁴

Following an extensive intergovernmental review process of the original version, approved back in 1957, the revised rules were adopted by the United Nations General Assembly in December 2015, thereby constituting a truly updated blueprint for prison management in the twenty-first century. In its basic principles, these rules very clearly establish that the provision of rehabilitation programmes in prisons, which foster the willingness and ability of prisoners to lead a law-abiding and self-supporting life upon release, are crucial to reduce recidivism and to improve public safety—the ultimate objective of any sentence of imprisonment.

This fundamental principle is backed by empirical studies and evidence. For example, a recent large-scale study conducted in the United States of America found that prisoners who receive general education and vocational training are significantly less likely to return to prison after release and are more likely to find employment than peers who do not receive such opportunities in the course of imprisonment. The United Nations Special Rapporteur on the Right to Education has equally reported that learning in prison is generally considered to have a positive impact on recidivism, reintegration and employment outcomes. More specifically, he recommended that comprehensive education programmes should be arranged, aimed at the development of the full potential of each prisoner: “These should aim also to minimize the negative impact of incarceration, and improve prospects of reintegration, self-esteem and morale.”¹⁵

From the point of view of the prison system, there are four main reasons for investing in education, training and work:

- Giving prisoners opportunities to learn new skills and build work experience will help them to stay away from crime when they leave prison, thus contributing to the overall mission of prison administration to contribute to public safety. As mentioned above, there is a good body of research that shows that in many countries,

1. prisoners have low levels of education and basic skills; and that

¹⁴ The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175 (2015), hereinafter referred to as “the Nelson Mandela Rules”, preliminary observation 1.

¹⁵ Report of the Special Rapporteur on the right to education, Verónica Muñoz, A/HRC/11/8 (2009), “The right to education of persons in detention”, para 91(b).

2. Improving these skills can have a positive impact on recidivism, social reintegration and employment outcomes.¹⁶
3. Prison-based rehabilitation programmes therefore help to make communities safer and reduce the levels of dependency of former prisoners.
 - The provision of constructive activities in prisons assists in rendering life in prison more similar to life outside. This is also referred to as the principle of “normalization”, For a recent review, see Justice Analytical Services/Scottish Government (2015): What Works to Reduce Reoffending: A summary of the Evidence. Physical health care Mental health care and psychological support Substance abuse treatment Addressing behaviour and attitudes Education and vocational training Work experience Types of prison-based rehabilitation programmes whose realization is explicitly called for in rule 5(1) of the Nelson Mandela Rules.¹⁷ Spending sufficient time engaged in meaningful educational or vocational training activities or productive work forms what the Nelson Mandela Rules call “normal occupational life”¹⁸ which prison administrations should seek to replicate as far as possible. Leading a busy life in prison can help reduce the risk of prisoners’ developing depression, other mental health problems or limitations in prisoners’ ability to lead a self-supporting and independent life (“institutionalization” or learned helplessness).
 - The provision of education, vocational training and work programmes in prisons can support order, safety and security in prison facilities, and help them develop into (more) positive environments. Prisoners engaged in constructive activities are less likely to become disaffected and cause problems. This may be particularly true if there are incentives and privileges attached to their involvement in activities offered, such as sentence reductions as well as financial remuneration—the latter being a requirement in the case of work programmes. Rehabilitation means prisoners are easier to manage and less prone to violence. While security and rehabilitation are sometimes seen as opposites, well-run rehabilitation programmes actually enhance safety and control inside prisons.
 - Work, in particular, can produce financial and other resources for both prisoners enrolled in such programmes as well as for the prison system. These might be direct

¹⁶ For a recent review, see Justice Analytical Services/Scottish Government (2015): What Works to Reduce Reoffending: A summary of the Evidence.

¹⁷ With regard to work programmes in prisons, also see Rule 99(1) of the Nelson Mandela Rules: “The organization and methods of work in prisons shall resemble as closely as possible those of similar work outside of prisons, so as to prepare prisoners for the conditions of normal occupational life.”

¹⁸ Nelson Mandela Rules, Rule 99(1).

resources, for example in prisons which cultivate their own food, or through the work which prisoners may undertake in order to clean and maintain the prison; they might also be indirect resources, for example when the products of prisoners' work are sold and parts of the profits reinvested in the prison system.

The above reasons illustrate why prison systems should invest in education, vocational training and work programmes. They indicate that there are benefits which accrue not only for the prisoners involved, but also for prison management and wider society. Publicizing the advantages and benefits that prison-based rehabilitation brings in this way can be a useful way of generating and maintaining political will to reform prisons, as well as fostering public support and understanding. Some may oppose rehabilitation as being too soft on offenders, and others may criticize work programmes, in particular as a form of cheap labour. But mainstream opinion is usually supportive of the idea that it is the deprivation of liberty only which constitutes the punishment, and that prisons should provide genuine opportunities for reform.

The Constitution of India has given rein to rights by making them executable through directly approachable to the court of authority i.e. Supreme Court of India.¹⁹ The Indian legal structure has been widened by the golden interpretations by the Honourable Supreme Court of India by interpreting the Constitution of India (Article 21) into various dimensions and expressed these interpretation by providing these rights

- right to life and liberty
- right to human dignity,
- right to privacy,
- right to speedy trial,
- right to free legal aid,
- right of prisoners to be treated with dignity and humanity,
- right to compensation to prisoners,
- right to fair wages
- right to good working conditions,
- right to security,
- right to education,
- right to healthy environment and others rights,

¹⁹C.R.Parthasaradhi, Civil Liberties and Human Rights: A Challenging Issue,28 (1999)

The interpretations by the apex court reflects his keen interest for the prison reformation.²⁰

The Supreme Court continuously balanced the reformatory and the retributive theory of punishment. A prison, or a corrective structure is a place where people are physically confined or detained and usually deprived of a personal range of freedom. Prison as an institution imbibed as an integral part of a country's criminal justice system. There are several classifications in prisons, such as those exclusively for adults, children, women, convicted prisoners, tested prisoners, detainees and separate facilities for criminals with mental illness. The concept of has changed and developed continuously over a period of time in the administration of criminal justice.²¹

The state has an obligation and authorization to protect the human rights of its citizens, as well as to protect society in general. The Constitution of India has provided some basic privileges for the protection of the citizens against the possible abuse by the authority. The elevation of these claims to the state of rights, gives citizens the ability to evoke the power of the judiciary to protect themselves against the violation of these rights, as well as to seek compensation for their return.

The Supreme Court of India, in the interpretation of Article 21 of the Constitution, developed jurisprudence on human rights for the preservation and protection of prisoners' rights to maintain human dignity.²² In accordance with the Constitution of India, the question of prisons is transferred from the central list to the state list and is mentioned in the seventh annex. Therefore, prisoners are given importance for their better maintenance and improvements in prisons. State governments have set up prison reform committees to protect prisoners' rights.

One of the basic principles of our legal system is the benefit of presumed innocence of the accused until he is found guilty at the end of the due process of legal evidence. A convict, some of his rights are removed by a common man, but this does not mean, that he is no longer a human being. Even an inmate has fundamental human rights. Only

²⁰Dr. Gurbax Singh, Law relating to Protection of Human Rights and Human Values, Vinod Publications (p). Ltd.,2008

²¹violations of the rights of the accused and the convicted in India, Sudipto Roy Department of Criminology, Indiana State University, Terre Haute, IN 47809

²²Rights of prisoners and convicts under the criminal justice administration by Justice T.S.Sivagnanam Judge, High Court, Madras, National Judicial Academy Regional Judicial Conference, Organized by High Court, Madras, Tamil Nadu State Judicial Academy and The National Judicial Academy, 24.02.2012 to 26.02.2012

those rights should be limited, because of incarceration, they are affected, but the remaining rights are not limited by any process of the law and the judiciary has yet and still recognized these rights through various statements.²³

The protection of Article 21 is also available for those convicted in prisons. The convicts are not by reason of their conviction, deprived of all the fundamental rights they otherwise possess. The convicted puts in the prison, can be deprived of fundamental freedoms, such as the right to move freely throughout India or the right to practice a profession but the Constitution guarantees other freedoms.

It can be said that until the 1970s the Judiciary in India has remained the status quo approach and showed a negligible appreciation in his concern for "shifting" approach towards prison operations. Year 1974 changed the whole dynamics and status when the Supreme Court Apex Court proposed a new jurisprudence on prisons, in an advanced step taken in the case of D.B.M. Patnaik,²⁴ the court assimilated that "*the convicts are not deprived of all the fundamental rights enshrined in our Constitution irrespective of their status*", again in Hiralal's case²⁵ accentuate for the prison reformation and rehabilitation of prisoners and the wave of changing dimension continued in a significant manner, the milestone of this wave witnessed in the celebrated move in prison justice and of prisoners' rights.

In the landmark judgment in the case of Sunil Batra,²⁶ 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*". In the case of Prem Shankar Shukla,²⁷ Court again added yet another projectile in its armoury to be used against the war for prison reform and prisoners' rights, observed and I quote that "*no person shall be hand-cuffed, fettered routinely for convince of the custodian's escort. Except there is clear and present danger of escape*". The Apex Court in R.D. Upadhyay's case²⁸ held that "*right to fair treatment and right of judicial remedy are pre-requisites of administration of prison justice*". In Hussainara Khatoon's case²⁹ Court adopted a dynamic and innovative role towards

²³Dr.Ashuthosh, Rights of Accused, 2nd Edition, Universal Law Publishing (P) Ltd, New Delhi.p.205

²⁴D. B. M. Patnaik v. State of A. P., AIR 1974 (SC 2092)

²⁵Hiralal Mallick v. State of Bihar., AIR 1977 (SC 2237)

²⁶Sunil Batra v. Delhi Administration., AIR 1978 (SC 1675)

²⁷Prem Shankar Shukla v. Delhi Administration., AIR 1980 (SC 1535)

²⁸R.D.Upadhyayv. State of A.P. and Ors., AIR 2001 (SCC 437)

²⁹Hussainara Khatoon. State of Bihar, AIR 1979 (SC 1377)

prison reformations and emphasised on the improvements of the Indian prison conditions.

PRISON TRENDS: THE GLOBAL PERSPECTIVE

Globally, men are overrepresented as both victims and perpetrators when it comes to homicide. However, women make up the majority of victims of homicide by intimate partners and family members, and there is limited regional differentiation in this pattern.³⁰

Despite the global downward trends in crime, between 2000 and 2015 prison populations rose unrelentingly by almost 20 per cent – a rate slightly higher than the world population growth over the same period.³¹ The number of women and girls in prison worldwide increased by 53 per cent between 2000 and 2017.³²

There are diverging trends in the use of imprisonment at the regional level. Between 2000 and 2015, the total prison population in Oceania increased by almost 60 per cent, and in the Americas it increased by over 40 per cent overall – 14 per cent in the US, over 80 per cent in Central American countries, and by 145 per cent in South American countries.³³ In Europe, by contrast, the use of imprisonment decreased by 21 per cent in the same period.³⁴ Russia's prison population decline is striking (a 37 per cent reduction between 2000 and 2015) and the explanation for this is not clear. One study suggested that the jurisprudence of the European Court of Human Rights might have had an impact;³⁵ since 1998, the Court has delivered more than 600 judgments finding inhuman and degrading treatment of individuals in Russia's detention facilities.³⁶ The Netherlands saw a decrease of 46 per cent in its prison population between 2006 and 2016. Again, the causes of this are unclear, but contributing factors are a renewed focus on crime prevention, a drop in registered violent crime, and expansion of the scope of suspended

³⁰ UN Commission on Crime Prevention and Criminal Justice, Twenty-seventh session, 14–18 May 2018, Note by the Secretariat on world crime trends and emerging issues and responses in the field of crime prevention and criminal justice, 2018, E/CN.15/2018/10.

³¹ Roy Walmsley, Institute for Criminal Policy Research, World Prison Population, 11th edition, 2016.

³² Roy Walmsley, Institute for Criminal Policy Research, World Female Imprisonment List, 4th edition, 2017.

³³ Roy Walmsley, Institute for Criminal Policy Research, World Prison Population, 11th edition, 2016.

³⁴ Roy Walmsley, Institute for Criminal Policy Research, World Prison Population, 11th edition, 2016.

³⁵ FriederDükel, 'The Rise and Fall of Prison Population Rates in Europe', Criminology in Europe, 2016, www.esc-eurocrim.org/images/esc/newsletters/ESC_15_2_2016.pdf

³⁶ 2 'How do European Court judgments influence detention conditions in Russia?' EIN Voices, 12 December 2017, www.einnetwork.org/ein-voices/2017/12/12/how-do-european-court-judgmentsinfluence-detention-conditions-in-russia.

sentences and in the use of electronic monitoring.³⁷ The country has such a surplus of unused cells that it has rented some of its prisons to Belgium and Norway.³⁸ Although the female prison population is rising, women and girls still remain a small minority, constituting 6.9 per cent of the global prison population.³⁹ In Africa, the proportion – at 3.4 per cent – is much lower than elsewhere. In the Americas, women and girls make up 8.4 per cent of the total prison population, while in Asia the proportion is 6.7 per cent; in Europe, 6.1 per cent; and in Oceania, 7.4 per cent.⁴⁰ The drivers behind the increasing rates of imprisonment globally are many and varied, and can be linked to changes in criminal justice policies and practices such as mandatory sentencing and stringent bail conditions, as well as social, cultural and economic factors such as levels of inequality, substance abuse, unemployment and social and community cohesion. Any relationship between rates of imprisonment and levels of criminal activity remains contested.

PROBLEMS IN PRISON: AN INDIAN PERSPECTIVE

Despite the relatively low number of people in prison compared to many other countries in the world, there are some very common problems in prisons in India, and the situation is likely to be the same or worse in many developing countries. Overcrowding, prolonged detention of prisoners on trial, unsatisfactory living conditions, lack of treatment programs and complaints about indifferent and even inhuman treatment of prison staff have repeatedly drawn critical attention over the years.

Overcrowding

Overcrowding seems to be the root cause which gives rise to a number of other problems related to medical care, food, clothing and poor living conditions. Overcrowding has also begun to influence prison administration attempts to train inmates with skills that would engage them in paid employment after release

The matter is also addressed by the Honorable Supreme Court in the case of *In Re: Inhuman Conditions in 1382 Prisons* (2016) 3 SCC 700 “Prison reforms have been the

³⁷ FriederDünkel, ‘The Rise and Fall of Prison Population Rates in Europe’, *Criminology in Europe*, 2016, www.esc-eurocrim.org/images/esc/newsletters/ESC_15_2_2016.pdf

³⁸ ‘Dutch get creative to solve a prison problem: Too many empty cells’, *The New York Times*, 9 February 2017, www.nytimes.com/2017/02/09/world/europe/netherlandsprisons-shortage.html

³⁹ Roy Walmsley, Institute for Criminal Policy Research, *World Female Imprisonment List*, 4th edition, 2017.

⁴⁰ Roy Walmsley, Institute for Criminal Policy Research, *World Female Imprisonment List*, 4th edition, 2017.

subject-matter of discussion and decisions rendered by the Court from time to time. Unfortunately, even Article 21 of the Constitution requires a life of dignity for all the persons, little appears to have changed on the ground as far as prisoners are concerned. Prisoners are also entitled to fundamental rights while in custody. The problem of overcrowding has been accentuated with the passage of time.”

Lack of Officers in the Prison

Of the 1061 seats of the superintendent to the sanctioned prison, only 294 were appointed, representing 27% of the authorized force and in controlled prisons only 38%, which is evident through the official data Prison statistics of India 2017⁴¹.

Lack of Prison

According to the Prison Statistics India 2017 report published in September, 67% (or 391574) of the total of 450696 held in 1,361 Indian prisons are not enough. Uttar Pradesh with 165% have the most overcrowded prisons. They follow Uttarakhand (140%) and Delhi (151%).⁴² Responding to a question put to Lok Sabha, the Minister of Home Affairs Hansraj Ahir said that over 10% of prisons in India have a crowding rate of over 200%. Of the 1,361 prisons in the country, 149 had more than twice as many inmates.

Torture in Custody

The practice of torture in prison has been widespread and predominant in India since time immemorial. Unchallenged and unrestricted, “it has become a ‘normal’ and ‘legitimate’ practice all over. In the name of investigating crimes, extracting confessions and punishing individuals by the law enforcement agencies, torture is inflicted not only upon the accused but also on bona fide petitioners, complainants or informants amounting to cruel, inhuman, barbaric and degrading treatment, grossly derogatory to the individual dignity of the human person.

⁴¹Prison statistics India 2017
⁴²Prison statistics India 2017

The Supreme Court of India has marvelously dealt with prisoner's rights in the landmark case of *Sunil Batra v. Delhi administration*⁴³ and provided a very obvious answer to the question of "whether prisoners are persons and if they have a right to basic rights while in detention, although there may be a reduction in fundamental rights."⁴⁴

Abuses faced in prison

The Constitution of India, the Universal Declaration of Human Rights and the Minimum Rules for the Treatment of Prisoners clearly specify the rules of treatment of prisoners on trial. But the reality in the prisons transmits a completely different melody. Following are some challenges that every prisoner suffers in preventive detention in Indian prisons.

Prison violence

At time, Prisons becomes a platform to release angriness or to dominate or taking revenge over the other prisoners by using the violent methods like group violence and the riots. In an incident in Brazil⁴⁵, approx. 111 people died and 35 were wounded by military police officers who were called to the detention chamber after a fight between two prisoner bands allegedly for the payment of marijuana. In three days of clashes and clashes in the Chappra district prison in Bihar in late March 2002, 6 prisoners were killed in the shootings that occurred when the military police officers of Bihar were summoned to quell the riots.

Impact of Criminality in the prison

As due to lack of any scientific classification method of the categories of criminals like hard criminals in a separate cell, prisoners with capital punishment segregated with prisoners with punishment of up to 3 years the first time offenders many times into the professional criminals which is justiciable with a famous quote "*Prisons are college criminals where people enter as undergraduates and go out with doctorates in crime.*"

⁴³ (1980) 3 SCC 488 W.P. (C) No. 406

⁴⁴ *ibid*

⁴⁵ Sao Paulo, Brazil, on October 2, 1992 the New York Times. ISSN 0362-4331 retrieved on 30 January 2018.

Health related Issues

Right to health enshrined under the Constitution of India as a fundamental human rights and generally India prisons faced with the issues of overcrowding and lack of adequate facilities to the maintenance of health and hygiene in prison which negatively impacts to host prisoners in safe and healthy conditions. It is also evident from the facts that the background of the most of the prisoners are that they come from disadvantaged and weaker section of the society where the medical facilities are negligible and disease spread very easily, and by putting these prisoners in the overcrowded prison with the other prisoners the others many times get infected with some diseases easily.

Effect on the families of prisoners

Generally the prisoner are not the only sufferers of the human right violations but many times their families are also becomes the victims of the human rights violations in the indirect manner.

The extortion by prison staff and their less aggressive corollary corruption protects corruption in prisons around the world. Given the substantial power that guards exercise over inmates, these problems are predictable, but the low wages paid by guards aggravate them severely. In exchange for smuggling or special treatment, inmates supplement the wages of guards with bribes. Although it was not official, according to empirical researchers and the discussion with some prisoners and prison staff and other prison-related people, this was extracted.

Inadequate rehabilitation programs and vocational training facilities are another problem in Indian prisons. Although there are few rehabilitation programs, they are simply obsolete.

In addition to the aforementioned problems of Indian prisons, there are also other problems including lack of legal assistance, health problems, homosexual abuse, drug abuse and violence in prisons.

The Prison Reformation: The United Nation benchmarks⁴⁶

As the guardian of international standards and norms in crime prevention and criminal justice, UNODC is mandated to support Member States in putting into practice these standards and norms by assisting States in building fair and effective criminal justice systems. Over the years a considerable body of United Nations standards and norms related to crime prevention and criminal justice has emerged.

Key among standards and norms that relate directly to prison reform are:

- United Nations Standard Minimum Rules for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment
- Basic Principles for the Treatment of Prisoners
- United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures For Women Offenders (Bangkok Rules)

Other UN instruments relevant to the prison system:

- Universal Declaration of Human Rights
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Basic Principles for the Treatment of Prisoners
- UN Declaration on the Protection of All Persons from Enforced Disappearance
- Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination Against Women
- Code of Conduct for Law Enforcement Officials
- Basic Principles on the use of Force and Firearms by Law Enforcement Officials
- Safeguards guaranteeing protection of the rights of those facing the death penalty
- UN Recommendations on Life Imprisonment
- Basic principles on the use of restorative justice programs in criminal matters
- Kampala Declaration on Prison Conditions in Africa

⁴⁶<https://www.unodc.org/unodc/en/justice-and-prison-reform/prison-reform-and-alternatives-to-imprisonment.html> last accessed on 11 November 2019 at 8 p.m

- Arusha Declaration on Good Prison Practice

The Reformation perspective: Indian scenario

The Legislative measures:

1. The Prison Act 1894
2. The Transfer of Prisoners Act, 1950
3. The Repatriation of Prisoners Act, 2003

The Rules:

1. The Repatriation of Prisoners Rules, 2004

Manual

1. The Model Prison Manual, 2016

Advisories

1. Strengthening of Security arrangements in Jails (21 Sep 1998)
2. Facilities to the children of women prisoners – Guidelines issued by the Supreme Court (15 May 2006)
3. Tightening of security measures in jails (14 Aug 2006)
4. Sensitization to Prison inmates on HIV/AIDS (29 Nov 2007)
5. Detention of mentally ill under trial prisoners – Guidelines issued by the Supreme Court (13 Dec 2007)
6. Ban of smoking etc. in prison premises (23 March 2009)
7. Transfer of prisoner from one jail to another (16 July 2009)
8. Comprehensive Advisory on Prison Administration (17 July 2009)
9. Improving of security measures in jails to avoid the incident of jail breaking (16 Oct 2009)
10. Advisory on the policy for the treatment of terminally ill prisoners-inmates (TIPs) (13 Aug 2010)
11. Best Prison Practices (08 Nov 2010)
12. Appointment of Non-Official Visitors in Prisons (18 Feb 2011)
13. Overcrowding in prisons (09 May 2011)

14. Advisory regarding guidelines for educational programme for prison inmates (15 June 2011)
15. Use of Section 436A of the Cr.P.C to Reduce Overcrowding of Prisons (17 Jan 2013)
16. Guidelines for safeguarding the interest of the Death Row Convicts (04 Feb 2014)
17. Access of prisoners to Aadhar/NPR in Correctional Homes (27 Sep 2015)
18. Advisory on adoption of measures by the States/UTs for improvement of security of jails (28 April 2015)
19. Guidelines for allowing visit inside jails by individuals/ NGOs/ Company/Press for the purposes of undertaking research, making documentary or interviewing the inmates, etc. (24 July 2015)
20. Hon'ble Supreme Court direction for installation of CCTV Cameras in all prisons of the country - reg (10 Dec 2015)
21. Safety and security of Prisons and prison inmates - Formation High Security Jail in States (25 Oct 2019)
22. Addressing the issue of Overcrowding in Prisons and providing relief to under trial prisoners (25 Nov 2019)

Conclusion & Suggestions

The 2030 Agenda for Sustainable Development by the United Nations General Assembly in 2015, UN has been adopted by the majority of the countries with a purpose and commitment towards making world a better place to live for the future generations too. Through Goal 16, which promotes peace, justice and the rule of law, the Sustainable Development Goals (SDGs) recognize that development efforts are closely linked with the justice sector. The rehabilitation and reintegration of offenders, a primary aim of criminal justice systems, has traditionally focused on changing the behaviour of the individual and improving their situation, for example through providing housing or helping them to find employment. A development-led approach can bring a wider perspective to this work by looking not only at the impact of rehabilitation on the individual offender but also the impact on their community and on wider society. By applying a development 'lens' to the rehabilitation and reintegration of offenders, including through targeted interventions for specific vulnerable groups, the scope of criminal justice interventions is broadened beyond their traditional boundaries. Development and justice organizations have tended to operate in isolation from each other. For states to fulfil their commitment to 'leave no one behind', there needs to be improved integration and cooperation, so that criminal justice actors can work together

with other sectors, including the private sector and civil society, as well as with authorities working in areas such as health, housing and education. In many parts of the world, programmes and measures are already in place that follow the basic principles of this kind of integrated approach. This Special Focus outlines four promising practices, and it is hoped that these will inspire those working in criminal justice systems to support the achievement of the SDGs, and to take advantage of an integrated multi-agency approach to improve their work in the effective rehabilitation and reintegration of offenders.

Prison is the important wing of administration of crime and criminology in the country. Ironically the research in the development of it is still in infancy. There are many hurdles to cross for the prisons to be a reformative institution than a custodial home of torture. The progress is mainly hindered by factors such as resource allocation, deterrent functions of punishment and rehabilitation approach. Prisons in the country shall endeavour to reform and re-assimilate offenders in the social milieu by giving them appropriate correctional treatment. Though there have been suggestions and recommendations by various committees, the major concern in India stands to be that of actual enforcement. It must not be overlooked that the issue of prison administration and reformation of prisoners is just a piece of the bigger picture of social recovery. The jail organization alone can't effectively reform the prisoners. It can just try its modest endeavors to set right the prisoners; however, endeavours will succeed only when our economics, education, social institution and values are appropriately coordinated into a cogent and congenial whole in view of the learning of the human establishment.

Keeping in view of the aforementioned discussions the suggestions for the effective aspects of the prison reformations are as follows:

1. The prisoners should be facilitated with contact with their family and friends through regular, affordable and easy access to mail, telephones and other communications, as well as through visits in a clean, respectful and safe environment.
2. An effective mechanism should be developed in the manner of rehabilitation and reintegration programmes that address root causes of offending and key barriers. Any skills and vocational training should take account of the employment market to boost

chances of employment post-release. Programmes for women should not reinforce gender stereotypes. For this the helps of NGO's could be the key factor.

3. For the Humane touch approach Implementation of the Nelson Mandela Rules should be prioritized in any strategy to prevent radicalization and violent extremism in prison. States should adopt individual risk and needs assessments that are grounded in human rights. Further research should be done on women-specific aspects of radicalization and violent extremism.
4. The mechanism to prevent and combat corruption in prisons, starting with recognizing the problem, adopting a zero-tolerance policy and undertaking a full corruption risk assessment should be prioritized.
5. There must be a structured policy for the remuneration and working conditions of the prisoners.
6. The technological advancement should be used to improve prisoners' opportunities for education, skill-building and communication, and to promote the efficiency of criminal justice systems.
7. Sentencing practice should be guided by international law, including the UN Tokyo and Bangkok Rules, and should be based on the principle of proportionality. Plea bargaining systems should be fully regulated to ensure access to justice is preserved and rights of suspects are upheld.