

Prison Conditions In India: A Study

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“Hate the crime and not the criminal”- Mahatma Gandhi

Generally, it is believed that prisoners are sent to prison as punishment, and not for punishment and this implies that the loss of an individual's right to liberty is enforced by containment in a closed environment. But keeping the individual in the custody of the State, should not have deleterious effects on him. Prison in jurisprudence does not mean that prisoners have lost all their rights because of imprisonment. Yet, there is a loss of rights within custodial institutions, which continue to occur. Moreover the public health policies are meant to ensure the best possible living conditions for all members of society, so that everyone can be healthy. Alas! Prisoners are often forgotten in this equation. They are in constant contact with all kinds of people who come in and out of prison everyday. This constant movement in and out of prison makes it all the more important to control any type of contagious disease within the prison so that it does not spread into the outside community. The constitution also assigns the custody and correction of criminals to the states and territories. Day-to-day administration of prisoners rests on principles incorporated in the Prisons Act of 1894, the Prisoners Act of 1900, and the Transfer of Prisoners Act of 1950. An inspector General (Prisons) administers prison affairs in each state and territory.¹

The Supreme Court had played a vital role in the past five years in introducing jail reforms. Its quest for prison justices probably a result of its attempt to revive liberty

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after extinguishing in the Habeas Corpus case. In fact, the Supreme Court had commented in that case during the emergency that the treatment meted out to the detainees was almost maternal. The Supreme Court carried the ratio of the Habeas Corpus case (ADM Jabalpur v. Siva Kant Shukla)² that Article 21 is the sole repository of life and liberty and during the emergency when liberty is suspended, due to the Presidential proclamation suspending Article 21, to the Prison conditions, and in the case of Bhanudas's³ Court held that a detainee during emergency could not agitate for better jail conditions and facilities.⁴

The degree of civilization in a society can be judged by entering its prisons. A society is not regarded as a civilized society unless it treats the prisoners with sympathy and affection. This treatment is not possible till the society recognizes and accepts their basic human rights and the fundamental rights. A prisoner can be a convict or under trial or detenu this does not mean that he is ceased to be a human being. Even when is lodged in jail also he continues to enjoy all his basic human rights and fundamental rights including the right to life guaranteed to him under the constitution. Article 5 of The Universal Declaration of Human Right, 1948⁵ stipulates that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Article 21 of the Constitution of India, which recognizes that right to life includes a right to live with human dignity and not mere animal existence, strengthens this mandate. Thus prison atmosphere can be accepted as civilized only if it recognizes the

² AIR 1976 SC 1207.

³ Union of India vs Bhanudas Krishna Gawde AIR 1977 SC 1027.

⁴ Professor Narendar Kumar, Constitutional Law of India 2006 Pg. 340

⁵ S.K. Kapoor, international Law and Human Rights 2004 pg, 779.

basic human rights and the constitutional rights of the prisoners and makes efforts for the effective and meaningful enjoyment.⁶

As per the records of Indian Home Ministry the death while in remand or custody increased from 1,340 in 2002 to 1,462 by the end of 2003. The National Human Rights Commission (NHRC) in their report found that a large proportion of the deaths in custody were from natural and easily curable causes aggravated by poor prison conditions. They found the Tuberculosis has resulted in causing many deaths of prisoners and HIV/AIDS remained a serious health threat among prison inmates. Non-governmental organizations (NGOs) observed that with prisoner abuse and torture are very common and which results in deaths in police custody. The Home Ministry reported that there were 28,765 complaints lodged against police for April 2003 for abuse including deaths.

- In May last year, in Ambedkarnagar, Uttar Pradesh, police arrested a daily labourer and tortured him when he failed to pay a Rs. 50,000 bribe.
- In the media reports the police admitted the victim to the hospital under a false name after injecting him in the rectum with petrol. Police also threatened to harm his family if he reported the incident.
- In the month of July 2004 the NHRC requested a report from Punjab's Inspector General of Prisons after a man incarcerated in Amritsar's Central Jail claimed the Deputy Superintendent and other prison officials branded him on his back when he demanded water and better treatment. Doctors found fresh

⁶ <http://india.indymedia.org/en/2005/04/210469.html>

scars on his back that had been inflicted with hot iron rods. By year's end, no action had been taken.

The rape of persons in custody is also part of the broader pattern of custodial abuse. Prisoner charities argue that rape by police, including custodial rape was more common. A statement from the Asian legal Resource Centre, on custodial deaths and torture in India, handed to the National Human Rights Commission and to the Sixty-first Session of UN Commission on Human Rights in Geneva, notes: "Any person, who dares to complain about police officers in India, faces the wrath of the law enforcement agency⁷.

Despite the checks and balances inherent in India's democratic structure designed to curb government lawlessness, the institutional basis for the prison system has become grossly unfair. It is observed that that in some major cities anyone unlucky enough to be arrested faces a far greater likelihood to torture or worse at the hands of the police than in many countries entirely lacking in the protections for civil liberties available in India. Generally the prisons are taken as levelling institutions in which the variable that affect the conditions of confinement are expected to be the criminal records of their inmates and their behaviour. In Indian prisons there exists a rigid calls system that is explicitly mandated by law, where special privileges are accorded to the minority of prisoners who come from the upper or middle classes, irrespective of the crimes they may have committed or the way that they comport themselves in prisons.

⁷ <http://www.countercurrents.org/hr-zora260805.htm>

As this report shows, it is a system filled with contradictions not unlike those permeating Indian society as a whole.⁸

State Government in collaboration with NGOs organized many seminars to bring reforms in the current prisons systems. Many reforms can be made in jail administration like:

- Rehabilitation of inmates will be meaningful only if they are employed after release and for that purpose educational facilities should be introduced or upgraded.
- In many jails, inmates including hardcore criminal and women had joined various courses offered by IGNOU and their respective State Universities. Courses mainly offered by them are BA,MA, MBA & other post graduation courses.
- The inmates can also join the classes of 10th and +2 for basic guidance. In many jails with a view of imparting vocational training a fully fledged computer training centers has been established.
- The inmates are also provided training in carpentry and fabric painting. Many jails have also initiated programs for women empowerment by training them in weaving, making toys, stitching and making embroidery items.
- Wage earning and gratuity schemes and incentives are also used to reduce the psychological burden on the convicts.

⁸ <http://www.hrw.org/en/reports/1991/04/01/prison-conditions-india>

- Various seminars are organized by jail authorities to enlighten the prisoners on their legal rights, health and sanitation problems, HIV/AIDS and issues of mental health, juveniles, minorities and steps to reduce the violence in prisons.
- The open prison system has come as a very modern and effective alternative to the system of closed imprisonment. The establishment of open prisons on a large scale as a substitute for the closed prisons, the latter being reserved for hardcore criminals shall be one of the greatest prison reforms in the penal system.

Yet several steps have been taken to improve the conditions of prisons, but much more is required to be done. Central Government along with NGO's and prison administration should be drafted throughout the country. The uniformity of standards can be maintained throughout all the States. Thus such practices will help in changing the traditional and colonial outlook of the Indian Prison System and also help the prisoners to become more responsible, creative and potential citizens.