

PRISON REFORMS AND PRISONER REHABILITATION WITH COMPARATIVE STUDY OF CANADIAN PRISONS

Thesis

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DECLARATION

I hereby declare that the work presented in this thesis entitled " **PRISON REFORMS AND PRISONER REHABILITATION WITH COMPARATIVE STUDY OF CANADIAN PRISONS** " in fulfillment of the requirements for the award of Degree of Doctor of Philosophy, submitted in the Maharishi School of Law, Maharishi University of Information Technology, Lucknow is an authentic record of my own research work carried out under the supervision of **Prof. (Dr.) K. B. Asthana** and I also declare that the work embodied in the present thesis-

- i) is my original work and has not been copied from any journal/ thesis/ book; and
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This is to certify that **Mr. Vikas Sharma** has completed the necessary academic turn and the swirl presented by him is a faithful record is a bonafide original work under my guidance and supervision. He has worked on the topic " **PRISON REFORMS AND PRISONER REHABILITATION WITH COMPARATIVE STUDY OF CANADIAN PRISONS** " under the School of Law, Maharishi University of Information Technology, Lucknow.

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ABSTRACT

The criminal justice system, with its prisons as a cornerstone, is designed not only to punish offenders but also to facilitate their rehabilitation and successful reintegration into society. However, the efficacy of this system in achieving these goals has been under scrutiny globally. This doctoral thesis embarks on a comprehensive examination of prison reforms and prisoner rehabilitation within the Canadian context, juxtaposed with international perspectives.

The introductory chapter sets the stage by elucidating the definitions, scope, and significance of prison reforms and prisoner rehabilitation. It outlines the research objectives, hypotheses, questions, and the methodological framework employed to accomplish these objectives.

A historical overview provided in Chapter II offers insights into the evolution of incarceration, from rudimentary forms of detention in ancient civilizations to the establishment of modern prison systems. This chapter underscores the shift from punitive measures to a more nuanced approach focused on rehabilitation, echoing the sentiments of scholars like Marc Mauer.

Chapter III delves into the legal underpinnings of prisons and prisoner rights, particularly within the Indian context. By examining mechanisms for sentence mitigation and the role of the state in administering justice, this chapter provides a foundational understanding of the legal framework governing prisons.

The pressing issue of prison overcrowding, particularly in facilities housing female inmates, is addressed in Chapter IV. Despite the existence of dedicated women's jails, overcrowding remains a significant challenge, underscoring the need for systemic reforms to alleviate these conditions.

Chapter V emphasizes the global consensus on the importance of rehabilitation within prison systems. It advocates for a standardized approach to rehabilitation, both within carceral settings and in post-release support, to maximize the potential for successful reintegration and reduce recidivism rates.

Expanding on the role of prisons within the broader criminal justice system, Chapter VI examines the complexities of punishment, correction, and rehabilitation. It highlights the inherent challenges faced by incarcerated individuals, particularly those from disadvantaged backgrounds, and the societal implications of punitive measures.

The concluding chapter, Chapter VII, synthesizes the findings and offers recommendations for prioritizing rehabilitation over punishment. By fostering a more dynamic and inclusive justice system within prisons, the thesis aims to contribute to the creation of safer communities and more equitable societies.

In conclusion, this doctoral thesis provides a comprehensive analysis of prison reforms and prisoner rehabilitation, contextualized within the Canadian context and informed by international perspectives. Through its multidimensional approach, the research offers insights into the challenges and opportunities inherent in the pursuit of effective prison reform, with the ultimate goal of promoting positive outcomes for both individuals and society as a whole.

Keywords :- Prison reforms, Prisoner rehabilitation, Comparative study, Canadian prisons, Criminal justice system, Historical overview, Legal framework, Overcrowding, Women's jails, Global perspectives, Rehabilitation programs, Correctional institutions, Punishment, Social implications, Disadvantaged populations, Justice reform, Positive outcomes, Legal mechanisms, State intervention, Societal impact.

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LIST OF ABBREVIATIONS & ACRONYMS

A.C.	–	Appeal Case
A.I.R.	–	All India Reporters
A.L.R	–	Academy Law Review Ala.
A.P.	–	Andhra Pradesh
ACHR	-	Asian Centre for Human Rights
AIR	-	All India Reporter
AOL	–	America Online website
ATM	–	Automated Teller Machine
C.P.C	–	Civil Procedure Code
CBI	–	Central Bureau of Investigation
CCTNS	–	Crime and Criminal tracking Network & Systems CERT
CEDAW Women	-	Convention on the Elimination of all Forms of Discrimination against Women
Cr.P.C	–	Criminal Procedure Code
Del.	–	Delhi
DNA	–	Dioxin Ribo Nucleic Acid
E.g/e.g	–	Exempli Gratia
ECOSOC	-	United Nations Economic and Social Council
FBI	–	Federal Bureau of investigation
HC	–	High Court
HC	-	High Court
HIV	-	Human immunodeficiency virus
HLR	–	Harvard Law Review
HTTP	–	Hyper Text Transfer Protocol
I.P.C	–	Indian Penal Code
ICC	-	International Criminal Court
ICCPR	-	International Covenant on Civil and Political Rights
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
ICJ	-	International Court of Justice
ICRC	-	International Committee of the Red Cross
ID	–	Identification

INR	–	In Indian Rupees
J&K	–	Jammu and Kashmir
J.	–	Justice
Jour	–	Journal
M.P	–	Madhya Pradesh
MCOCA	-	Maharashtra Control of Organised Crime Act
NHRC	-	National Human Rights Commission
NPR	–	National Population Register
OECD	–	Organization
PIO	–	Public Information Officer
RBI	–	Reserve Bank of India
RBI	–	Reserve Bank of India
RTI	–	Right to Information
SC	–	Supreme Court
SC	-	Supreme Court
SCC	-	Supreme Court Cases
SSL	–	Secure Sockets Layer
T.N.	–	Tamil Nadu
TCP/IP	–	Transmission Control protocol/Internet Protocol
U.K.	–	United Kingdom
U.P.	–	Uttar Pradesh
U.S.A.	–	United States of America
UAV	–	Unmanned Aerial Vehicles
UDHR	-	Universal Declaration of Human Rights
UIDAI	–	Unique Identification Authority of India
UN	–	United Nations
UN	-	United Nations
UNODC	-	United Nations Office on Drugs and Crime
UP	-	Uttar Pradesh
URL	-	Uniform Resource Locator
USB	–	Universal serial Bus
XSS	–	Cross Site Scripting

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CHAPTER 1

INTRODUCTION

“Criminal behavior often stems from underlying mental health issues, suggesting that jails should resemble hospitals, providing environments conducive to treatment and rehabilitation.”

- Mahatma Gandhi

1.1 BACKGROUND

Captivity is the most dreadful level of subservience, and it is a curse. When the State is the captor, the captive loses all authority over his personal life, with the exception of those allowed by the Constitution. Generally, the captive as a prisoner becomes a pawn in the hands of a disinterested administration. Due to close contact with hard core criminals in the jail, a large proportion of convicts are frequently re-locked instead of being rectified. This appears to be true based on evidence acquired throughout time¹.

At the heart of this concept is the contradiction that incarceration removes the right to exasperate people from society. They are necessary to be isolated from all human influences since they breach the conventions. As a result, a rethinking of policy and procedure in dealing with the challenges associated with prisoner rehabilitation is required. The research is based on the results of the jail reform².

Nobody is a criminal just by virtue of their birth. One person became involved in crime as a result of the influence of certain social environment and other significant elements. Even if one is a criminal, no one wants to live their entire life as a criminal³.

¹ “EconPapers: Criminal justice in Indian country: Examining declination rates of tribal cases,”*available at*: https://econpapers.repec.org/article/blasocsci/v_3a103_3ay_3a2022_3ai_3a1_3ap_3a69-81.htm (last visited April 4, 2023).

² “Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria | Emerald Insight,”*available at*: <https://www.emerald.com/insight/content/doi/10.1108/JMLC-09-2015-0042/full/html> (last visited April 15, 2023).

³ “Criminal justice in Indian country: Examining declination rates of tribal cases - Branton - 2022 - Social Science Quarterly - Wiley Online Library,”*available at*: <https://onlinelibrary.wiley.com/doi/10.1111/ssqu.13100> (last visited April 16, 2023).

However, no one can escape the grips of crime without the assistance of certain internal and external institutions. The most important consideration is the length of incarceration. The main goal of incarceration is to reform the criminal. As a result, the timeframe must be correctly employed in order to transform the criminal's antisocial thinking into a socially healthy mind-set. As a result, the function of the prison system requires effective reformatory assistance in order to serve the ultimate goal of atonement of the criminal, otherwise all efforts would be futile regardless of time period⁴.

Punishing criminals is a critical component of every civil society. Criminals are believed to change if they are subjected to rigorous isolation and incarceration. However, this expectation and imprisoned experience have a negative impact. It outdates the old-fashioned incarceration system, which has evolved alongside the advancement of behavioural research. Prisons are unusual places. With their personal space, criminal access restricted freedom and liberty. The objective of jail has always been a myth: the process of rehabilitation and atonement for criminals so that they might return to regular life. However, reality differs from expectations. In actuality, the jail and the prison administrators employ a more obsessive approach. As a result, the convict's transformation is cosmetic and fleeting. As soon as they are freed, they are lured to illegal activity⁵.

In our nation, prison reform was primarily motivated by the worst features of treatment experienced by political prisoners in jail, as well as by the involvement of the judiciary. Prison functioned as a reformatory facility⁶.

This may be seen in the status report of Indian prisoners and jails. As a result, punishment alone cannot produce adequate outcomes. To successfully administer jail, rehabilitation of convicts must be performed concurrently, so that when a prisoner is freed, further they should also not commit crimes⁷.

⁴ *Ibid.*

⁵ "Taking Justice Outside the Courts: Judicial Activism in India | Semantic Scholar," *available at*: <https://www.semanticscholar.org/paper/Taking-Justice-Outside-the-Courts%3A-Judicial-in-Verma/791d2c06b97273a6eb129163430297ff3e5457e1> (last visited April 26, 2023).

⁶ "Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria | Emerald Insight," *available at*: <https://www.emerald.com/insight/content/doi/10.1108/JMLC-09-2015-0042/full/html> (last visited April 25, 2023).

⁷ *Ibid.*

Prisoner punishment and administrative control should not be used to manage inmates in order to reduce administrative complications. Instead, the goal of punishment should be to change the motivations behind inmates' illegal behaviour⁸.

Prison is the global headquarters of judicial administration. The jail system is far removed from the notion of a prisoner, and the concept of a prison was originally seen to be a sign of indecency, immorality, and moral degradation. Modern prisons are loaded with many interior therapies that ultimately help to criminal correction. The participation of foreign organisations and the Indian judiciary is accorded due weight⁹.

Due to all these reasons criminologists all around the world have finally agreed that the ultimate goal of the criminal justice system is to reform and rehabilitate offenders in order to reintegrate them into society. The ideas have also been supported by the majority of nations, tribunals, and jurists. The Prison Act of 1894 oversees jail administration, and its Rules aid in this purpose. Other government departments must collaborate with jail administration or the purpose of rehabilitation will be jeopardised. The goal of this Chapter is to look at the barriers to prisoner rehabilitation and the efforts made by prison administration and other stakeholders. Few such important issues and challenges are discussed in this thesis¹⁰.

1.2 Criminal Justice Administration; Police, Judicial, Prison Administration

Throughout history, prisons have often been shrouded in secrecy, with harsh conditions and little focus on rehabilitation. Today, there's a growing movement to reform these institutions and create a more humane approach to incarceration. During their custody, inmates undergo several agonies in the name of punishment, such as abuse, third-degree torture, overcrowding or congestion, sanitation, and so on. Generally, prison stories do not leave its walls. Prison administration must be in conformity with the law so that

⁸ Praveen Kumar, (2022), Prisoners Are Too 'Victims' of the Criminal Justice System. Can They Have an Idea of 'Fair Access to Justice'?, Journal of Victimology and Victim Justice, <https://doi.org/10.1177/25166069221134215> Visited on, 10.12.2022

⁹ "Prisoners Are Too 'Victims' of the Criminal Justice System. Can They Have an Idea of 'Fair Access to Justice'?" - Praveen Kumar, Anand Kumar Banskhar, Shubhendu Shekhar, KM Pushpa Rani, 2022," *available at*: <https://journals.sagepub.com/doi/abs/10.1177/25166069221134215> (last visited April 9, 2023).

¹⁰ *Ibid.*

convicts can live with human dignity behind prison walls. The combined efforts of Parliament and the judiciary have strengthened prison jurisprudence¹¹.

The Prisons Act, 1894, defines 'prison' as encompassing any jail or location, used permanently or temporarily under a state government's orders, for detaining prisoners. This definition incorporates all associated lands and buildings but excludes: (a) police custody facilities, (b) locations designated by the state government under a specific legal provision, and (c) any place officially declared a subsidiary jail by the state government

There are many terms for incarceration facilities, like prison, jail, or penitentiary. Regardless of the name, they all serve the same purpose: to house individuals sentenced to confinement. These facilities have three main goals:

1. **Custody:** Ensuring inmates are securely detained.
2. **Coercion:** Deterring crime through punishment.
3. **Correction:** Rehabilitating inmates to become law-abiding citizens.

Proper prison management shouldn't violate inmate rights. The ultimate aim, as seen in the Prisons Act of 1894, is to reform offenders through a combination of punishment and discipline. However, it's important to note that prison administration falls under the control of individual state governments, with their own specific regulations alongside the central Act¹².

In Ancient India, penology emerged in ancient India under the concept of "danda-niti," which literally means punishment principles¹³. The history of several countries' early prison systems demonstrates that penalties were severe and savage in character. Humanitarianism began to exert influence on penology near the close of the 18th century. Corporal punishments such as flogging, mutilation, branding, pillories, chaining captives together, incarceration, confiscation of property, and fine were frequent forms of punishment in many regions of the

¹¹ M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, Journal of Criminal Justice Education, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022.

¹² "The Prisons Act, 1894|Legislative Department | Ministry of Law and Justice | GoI," available at: <https://1ddashboard.legislative.gov.in/actsofparliamentfromtheyear/prisons-act-1894> (last visited may 4, 2023).

¹³ Arvind Verma(2002), Taking Justice Outside the Courts: Judicial Activism in India, The Howard journal of crime and justice, Volume40, Issue2, <https://doi.org/10.1111/1468-2311.00198>, Visited on, 10.12.2022

world. Justice was administered in ancient India during the period of Arthashastra according to legal norms that fell under one of the following categories¹⁴.

- a) Sacred Law (dharma),
- b) Secular Law (vyabhara),
- c) Custom (charitra)
- d) Royal commands (rajasasana)¹⁵.

In Medieval India, The terrible and savage punishment system of ancient times persisted in our land for a long period till the fall of the Mughal empire. Only Quranic law was applicable in our nation under this time; the Quran was an important source of legislation in the mediaeval period, prescribing harsh punishments for transgressions. During Muslim control in India, incarceration was not as widespread as it was in ancient Hindu India. In addition, convicted criminals awaiting trials were imprisoned. There were no regular jails throughout the Sultanate period. As prisons, only historical forts and castles were employed. Prisons were utilised in Muslim India for both confinement and punishment of criminals. Hadd, Tazir, Qisas, and Tashhir are the four types of punishment in Muslim law. Hadd's goal was to discourage others from doing similar crimes, and he was deemed 'God's right'¹⁶.

During British Raj, the modern jail in India began with T.B. Macaulay's momentous Minute in 1835. Thus, the current jail system in India is a relic of British control. A standard system of judicial justice was not established in India till after 1858. In 1835, a spotlight was cast on the horrific state of Indian prisons. Lord Macaulay, a member of the Legislative Council, brought the issue to light, describing the conditions as "shocking to humanity." This marked the first time such a harsh condemnation was voiced about these institutions.¹⁷ Sparked by this revelation, Macaulay proposed forming a committee. Their mission: to gather details on the dire state of Indian prisons and, crucially, to craft a better system for prison discipline. Lord William Bentinck created a Prison Discipline

¹⁴ Arvind Verma(2002), Taking Justice Outside the Courts: Judicial Activism in India, The Howard journal of crime and justice, Volume40, Issue2, <https://doi.org/10.1111/1468-2311.00198>, Visited on, 10.12.2022

¹⁵ Regina Branton, Kimi King, Justin Walsh (2022), Criminal justice in Indian country: Examining declination rates of tribal cases, Social science quarterly, Volume103, Issue1, January 2022, Pages 69-81, Available at <https://doi.org/10.1111/ssqu.13100>

¹⁶ Arvind Verma(2002), Taking Justice Outside the Courts: Judicial Activism in India, The Howard journal of crime and justice, Volume40, Issue2, <https://doi.org/10.1111/1468-2311.00198>, Visited on, 10.12.2022

¹⁷ "Criminological and Criminal Justice Education in India: A Comparative Note: Journal of Criminal Justice Education: Vol 19 , No 1 - Get Access,"*available at:* <https://www.tandfonline.com/doi/full/10.1080/10511250801892987> (last visited May 4, 2023).

Committee after the Council approved Macaulay's suggestion. The committee's report was published in 1838. The committee emphasised the flaws in jail management that existed in India at the time. The committee was of the opinion that the great objective of punishment is, in our opinion, to dissuade all men from crime who are capable of committing it and vulnerable to the dread of punishment. The committee thoroughly examined numerous elements such as prisoner housing, discipline, health, nutrition, monetary rewards, punishments, education, and labour. The group proposed categorising inmates and keeping them apart based on their classification¹⁸.

Following Lord Macaulay's initial call for reform, a series of committees were established to address the issues in Indian prisons. The second committee, formed in 1864, focused on specific concerns like juvenile delinquency, female prisoners, and dietary needs. In 1876, a third committee aimed to standardize disciplinary measures and make short sentences more effective deterrents. Finally, Lord Dufferin established a committee in 1888, whose work was later informed by the recommendations of the All India Committee in 1892. These committees represented a continuous effort to improve prison conditions and practices in India¹⁹. Following a comprehensive review of India's prison system, the All India Jail Committee (1919-1920) under Sir Alexander Cardew stands as a landmark in Indian prison reform. This committee's recommendations, later adopted as the Prisons Act of 1894, addressed crucial aspects like prisoner classification and standardized treatment.

However, the true turning point was the committee's emphasis on rehabilitation. For the first time, it positioned reform alongside deterrence as a core principle of prison administration. The committee advocated for productive work programs and a robust after-care system to aid released prisoners in their reintegration into society. These recommendations laid the foundation for modern prison reform in India, aiming not just to punish offenders but also to equip them for a law-abiding future²⁰.

Despite India's post-independence efforts towards humane prison management, several challenges persist. These include:

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ "Prisoners Are Too 'Victims' of the Criminal Justice System. Can They Have an Idea of 'Fair Access to Justice'?" - Praveen Kumar, Anand Kumar Banskhar, Shubhendu Shekhar, KM Pushpa Rani, 2022," *available at*: <https://journals.sagepub.com/doi/abs/10.1177/25166069221134215> (last visited 10.12.2022).

- **Overcrowding:** Prisons are often filled beyond capacity.
- **Pre-trial Detention:** Many people await trial for extended periods, adding to overcrowding.
- **Poor Living Conditions:** Basic needs like hygiene and sanitation are not adequately met.
- **Lack of Rehabilitation Programs:** Opportunities for inmates to learn skills or receive treatment are scarce.
- **Allegations of Abuse:** Reports of mistreatment by prison staff continue to surface.

These issues have been repeatedly raised by critics, highlighting the need for further reform in the Indian prison system²¹.

The Government of India created the All India Jail Manual Committee in 1957 to prepare an All India Skeleton Jail Manual, examine the Prisons Act of 1894²² and other pertinent central legislation, and provide recommendations for jail improvements throughout the country. The committee believed in Mahatma Gandhi's concept of "hating the crime, not the offender." The group's findings said that issues cannot be remedied by increasing punishment.²³

In 1980, the Indian government formed the All India Jail Reform Committee under Justice A.N. Mulla. This committee aimed to modernize the prison system. One key recommendation was the creation of a permanent National Prison Commission.

The committee also focused on improving prison conditions. This included ensuring adequate food, clothing, hygiene, and ventilation for inmates. Recognizing the importance of rehabilitation, they stressed the need for proper training of prison staff and a shift in focus towards reforming and reintegrating prisoners²⁴.

²¹ *Ibid.*

²² The Prisons Act, 1894 (Act No IX of 1894) Acts of Parliament, 1894 (India).

²³ Praveen Kumar, (2022), Prisoners Are Too 'Victims' of the Criminal Justice System. Can They Have an Idea of 'Fair Access to Justice'?, Journal of Victimology and Victim Justice, <https://doi.org/10.1177/25166069221134215> Visited on, 10.12.2022

²⁴ "Criminological and Criminal Justice Education in India: A Comparative Note: Journal of Criminal Justice Education: Vol 19 , No 1 - Get Access," *available at:* <https://www.tandfonline.com/doi/full/10.1080/10511250801892987> (last visited June 4, 2023).

The Supreme Court echoed these sentiments, citing the Mulla Committee Report. The court emphasized the importance of work programs for prisoners, not as punishment, but as a way to improve their physical and mental well-being and ultimately aid in their rehabilitation.

Justice Thomas argued that rehabilitation of prisoners shouldn't come at the expense of ignoring the pain of crime victims. He emphasized the need for a balanced approach that acknowledges the suffering of both victims and offenders²⁵. Following the recommendations of the Justice Mulla Committee, efforts continued to improve India's prison system. The National Expert Committee on Women Prisoners, led by Justice V.R. Krishna Iyer, built upon this progress. Their 1988 report advocated for increased recruitment of women into the police force, acknowledging their unique role in handling crimes involving women and children.

Additionally, specific jail classifications were implemented, as seen in the UP Jail Manual which categorized Uttar Pradesh jails into four types:

- Central prisons (likely housing longer sentences or higher security needs)
- District jails
- Juvenile jails (for young offenders)
- Lock-up jails (possibly for temporary detention)

These efforts demonstrate a multi-pronged approach to prison reform in India, addressing both broader systemic issues and the specific needs of certain prisoner groups.

In most cases, central jails house more than 1,000 inmates. Adults convicted to life in prison or sentences of more than seven years will be transported to these facilities. District prisons are classified into five types²⁶:

First-class, with space for more than 500 convicts. Prisoners condemned to lengths of imprisonment of more than three years but less than seven years will be admitted to these facilities²⁷.

²⁵ *Ibid.*

²⁶ UP Jail Manual, 1941

²⁷ *Ibid*

Second class, with accommodations for convicts in excess of 300 but not surpassing 500. Prisoners condemned to lengths of imprisonment of more than two years but less than three years will be housed in this type of jail²⁸.

Third class, with accommodations for prisoners above 150 but no more than 300.²⁹

Fourth class, with accommodations for prisoners weighing more over 100 pounds but not more than 150 pounds. Prisoners condemned to lengths of imprisonment of more than two years but less than three years will be imprisoned in third and fourth category district prisons³⁰.

The fifth class of district jail will normally house no more than 100 convicts. Prisoners condemned to sentences of imprisonment of no more than one year will be imprisoned for that period. The Prisons Act of 1894 defines the jail officials and their roles and obligations³¹.

The Prisons Act of 1894³² outlines the leadership structure for Indian prisons. Each state government appoints an Inspector General to oversee all prisons within their territory. These Inspectors General report to the state government and hold overall control of the prison system.

Individual prisons are managed by a Superintendent, who may also serve as the Medical Officer. Other key staff include a Medical Subordinate (likely a nurse or paramedic) and a Jailer. The state government has the authority to assign additional personnel as needed³³.

The Superintendent holds ultimate authority within the prison, overseeing all aspects of discipline, labor, finances, punishments, and overall control. This includes maintaining various crucial records:

- **Admission Register:** Tracks incoming prisoners.

²⁸ *Ibid*

²⁹ *Ibid*

³⁰ *Ibid*

³¹ *Ibid*

³² “The Prisons Act, 1894|Legislative Department | Ministry of Law and Justice | GoI,”*available at*: <https://laddashboard.legislative.gov.in/actsofparliamentfromtheyear/prisons-act-1894> (last visited April 4, 2024).

³³ Praveen Kumar, (2022), Prisoners Are Too ‘Victims’ of the Criminal Justice System. Can They Have an Idea of ‘Fair Access to Justice’?, *Journal of Victimology and Victim Justice*, <https://doi.org/10.1177/25166069221134215> Visited on, 10.12.2022.

- **Release Schedule:** Indicates each prisoner's release date.
- **Punishment Book:** Documents any disciplinary actions taken against inmates.
- **Visitors' Book:** Records observations made by visitors regarding prison administration.
- **Confiscated Property Log:** Lists money and belongings taken from prisoners.
- **Additional Records:** Maintains any other documentation mandated by authorities.

These records ensure transparency and accountability within the prison system.

All convicts entrusted to his care must be received and detained by the superintendent or jailor. The superintendent must immediately notify the district magistrate of any wounds, bruises, or contusions discovered on detainees that are unrelated to the offence or case for which he is being held. The Bombay High Court ruled that the notion of fairness must be followed alone by the Superintendent. He must personally "examine" the inmates. He cannot just depend on a prefabricated remark that would not be a 'examination'. The investigation is quasi-judicial in character, and the prisoner has the right to be heard, fully informed, and cross-examined. Finally, the reasoned order must be issued by the Superintendent. In the issue at hand, the petitioner was penalised by prison officials for an offence he committed while incarcerated³⁴.

The prison's medical care falls under the responsibility of the Medical Officer. They oversee sanitation within the facility and fulfill additional duties outlined by state government regulations.

The Medical Officer plays a crucial role in protecting prisoner well-being. If they suspect a punishment or treatment might harm a prisoner's mental state, they must notify the Superintendent. They also take on the somber task of documenting prisoner deaths, recording details like the onset of illness, hospitalization dates, diet, assigned labor, cause of death, and the last medical check-up before passing.

³⁴ M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, *Journal of Criminal Justice Education*, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022

Finally, upon admission, every prisoner undergoes a medical examination conducted by or under the direct orders of the Medical Officer. This ensures a baseline health record for each inmate³⁵.

A thorough inspection process awaits every new arrival at the prison gates. Before entering the quarantine area, an Assistant Medical Officer, in the presence of a jailer or another officer, conducts a detailed examination. This includes recording the prisoner's name, time of examination, and any discovered injuries, wounds, or suspicious markings. This information is documented in the jailer's report book and signed by authorized personnel.

Prisoners' clothing also undergoes scrutiny. If any suspicious stains are found, the district magistrate is notified, and the clothing is secured for further investigation.

For prisoners being transferred from other facilities, the Medical Officer assesses their fitness for travel. Finally, regular medical evaluations are conducted on working prisoners to monitor their health and well-being. These comprehensive measures aim to ensure the health and safety of both inmates and staff³⁶.

The Jailer plays a vital role in prison security and record-keeping. They are typically required to reside within the prison grounds, unless written permission for off-site residence is granted by the Superintendent.

In the unfortunate event of a prisoner's death, the Jailer is responsible for immediately notifying both the Superintendent and the Medical Subordinate. Additionally, the Jailer holds significant custodial duties. This includes safeguarding:

- Records mandated by Section 12 of the Prisons Act.
- Commitment warrants - legal documents authorizing detention.
- Any other documents designated as the Jailer's specific responsibility.
- Confiscated money and belongings from prisoners.

³⁵ M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, *Journal of Criminal Justice Education*, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022.

³⁶ Arvind Verma(2002), Taking Justice Outside the Courts: Judicial Activism in India, *The Howard journal of crime and justice*, Volume40, Issue2, <https://doi.org/10.1111/1468-2311.00198>, Visited on, 10.12.2022

These responsibilities highlight the Jailer's critical role in maintaining order, accountability, and secure record-keeping within the prison system³⁷.

The Jailer's responsibilities extend beyond record-keeping and secure custody. They are expected to be physically present within the prison most of the time. Overnight absences require written permission from the Superintendent. However, in unavoidable circumstances, the Jailer must promptly inform the Superintendent about the absence and its cause.

The Prisons Act also provides for an Assistant Jailor or Deputy Jailor, appointed by the Superintendent, who can perform all the Jailer's duties when necessary. This ensures continuity of operations even during the Jailer's absence.

the Jailer plays a part in prisoner healthcare. They are required to promptly notify the Medical Officer if a prisoner becomes unwell. Additionally, they must follow any instructions provided by the medical staff regarding the prisoner's care. This highlights the Jailer's role in maintaining not just security but also the well-being of those in their custody³⁸.

Subordinate officers, as gatekeepers, are also officers of the prison, and they can examine anything brought into or out of the prison, search or stop anyone to determine what is going into or coming out of the prison, and must immediately notify the jailor if they find any prohibited article or property. Officers subordinate to the jailor may not leave the prison without permission from the Superintendent or the jailor. Prisoners who have been appointed as prison officials are considered public employees under the Indian Penal Code, 1860³⁹.

The Prisons Act establishes clear guidelines for ethical conduct among prison staff. To prevent favoritism or exploitation, staff are strictly prohibited from engaging in any commercial transactions with prisoners, either directly or through intermediaries. This includes selling goods, accepting payment, or having any financial ties with inmates. Additionally, staff cannot hold personal interests in prison supply contracts or benefit from the sale or purchase of prison goods.

³⁷ “The Prisons Act, 1894|Legislative Department | Ministry of Law and Justice | GoI,” *available at*: <https://ddashboard.legislative.gov.in/actsofparliamentfromtheyear/prisons-act-1894> (last visited June 9, 2023).

³⁸ *Ibid.*

³⁹ The Indian Penal Code, 1860

Beyond these restrictions, the Act emphasizes the importance of humane treatment. Prison staff are expected to treat detainees with compassion and listen to their concerns with the goal of resolving issues and avoiding unnecessary aggravation. This focus on respectful interaction helps maintain order within the prison system⁴⁰.

In today's world, society appears to have a number of goals in mind when it comes to crime management, and jail appears to be one of them. First, as emphasised by the relatively recent focus on criminal reform, rehabilitation, and therapy, society wants convicts altered so that they will not commit more crimes. Criminals are expected to be reformed or rehabilitated in the jail. Society wants to be safe from criminals. The jail keeps offenders apart from society so that they cannot do harm by committing crimes during specific time periods⁴¹. Society, too, desires punishment. Criminals are supposed to suffer in their daily lives because they have made the lives of others unbearable. It is in the best interests of society to reduce crime rates not just through rehabilitating offenders, but also by discouraging the general population from engaging in behaviour that is punished by incarceration. Because the jail has been tasked with working toward each of society's goals, goal completion may be considered the purpose of punishment. Within the jail, numerous theories of punishment are made suitable to the penal framework in order to execute the responsibilities and achieve the aims of incarceration⁴².

The National Crime Records Bureau (NCRB) has recently unveiled its eagerly anticipated Prison Statistics India (PSI) Report for the year 2022. This comprehensive report draws upon data submitted by the Prison Departments of all 36 States and Union Territories (UTs), covering the period from January 1st to December 31st, 2022⁴³. Utilizing a prescribed proforma developed by the NCRB, the data collection process was facilitated through a dedicated application. The PSI report offers an in-depth analysis of various facets of India's prison system, shedding light on critical aspects such as the prison population, distribution of undertrials versus convicts, capacity utilization, and state-wise variations. Additionally, it provides insights into gender and age demographics within the prison population, along with

⁴⁰ "Taking Justice Outside the Courts: Judicial Activism in India - Verma - 2001 - The Howard Journal of Criminal Justice - Wiley Online Library," *available at*: <https://onlinelibrary.wiley.com/doi/abs/10.1111/1468-2311.00198> (last visited June 23, 2023).

⁴¹ *Ibid.*

⁴² M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, *Journal of Criminal Justice Education*, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022.

⁴³ "NATIONAL CRIME RECORDS BUREAU (NCRB) | Ministry of Home Affairs," *available at*: <https://www.mha.gov.in/en/national-crime-records-bureau-ncrb> (last visited June 24, 2023).

offense-wise categorizations, allowing for a nuanced understanding of incarceration trends and challenges.

India faces a critical challenge with a staggering number of undertrial prisoners over 435,000 in 2022, constituting more than three-fourths of the total prison population. This overcrowding, exceeding 131% capacity, creates a harsh environment. The root causes lie in a complex and slow judicial system with case backlogs, witness unavailability, and lawyer shortages leading to extended pretrial detentions. Furthermore, misuse of preventive detention laws and socio-economic factors like poverty and lack of legal aid disadvantage undertrials, hindering their ability to navigate the legal system efficiently. The consequences are dire, with prolonged incarceration causing loss of livelihood, psychological distress, and social stigma, even for those ultimately acquitted.

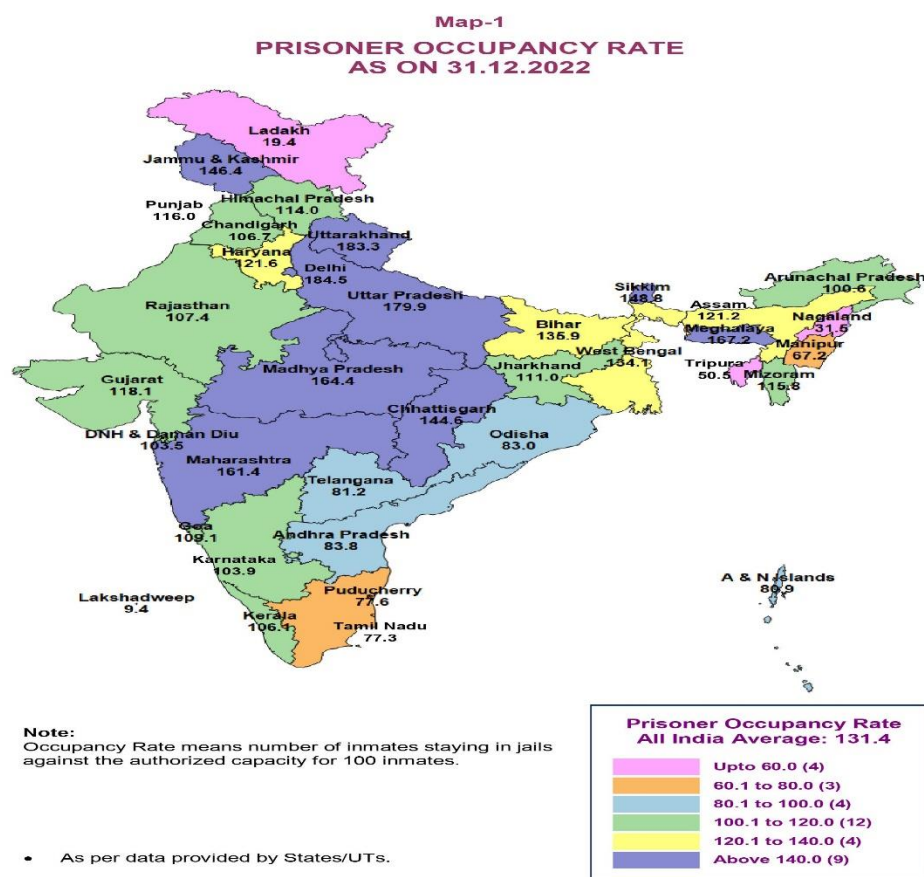
Prisons – Types & Occupancy⁴⁴

Year	No. of Prisons	Actual Capacity of Prisons	No. of Prisoners at the end of the year	Occupancy Rate at the end of the year
2020	1,306	4,14,033	4,88,511	118.0%
2021	1,319	4,25,609	5,54,034	130.2%
2022	1,330	4,36,266	5,73,220	131.4%

The number of prisons in India increased slightly in 2022 (1,330) compared to 2021 (1,319). These prisons are categorized with District Jails having the highest number (428) followed by Sub Jails (574) and Central Jails (148). Notably, several states/UTs lack specific jail types like Women Jails (only 16 states with 34 jails) or Sub Jails (10 states/UTs without them). The total prison capacity also increased (4,36,266 in 2022 from 4,25,609 in 2021), but overcrowding remains a concern with an occupancy rate of 131.4%. While the prison population grew (5,73,220 in 2022 from 5,54,034 in 2021), a significant portion (75.8%) are undertrials awaiting trial. Uttar Pradesh houses the most prisoners (1,21,609) and has the highest capacity (67,600 inmates), but also the second-highest occupancy rate (179.9%). Occupancy rates are particularly high in District Jails (156.5%) and some states like Delhi (184.5%). Although Women Jails have a lower occupancy rate (60.1%), only a limited

⁴⁴ “Home | Open Government Data (OGD) Platform India,” *available at*: <https://data.gov.in/ministrydepartment/national-crime-records-bureau-ncrb> (last visited May 6, 2024).

number of states have them, with Uttar Pradesh incarcerating the most female prisoners (4,809).



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Prisoners – Types & Demography⁴⁶

Year	Number of convicts	Number of undertrial prisoners	Number of detenues	Number of other intimates	Total number of prisoners
2020	1,12,589	3,71,848	3,590	484	4,88,511

⁴⁵ Ibid.

⁴⁶ Ibid.

2021	1,22,852	4,27,165	3,470	547	5,54,034
2022	1,33,415	4,34,302	4,324	1,179 5	5,73,220

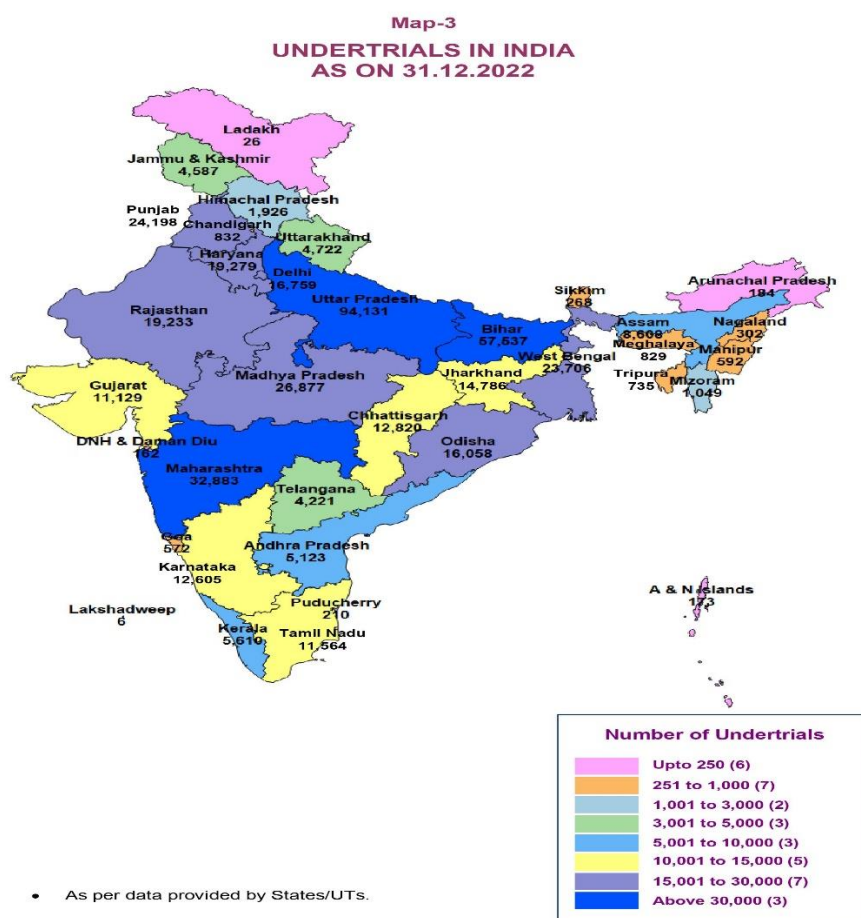
In 2022, Indian prisons saw a slight decrease (0.1%) in admissions compared to 2021, with a total of 18,04,787 inmates entering various jails. However, overcrowding remains a pressing issue. As of December 31st, 2022, prisons housed 5,73,220 individuals, with a concerning 75.8% being undertrials awaiting trial. This highlights the need for a more efficient justice system. The remaining population consisted of convicts (23.3%), detenues (0.8%), and a small group categorized as "other prisoners" (0.2%).

Convicted Prisoners

The number of convicted prisoners in India saw an 8.6% increase in 2022 (1,33,415) compared to 2021 (1,22,852). These convicts are primarily housed in Central Jails (64.9% or 86,545), followed by District Jails (27.9% or 37,163) and Sub Jails (2.1% or 2,861). Interestingly, Uttar Pradesh incarcerates the most convicts (20.4% or 27,209), followed by Madhya Pradesh (16.3% or 21,761) and Maharashtra (6.0% or 7,998). It's worth noting that a very small number (138) are civil convicts.

Undertrial Prisoners

Undertrial populations also saw a slight increase of 1.7% in 2022 (4,34,302) compared to 2021 (4,27,165). These individuals awaiting trial are predominantly held in District Jails (52.1% or 2,26,386), followed by Central Jails (35.8% or 1,55,528) and Sub Jails (9.8% or 42,652). Notably, Uttar Pradesh houses the most undertrials (21.7% or 94,131), followed by Bihar (13.2% or 57,537) and Maharashtra (7.6% or 32,883). It's important to note that the vast majority (4,34,258) are criminal undertrials, with only a minimal number (44) classified as civil.



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Detainees

Detention rates surged by 24.6% in 2022 (4,324) compared to 2021 (3,470). These individuals are primarily held in Central Jails (80.0% or 3,458), followed by District Jails (15.4% or 665) and Special Jails (2.4% or 104). Interestingly, Tamil Nadu houses the most detainees (49.2% or 2,129), followed by Jammu & Kashmir (12.6% or 546) and Gujarat (7.7% or 334).

Deaths and illness in Prisons⁴⁸

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

Year	Total No. of Deaths in Prisons	No. of Natural Deaths	No. of Un-natural Deaths (incl. Suicide)
2020	1,887	1,642	189
2021	2,116	1,879	185
2022	1,995	1,773	159

Indian prisons saw a welcome decrease in inmate deaths during 2022. The overall number of deaths dropped by 5.7%, with 1,995 fatalities compared to 2,116 in 2021. This decline applies to both natural causes (down 5.6% to 1,773) and unnatural causes (down 14.1% to 159). Among natural deaths, illnesses were the leading cause (1,670), with heart disease (25.6%) and lung disease (11.4%) being the most prevalent. Suicides remained the most common form of unnatural death (119), followed by inmate murders (4), accidents (10), and assault by outsiders (1). Notably, the cause of death remains undetermined for 63 inmates.

Prisoners – Sentences & Incarceration⁴⁹

Convicts: As of December 31st, 2022, prisons housed 544 individuals sentenced to capital punishment, with 190 receiving the sentence in 2022 alone. Among all convicts (1,33,415), a majority (56.7% or 75,629) faced life imprisonment. Sentence lengths for others varied, with 15.6% (20,836) receiving 10-13+ years and 6.7% (8,901) sentenced for 7-9+ years.

Undertrials: A significant concern lies with the lengthy pretrial detention of undertrials. As of the same date, nearly 69% (2,99,503) were confined for up to 1 year, with the largest group (46.5% or 1,39,245) held for up to 3 months. While some progress through the system faster (85,358 for 3-6 months and 74,900 for 6-12 months), a substantial number (14.6% or 63,502) wait for trial for 1-2 years. The wait extends even further for others, with 7.8% (33,980) held for 2-3 years, 6.0% (25,869) for 3-5 years, and a concerning 2.6% (11,448) for more than 5 years.

Prison Staff - Strength & Training

Indian prisons faced significant understaffing in 2022, with a sanctioned strength of 91,181 positions but only 63,578 filled. This gap existed across all staff categories, including

⁴⁹ *Ibid.*

Officers (DG/Addl. DG/IG, DIG, AIG, Supdt. etc.), Jail-cadre Staff (Head Warder, Head Matron, Warder, etc.) and Correctional Staff (Probation Officer / Welfare Officer, Psychologist / Psychiatrist, etc.). The medical staff vacancy rate was also high (3,570 sanctioned, 2,125 actual). There were 8,674 women staff members, including medical personnel. In an effort to address this gap, 20.7% (13,180) of existing staff received training through various refresher, specialized, and re-orientation courses during 2022⁵⁰.

1.3 Hypothesis

The purpose of doing this research is to do an analysis on the criminal justice administration in India and examine the jail administration's rehabilitation strategy in India. Also do a comparative analysis on the reformation and rehabilitation strategy adopted in India and Canada.

On basis of study, the researcher has formulated following hypothesis:

1. Implementing comprehensive educational and vocational programs within prisons, coupled with effective mental health support, will reduce recidivism rates and foster successful reintegration into society, ultimately lowering crime rates and enhancing community safety.
2. Enacting legislation that emphasizes alternatives to incarceration, such as community-based rehabilitation programs and diversionary measures, will alleviate prison overcrowding, mitigate the disproportionate impact on marginalized communities, and promote effective reintegration of offenders into society while maintaining public safety.

1.4 Review Of Literature

Paveen Kumar(2022), in this research the author takes the reader through a broad examines the concerns, challenges, and negative consequences of the criminal justice system in general. Furthermore, it outlines strategies that have been practically applied and have yielded positive outcomes and consequences. This article depicts the effort of delivering free socio-legal aid and socio-legal counselling services to underprivileged under trial inmates who had been imprisoned for years despite 'due process of law' and a

⁵⁰ *Ibid.*

lack of appropriate legal representation. As a result, they are also 'victims' of this flawed criminal justice system⁵¹.

M. Z. Khan & N. Prabha Unnithan (2008), The authors seek to trace the evolution of the field in India, taking into account both general education and particular work training, in order to help the reader comprehend criminal justice education in comparison. According to the writers, there are some important parallels and distinctions between India and the US.

National Influence: How much control does the national government have over the curriculum and standards for criminal justice education? Is there a unified approach, or do states have significant autonomy?

1. **Theory vs. Practice:** Does criminal justice education adequately bridge the gap between theoretical knowledge gained in classrooms and the practical skills needed for real-world jobs in the field?
2. **Economics and Crime:** Does the level of economic development in a region influence the type of criminal justice education offered or needed? Are there specific training needs for areas with higher or lower crime rates?
3. **External Influences:** How do outsiders and outside agencies, such as advocacy groups or professional organizations, impact the content and delivery of criminal justice education? Are these influences positive or pose potential challenges?

By examining these questions, we can gain a deeper understanding of the current state of criminal justice education and how it can be improved to better prepare future professionals for the complexities of the field⁵².

Arvind Verma(2002), This article explores the rise of judicial activism in India and its impact on the criminal justice system. The authors acknowledge both the positive influence and potential drawbacks of this trend.

⁵¹ Praveen Kumar, (2022), Prisoners Are Too 'Victims' of the Criminal Justice System. Can They Have an Idea of 'Fair Access to Justice'?, Journal of Victimology and Victim Justice, <https://doi.org/10.1177/25166069221134215> Visited on, 10.12.2022

⁵² M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, Journal of Criminal Justice Education, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022

According to the article, judicial activism has become a significant driver of social change in India. Judges have reinterpreted court procedures and pioneered Public Interest Litigation (PIL), allowing ordinary citizens to petition the Supreme Court directly through letters. This has had a tremendous effect. Judicial action based on these written petitions has addressed a vast array of issues. It has delivered justice to marginalized groups, tackled political corruption, and held authorities accountable⁵³.

In a 2017 study, Gbenga Oduntan examines corruption within the legal framework. Oduntan analyzes the legal codes outlining corruption offenses and explores how corruption manifests across various sectors of the criminal justice system. His proposed solutions are categorized as short-term, medium-term, and long-term plans.

Oduntan's primary objective is to identify methods and mechanisms that can improve the justice system at both federal and state levels. His focus is on strengthening professionalism, effectiveness, integrity, accountability, and transparency within these organizations. This includes federal and state Ministries of Justice, police forces, prison services, immigration and customs agencies, and even the legal profession itself.⁵⁴

Regina Branton, Kimi King, Justin Walsh 2022, this research examines the link between violence on tribal lands and the federal government's oversight of criminal cases. The author argues that the lack of prosecution for crimes committed by Indigenous criminals (IC) contributes to a cycle of violence. They found that IC cases are much more likely to be dropped compared to non-IC cases. This suggests a correlation between the lack of federal oversight and the prevalence of violence in these areas.

Interestingly, the study also shows a significant decrease in declined IC cases following the passage of the Tribal Law and Order Act (TLOA) in 2010. This implies that improved federal oversight through TLOA may be an effective strategy in reducing violence on tribal lands⁵⁵.

⁵³ Arvind Verma(2002), Taking Justice Outside the Courts: Judicial Activism in India, The Howard journal of crime and justice, Volume40, Issue2, <https://doi.org/10.1111/1468-2311.00198>, Visited on, 10.12.2022

⁵⁴ Oduntan, G. (2017), "Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria", Journal of Money Laundering Control, Vol. 20 No. 1, pp. 35-51. <https://doi.org/10.1108/JMLC-09-2015-0042>

⁵⁵ Regina Branton, Kimi King, Justin Walsh (2022), Criminal justice in Indian country: Examining declination rates of tribal cases, Social science quarterly, Volume103, Issue1, January 2022, Pages 69-81, <https://doi.org/10.1111/ssqu.13100>

Roshni (2019), The author attempts to emphasise the growing importance of criminology in social work in India. The relationship and interaction between criminology and social work is investigated. As a result, this article offers context for the development of criminal justice social work as an area of practise in the Indian setting. The evolution of criminal justice social work emphasises the numerous sub-sectors that now exist within this field of practise. Criminal justice social work has significant promise in the Indian context⁵⁶.

Tamara (2021), The author tries to form crime-terror nexus and says that crime terror evolved from many strands of study that questioned how mainstream security academics assessed risks during periods of significant change in national and/or worldwide security contexts. He says their nexus between crime and terrorism have progressed from offering a simple linear model classifying different kinds of the nexus to exhibiting a link that occurs on a succession of planes: one operational, one evolutionary, and one philosophical. The first form of link that occurs between Transnational Organized Crime and terrorism is an alliance. The second sort of interaction confirmed by case studies is strategy appropriation. Transformation happens when the organization's ultimate goals and motives change⁵⁷.

Jain, Amit Kumar; Tripathi, Upendra Nabh. (2018), The author tries to say prison system is expected to reduce crime rates not only by reforming criminals but also by discouraging the general public from behavior which is punishable by imprisonment. The jail system is also meant to make life difficult for persons who have made the lives of others difficult via their crimes. Finally, society wishes to lower crime rates. Our country's jail system has greatly improved. In general, the consequences of incarceration are of the type of progressive weakening of mental powers and degeneration of character that renders the inmates' life appropriate for constructive social life, and as a result, they are no longer subject to reconviction. Our massive time, energy, and financial investment in reformatory or rehabilitative prison models has been demonstrably beneficial in reducing and managing recidivism among offenders⁵⁸.

⁵⁶ Shaikh, Roshni. International Journal of Criminal Justice Sciences, suppl. Special Issue on Criminal Justice Social Work in I; Thirunelveli Vol. 14, Iss. 1, (Jan-Jun 2019): 9-21. OI:110.5281/zenodo.3242022

⁵⁷ "Foundations and evolution of the crime-terror nexus | 18 | v2 | Routledge," *available at*: <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003044703-18/foundations-evolution-crime-terror-nexus-tamara-makarenko> (last visited June 14, 2023).

⁵⁸ *Ibid.*

This passage by **McClish (2019)** challenges a traditional understanding of law in ancient India. Traditionally, legal texts known as Dharmastras are seen as the foundation for religious law in South Asia. These texts outline the "dharma" or duties of various social classes, including the king's duty to resolve legal disputes. Scholars like Maine and Weber believed the Dharmastras reflected a gradual separation of law from religion.

However, McClish argues this perspective is inaccurate. A closer look at the sources reveals that royal court law actually emerged from a separate, secular tradition of statecraft. This secular legal system was later incorporated into the Dharmastras, where it was presented as a sacred obligation and its historical origins were obscured. McClish suggests that rather than a transition from pure law to religious law, the development of legal systems in India involved a shift from a focus on secular law to its integration within the broader concept of dharma⁵⁹.

Ayushi (2019) The author says that from over the last few decades, the number of people imprisoned in India has skyrocketed. This rise is directly tied to an increase in crime and a rise in the general population. The indifference of junior judges may possibly have played a crucial role. This has presented the authorities with a variety of issues, including worries about safety, security, and cleanliness. There are countless of examples when persons accused of bailable offences are incarcerated, despite the fact that bail is a legal privilege. In such instances, the detention order is an anomaly⁶⁰.

Varghese, J., & Raghavan, V. (2019), The authors says that because almost all convicts are freed at some point, social re-entry into the criminal justice system is unavoidable. These programmes are the result of a restorative justice strategy, which tries to decrease future offences by rehabilitating and restoring criminals to normal life. Prisoners' life in India were extremely tough until the last decade. Various rehabilitation measures have been implemented within jails, but the number of social re-entry programmes after release is substantially lower. Many psycho-social and economic challenges confront the released, threatening a person's capacity to adjust to the services given⁶¹.

⁵⁹ McClish, M. (2019). FROM LAW TO DHARMA: STATE LAW AND SACRED DUTY IN ANCIENT INDIA. *Journal of Law and Religion*, 34(3), 284-309. doi:10.1017/jlr.2019.36

⁶⁰ "FROM LAW TO DHARMA: STATE LAW AND SACRED DUTY IN ANCIENT INDIA | *Journal of Law and Religion* | Cambridge Core," *available at*: <https://www.cambridge.org/core/journals/journal-of-law-and-religion/article/abs/from-law-to-dharma-state-law-and-sacred-duty-in-ancient-india/49D3C15A4CA35DBE7DD887079D37C065> (last visited June 28, 2023).

⁶¹ "Restoration of Released Prisoners to Society: Issues, Challenges and Further Ways; Insights from Kerala, India | *Semantic Scholar*," *available at*: <https://www.semanticscholar.org/paper/Restoration-of-Released->

This study by Dr. Bharat Dhiman (2022) explores the lives of female inmates in a prison setting. The author argues that prisons, due to their isolation and controlled environment, offer a simpler social system compared to broader society, making them valuable sites for sociological research.

Dhiman examines the various challenges faced by female prisoners, encompassing cultural, social, economic, medical, environmental, and psychological aspects. Their data collection employed both primary and secondary sources. Primary data came from interviews conducted using a self-designed questionnaire and direct observation of the prison environment. Secondary data was gathered from academic journals, books, newspapers, government documents, and other published and unpublished works. This multi-pronged approach likely yielded a comprehensive understanding of the experiences of female inmates within the prison system⁶².

Sidhu, Sahibnoor Singh and Mishra, Utkarsh (2022), The author says that every culture is made up of people who have various perspectives and attitudes toward life. There are many perceptions, which frequently result in differences in the actions made by persons in accordance with their distinct views. However, these many behaviours may have differing effects on society, not all of which are necessarily positive. Individual interests, according to Roscoe Pound's notion of 'social engineering,' should be treated in such a manner that they can act freely while the common interest of society is safeguarded. This is when the function of law is engaged to govern the actions of individuals so that they do not harm society⁶³.

Vijay Raghavan (2020), The author says all convicts are freed at some point, social re-entry into the criminal justice system is unavoidable. These programmes are the result of a restorative justice strategy, which tries to decrease future offences by rehabilitating and restoring criminals to normal life. Prisoners' life in India were extremely tough until the last decade. Various rehabilitation measures have been implemented within jails, but the number of social re-entry programmes after release is substantially lower. Many psycho-

Prisoners-to-Society%3A-and-Varghese-Raghavan/9e92a9e42cdfa780df3599b1f9f80d3904f4bfc4 (last visited July 9, 2023).

⁶² "Condition of Women Prisoners in Model Jail, Chandigarh: A Communication Study by Dr. Bharat Dhiman :: SSRN," *available at*: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4205096 (last visited July 25, 2023).

⁶³ Sidhu, Sahibnoor Singh and Mishra, Utkarsh (2022) Prison reform In India : An incomplete saga. *Journal of Positive School Psychology*, 6 (7). pp. 2234-2250. ISSN 2717-7564

social and economic challenges confront the released, threatening a person's capacity to adjust to the services given. Aftercare programmes are recommended by India's national jail policy for the rehabilitation of freed inmates. Prisoners' capacity to re-enter society after release is hampered by the labelling and social stigma associated with their crime. In this context, the current research investigated the concerns and obstacles encountered by released convicts during their social re-entry and proposed rehabilitative approaches for a more successful restoration process in the Indian setting.

Dubey, Divya (2021), According to the author, every jail in the world today requires a correctional programme in order to properly rehabilitate and reintegrate criminals. Correctional reform is a critical subject that has received international attention. Many attempts have been made in India to improve the conditions of jails and convicts, but little progress has been accomplished at the grassroots level. To address the current demands of the criminal justice system, correctional reforms might be modified in a variety of ways. The author provided an overview of correctional reforms in Indian prisons and will attempt to highlight the limits of correctional programmes that must be addressed for successful rehabilitation and reformation of convicts after reading the current literature⁶⁴.

1.5 Object and Significance Of Study

Based on information and analysis gathered about prison administration, as well as the government's reformatory and rehabilitative approach, the following goals have been established:

- a) to investigate the reformatory strategy taken by the Indian jail administration.
- b) to examine through various observations and reports whether the prison reform has had any positive effect on the prisoner.
- c) to investigate if the rehabilitative approach to convicts has had any good influence on their transformation via various observations and reports.
- d) to investigate if a separate rehabilitation method is used for female convicts.

⁶⁴ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023). in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

- e) to check if the recommendations established by the United Nations and National, International Organization are followed.
- f) to make a comparative analysis of reformative and rehabilitative approach adopted in Canadian prisons and Indian prisons.
- g) To investigate if the guidelines issued by the Supreme Court of India and High Courts are followed.

This study is notable since it focuses on habitual offenders, prison administration, and the rehabilitative approach utilised on prisoners to reform them and meagre them back in the society as a normal individual. The study's findings might be more useful in analysing the literature on prison administration and defining the type of strategy that could be more effective in bringing about transformation among prisoners for a better way of life.

1.6 Research Design And Methodology

The basic object of research has always been to arrive at certain conclusions and to give suggestions on the basis of the study and it has been possible by getting material which is informative on the basis of proper understanding of the relevant document on the subject. The research work will be based on the study of primary as well as secondary sources of information. For the purpose of this study, primary sources are preferred in the form of comprehensive data and judgments of various High Courts and Supreme Courts. Secondary sources are available and are utilized in the form of journals, reports, periodicals, magazines and articles.

The research method adopted for this study is doctrinal. Considering the nature of the subject, the researcher commenced his study by utilizing the rich treasures of books and treatises available in the library and picked up from them the material relevant for tracing the historical evolution of the concept of service and thereafter proceeded ahead to extensively examine other materials like the various legislations, commentaries by the jurists, the statutory interpretations by the Supreme Court and the High Courts of India

The “Doctrinal or the Traditional” method of research are adopted as the primary method for study. Researcher also intends to conduct research by applying the Critical Study and Comparative Study by collecting the data as secondary as well as primary source of information. An intense study of the books of the yore and the contemporary India is also

contemplated so as to include the thoughts or the theories derived from the Indian books, the sayings of various Indian and the Western scholars, and those borrowed from the service tradition.

1.7 RESEARCH QUESTION

1. How do things like education, job training, and therapy offered in prison affect the chance someone will re-offend after release?
2. Does focusing on rehabilitation make communities safer and save money compared to just punishing people? How does it affect released prisoners and their families?
3. How do prison programs help specific groups like Indigenous people, women, and young offenders?
4. Does spending money on programs to help people in prison make more financial sense than putting them back in jail later?
5. How can we help people who finish programs stay on the right track after they're released?

After making in-depth study of the subject, the research work is divided into 7 chapters.

1. **Chapter I-** Being the first chapter of the study, the researcher in this chapter, presents an introductory outline of the subject and discusses the meaning, nature and scope of the terms reforms and rehabilitation. The other highlights of the chapter are the hypothesis, object and significance of the research, the research questions and the methodology adopted.
2. **Chapter II-** This chapter deals with the historical overview of concept of prisons that has existed for millennia, with early versions resembling dungeons in various civilizations like Rome, Egypt, China, and India. These were documented by scholars like [e.g., Marc Mauer in "The Future of Incarceration"]. However, imprisonment as a specific punishment is a more recent development. Historically, jails served primarily as temporary holding facilities for those awaiting trial or execution. The modern prison system, with its focus on incarceration as punishment and potential rehabilitation, emerged much later.
3. **Chapter III-** This Chapter discusses that the prisoner's sentence can be mitigated or decreased by the relevant State government, the Apex Court, and the President of India. The Indian Penal Code of 1860 has several clauses that favour inmates. This

Act primarily defines numerous offenses under criminal law and sets the penalties for such acts. The state is crucial in the administration of criminal justice. In criminal cases, the State is always present. The State files the case on behalf of the victim because the wrongful conduct has a societal impact.

4. **Chapter IV-** Chapter IV deals with the information that suggests that while dedicated women's jails have significant unused capacity, overcrowding remains an issue in other types of jails housing female prisoners.
5. **Chapter V-** Chapter V deals with the worldwide jail administration that has reached an agreement to develop a consistent method to dealing with this challenge. As a result, the notion of rehabilitation as a solution both inside and outside of jail must be established in such a way that prisons are optimally correctional institutions
6. **Chapter VI –** Chapter VI deals with the prisons as last stop in the criminal justice system, where offenders are temporarily housed and kept away from society. Prisons are often effective in isolating offenders from society and punishing them for their crimes. The notion of jail has remained inextricably associated with theories of punishment, which are not universally embraced in practically all civilised nations across the world. No community can be crime-free, and criminals may be found in all age groups, both sexes, and all social classes. These criminals are brought to prison from disadvantaged societies and released after serving their terms. This particular jail sentence causes a slew of issues in the fields of correction, rehabilitation, and reform
7. **Chapter VII** deals with the conclusions and suggestions. prioritizing rehabilitation over punishment and fostering a more dynamic justice system within prisons, the goal is to create a more effective system that promotes positive societal outcomes.

CHAPTER II

PRISON REFORMS AND INTERNATIONAL CONVENTIONS

Prelude

India's prison system has undergone a significant transformation throughout history.

- **Early Period (up to mid-16th century):** Prisons primarily functioned as dungeons or holding cells located within castles or fortified cities. They held criminals awaiting trial or execution.
- **Second Phase (mid-16th century onwards):** This period saw experimentation with imprisonment as a form of punishment, particularly for specific types of offenders, often young people.
- **Later Developments:** Over time, imprisonment became a more widely used punishment, eventually even replacing capital punishment in some cases⁶⁵.

The concept of prisons has existed for millennia, with early versions resembling dungeons in various civilizations like Rome, Egypt, China, and India. These were documented by scholars like [e.g., Marc Mauer in "The Future of Incarceration"]. However, imprisonment as a specific punishment is a more recent development. Historically, jails served primarily as temporary holding facilities for those awaiting trial or execution. The modern prison system, with its focus on incarceration as punishment and potential rehabilitation, emerged much later⁶⁶.

2.1 Evolution of Prison System: Ancient, Medieval, Modern

Early jails in India were just places of imprisonment where a criminal was confined until trial, verdict, and execution. During the early period of ancient civilization in India, when Dharma was Supreme, the criminal was treated with the utmost tolerance, but this was later superseded in the middle ages by the political party of the King. The ancient times

⁶⁵ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" *available at*: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited February 16, 2023).

⁶⁶ "Criminological and Criminal Justice Education in India: A Comparative Note: Journal of Criminal Justice Education: Vol 19 , No 1 - Get Access," *available at*: <https://www.tandfonline.com/doi/full/10.1080/10511250801892987> (last visited April 23, 2023).

alludes to four types of punishment (Danda), namely, gentle admonition, harsh reproof, fines, and physical penalties, and states that these punishments may be inflicted alone or in combination depending on the nature of the violation⁶⁷.

Manu's teachings, as articulated by Yagnavalkya, Kautilya, and others, served as the foundation for ancient Indian civilisation. Among the several types of corporal punishment recognised in ancient Indian penology – branding, hanging, mutilation, and death – imprisonment was the most moderately punished. The major objective of incarceration was to keep wrongdoers away from members of the social order so that they did not taint them. The conditions in these dungeons were utterly dark, frigid and damp, and lighted. There were no human habitation facilities and no basic hygienic measures⁶⁸.

Fines, imprisonment, banishment, mutilation, and the death sentence were the most commonly used penalties. Fines were the most common, and anyone in prison who could not pay his debt was sentenced to bondage until it was paid by his labour in prison. Once upon a time, our civilization was divided into four classes: Brahmin, Kshatriya, Vaishya, and Sudra. For murdering a Brahmin, the penalty was 1000 cows, 500 cows for murdering a Kshatriya, and 100 cows for murdering a Kshatriya. Despite the fact that Indian legislation provides only a rudimentary picture of prison life, historical study of available data produced a clear picture. Several Smiriti authors had created work for prisons⁶⁹.

India is a sovereign nation-state. India has had a well-defined jail system since time immemorial. According to Kautilya's Arthshastra, vibhaktistripurushasthaanam apasaraatah sugupsakakshyam bandhanaagaaram kuarayet, a jail in the capital must be created and strictly guarded to offer separate housing for men and women. Segregation of offenders based on sex was therefore always kept in mind even at the time, reflecting the state's thorough and well-thought-out criminal administration. The employment of prisoners is mentioned in Kautilya's Arthshastra, which states, oornaawalkkaarpaasatoolshanakshaumaani chdandapratikaarineebhih kartayet, which indicates that the Superintendent of Weaving shall employ, among others, women who

⁶⁷ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited February 16, 2023). in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>.

⁶⁸ "Prison Reform In India- An Incomplete Saga | Journal of Positive School Psychology | Prison reforms in india," available at: <https://maroonecho.com/articles-on-prison-reform-in-india> (last visited July 23, 2023).

⁶⁹ *Ibid.*

are forced to work for cutting wool, fibre, hemp, etc. Another such reference in Kautilya's Arthshastra is, bahuhalaparikrishtaayaam swabhoomau daaskarmakardandapratikartribhirvapayet, which says that the Superintendent of Agriculture may use slaves, labourers, and inmates for agricultural activities such as spreading seeds on slate soil⁷⁰.

Kautilya advocated for the construction of jails as near to the road as possible to minimise the malaise of monotony and alone in prison life. At the same time, because spirituality was the dominant norm in ancient India, great care was taken to build the jails so that the prisoners may atone and remonstrate. In this environment, solitary confinement was widely advocated for in order to give the sentenced time to reflect. Kautilya also advocated for the release of some prisoners every fifth day in exchange for money, punishment, or a promise to work for societal upliftment.⁷¹

Offenders were the primary object of punishment in India during the Hindu period. Other recognised punishment tactics included mutilation, lashing, flogging, and branding, in addition to confinement, which was the mildest form of punishment at the time⁷².

According to the ancient writings, ancient Hindu Penology advocated incarcerating the evildoer and isolating him from society. Old and infirm convicts, orphans, and mid-level prisoners who committed to engage in social upliftment were released early on auspicious days like as festivals or the King's birthday. At the same time, Kautilya executed a prisoner who had escaped through jail breaking. The onus lay completely on the jail administration to maintain strict discipline within the walls of the facility. Kautilya emphasised the obligations of a jailor, stating that the jailor must be vigilant at all times and ensure that no act in jail goes unnoticed. During the early Asoka period, jails

⁷⁰ "Restoration of Released Prisoners to Society: Issues, Challenges and Further Ways; Insights from Kerala, India | Semantic Scholar,"available at: <https://www.semanticscholar.org/paper/Restoration-of-Released-Prisoners-to-Society%3A-and-Varghese-Raghavan/9e92a9e42cdfa780df3599b1f9f80d3904f4bfc4> (last visited June5, 2023).

⁷¹ Restoration of Released Prisoners to Society: Issues, Challenges and Further Ways; Insights from Kerala, India | Semantic Scholar,"available at: <https://www.semanticscholar.org/paper/Restoration-of-Released-Prisoners-to-Society%3A-and-Varghese-Raghavan/9e92a9e42cdfa780df3599b1f9f80d3904f4bfc4> (last visited June5, 2023)

⁷²Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN"available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023).in India: A " Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

remained unreformed. However, Asoka was imprisoned because he practised Buddhism⁷³.

Yajnavalkya revealed that the person who was instrumental in the prisoner's escape had got the death penalty. Vishnu suggested that anybody who caused injury to a man's sight be imprisoned. Kautilya has indicated the location of the jail as well as the dates on which the criminals may be released. The jail officials' names were Bhandanagaradhyaksa and Karka. The first was a carer, while the second was one of his assistants. Sannidhata oversaw the jail department. There are references to prisoners in Ashokan inscriptions, notably the sixth Rock Edict. Kautilya then defines the duties of the jailors, who must constantly monitor the conduct of the convicts and guards⁷⁴.

Ashoka must have been well-versed in the Arthashastra, as he claimed to have executed up to twenty-five captives in the 26 years following his accession to the throne. In the post-Ashokan period, the Jatakas portrays prisoners being freed during conflict. According to Harsha Charitha, the captives' living circumstances were deplorable⁷⁵.

Captives were generally abused, according to Hiuen-Tsang. During the Royal Coronation, prisoners were released. According to the previous dispute, there was no such thing as a proper jail system in ancient India, and incarceration as a form of punishment was not widespread when compared to the current system in India⁷⁶.

The legal system of Mediaeval India was comparable to that of Ancient India, and Muslim rulers of the time seldom, if ever, attempted to interfere in the administration of justice⁷⁷.

During the Mughal Empire, the origins and nature of law were predominantly Quranic and remained so. Crimes were divided into three categories:

- Offences against God,

⁷³ "Condition of Women Prisoners in Model Jail, Chandigarh: A Communication Study by Dr. Bharat Dhiman :: SSRN," available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4205096 (last visited June 26, 2023).

⁷⁴ *Ibid.*

⁷⁵ Varghese, J., & Raghavan, V. (2019). Restoration of Released Prisoners to Society: Issues, Challenges and Further Ways; Insights from Kerala, India. *International Annals of Criminology*, 57(1-2), 61-74. doi:10.1017/cri.2020.5

⁷⁶ *Ibid*

⁷⁷ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023). in India: A " Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

- Offences against State,
- Offences against private persons⁷⁸.

The punishment for these offences was divided into four categories:

- Hadd
- tazir
- Quisas
- Tasir⁷⁹.

For common criminals, incarceration was not utilised as a form of punishment. It was only in ancient times that it was largely used as a means of confinement. Around our territory, there were various strongholds where offenders were kept for trial and punishment⁸⁰.

The inmates' only saving grace was that they were only freed on rare occasions. Captives were housed in forts called as Bhandhi-khanas or Adab-Khanas, and perpetrators of major crimes were moved there from various locales. Punishment was often utilised as a measure of retribution or deterrence under the Mughal Empire in India. In this historical period, like in ancient India, incarceration as a form of punishment was not a common component of the legal system. Punishment was given outside of the jail, and only a small number of persons were imprisoned⁸¹. The most popular kinds of punishment were capital punishment, mutilation, flogging, exile fines, and incarceration. The fundamental feature of the period's imprisonment was the lack of a time restriction. The Quazi and the court had the ability to jail anybody for any crime that may result in a punishment, and the accused had to show signs of regret in order to be released: there were three noble prisons or castles at Gwalior, Ranthambore, and Rohtas. The Ranthambore Fort was used as a temporary prison for death row inmates. They would be forced down the slope to

⁷⁸ M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, *Journal of Criminal Justice Education*, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022

⁷⁹ *Ibid*

⁸⁰ Ayushi R. Saxena (2019), The candle burns: human rights violations of under trial prisoners in India with particular emphasis on Madhya Pradesh, *The International Journal of Human Rights*, Volume 24, 2020 - Issue 5, <https://doi.org/10.1080/13642987.2019.1663341>

⁸¹ *Ibid*

their deaths after two months. The Rohtas Prison was used to hold aristocrats sentenced to life imprisonment, from which few returned⁸².

Several historical accounts collected by travellers throughout the time period vividly show the awful conditions that prevailed in Mughal period jails. According to Monserrate, ordinary criminals were detained under supervision in shackles but not in jail⁸³.

Jails in Mughal India served a dual purpose: temporary confinement and punishment. Nicolan Manucci describes prisoners being brought in with heavy chains and leg irons. For short-term detentions, police lockups (Chabutra-l-kotwali) existed. Emperor Aurangzeb's newsletters frequently mention the imprisonment of criminals and even corrupt officials. Islamic law mandated Qazis (magistrates) to visit jails, investigate cases, and release repentant prisoners. However, this duty was often neglected. Releases, though rare, did occur on special occasions like the birth of a prince, the emperor's recovery from illness, or during royal visits to prison forts. Historical accounts mention Emperor Akbar ordering the release of all prisoners on the birth of his son Salim, and Jahangir doing the same upon his ascension to the throne. These examples highlight the arbitrary nature of imprisonment during this period⁸⁴. In 1618, he evaluated the situation of the convicts at the Fort. With the exception of those convicted of murder or other serious offences, he released everyone and distributed them according to their circumstances. During Shahajahan's reign, anytime the Emperor passed by a fort, the captives' problems were to be brought to his notice. At the beginning of his reign, he proceeded to the Fort of Gwalior and ordered the release of all prisoners save those convicted of exceptionally serious crimes. In the eleventh year of his reign, he happened to pass by the fort again. He investigated the offenders' cases, finding just 11 with long-term sentences and released them⁸⁵. In 1638, Shah Jahan freed convicts to commemorate

⁸² Varghese, J., & Raghavan, V. (2019). Restoration of Released Prisoners to Society: Issues, Challenges and Further Ways; Insights from Kerala, India. *International Annals of Criminology*, 57(1-2), 61-74. doi:10.1017/cri.2020.

⁸³ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023). in India: A " Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

⁸⁴ M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, *Journal of Criminal Justice Education*, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022

⁸⁵ M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, *Journal of Criminal Justice Education*, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022

Begam Sahib's recovery from sickness. Aurangzeb ordered the release of all prisoners detained in the 46th year of his reign, 1703, with the exception of a Faqir. Throughout the Mughal era, prisoners were released on notable occasions⁸⁶.

Prisons were also thought to be an uncommon type of punishment throughout the Maratha period. Mutilation, fines, and death were common penalties. As in the ancient and Mughal times, the type of punishment existed during the Maratha period as well. The basic characteristics of the Indian prison system previous to and during the British rule are as follows:

- There were no jails in the contemporary sense at the time.
- Internal prison management was not described.
- Courts were not prison feeding stations, and there were no distinguishing jail services.
- There were no laws controlling jail maintenance⁸⁷.

The prison system we have now was originally set up by the British during their rule. It wasn't like our old system, which was harsher and more brutal. The British system aimed to make people scared of going to jail as a punishment for bad things they did. Even though it wasn't perfect, it was better than what we had before because jail became the main way to punish criminals instead of harsher methods.⁸⁸ In 1784, the British Parliament authorised the East India Company to administer India, and various successful initiatives have been made since then to enhance the administration of Law and Justice. At the time, our country had only 143 civil prisons, 75 criminal jails, and 68 mixed prisons. In reality, these prisons were an extension of Mughal rule maintained by East India Company officials in their efforts to maintain calm and boost trade⁸⁹.

During the British colonial rule, significant criminal developments in India began. The British administration worked tirelessly to ameliorate the conditions of Indian prisoners and convicts. While keeping the sentiments of the locals in mind, radical changes were made to the then-existing prison system⁹⁰. When the British arrived, they made certain

⁸⁶ *Ibid*

⁸⁷ *Ibid*

⁸⁸ Arvind Verma(2002), Taking Justice Outside the Courts: Judicial Activism in India, The Howard journal of crime and justice, Volume40, Issue2, <https://doi.org/10.1111/1468-2311.00198>, Visited on, 10.12.2022

⁸⁹ *Ibid*

⁹⁰ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN"available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last

changes to the overall legal system. The Calcutta Supreme Court was established by the Regulating Act of 1773 to exercise all civil and criminal authority in line with the English jurisprudence⁹¹. The Indian Penal Code (1860) and the Criminal Procedure Code (1860) established the foundation of India's modern criminal justice system. These codes defined a wide range of offenses, outlined specific punishments, and set procedures for handling criminal cases.

As a result, by the year 1860, jail had become a recognised form of punishment across India. Jail became the smallest unit of the prison system, where offenders condemned by the courts would be imprisoned for a period of time. Prior to the use of incarceration as a form of punishment, the penal system put no financial load on the State⁹². As a result, the Directors of the East India Company were cautious to invest money in jail upkeep throughout the early period. As a result, despite the fact that the jails were fashioned after British models, living conditions in them were appalling.

In 1838, the Prison Enquiry Committee, headed by Lord Macaulay and established by the Government of India, submitted a scathing report. It accused the prison system of rampant corruption and mismanagement. Steps to minimise corruption among correctional workers were also discussed. It principally advised that each Central Jail accommodate no more than 1000 inmates. That each jail have adequate facilities to comfortably house the detainees, and that each province have an Inspector General of Prisons. It also pushed for the abolition of the practise of putting convicts to work on the road. In 1846, Agra's first central jail was built⁹³.

A turning point in 1855 The appointment of the first Inspector General of Prisons marked a significant reform in Indian prisons. This centralized leadership role aimed to

visited June 16, 2023).in India: A " Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

⁹¹ Regulating Act of 1773

⁹² Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN"available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023).in India: A " Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

⁹³ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN"available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023).in India: A " Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

enforce discipline not just among inmates but also curb potential abuses of power by jailors and other prison staff.⁹⁴

The deplorable state of Indian jails in the mid-19th century became tragically evident in 1864. The second Jail Reforms Committee documented a shocking number of prisoner deaths (over 46,000 in the previous year) attributed to appalling sanitary conditions. Overcrowding, poor ventilation, inadequate drainage, lack of proper clothing, and insufficient medical care were identified as major culprits. This report, along with concerns raised by the 1838 committee, highlighted the urgent need for reform.

In response, the committee made crucial recommendations, emphasizing the importance of providing prisoners with proper food, clothing, and adequate medical treatment. A significant step was mandating that all provincial jail superintendents be qualified Civil Surgeons, ensuring a baseline level of medical care within the prison system. These reforms aimed to address the dire conditions and high mortality rates plaguing Indian jails⁹⁵.

Following that, in 1877, the third Jail Reforms Committee published recommendations for general jail management. The fourth Jail Reforms Committee advocated changes to prison laws as well as the categorization and segregation of offenders into casual and habitual; the majority of its recommendations were included into the jail manuals of various provinces. The All India Committee of 1892 then re-examined the entire concept of jail administration and issued detailed rules, which acted as a precursor to the Prisons Act of 1894⁹⁶, which became law in all jails across the country.

The Prisons Act of 1894 empowered the then-existing provinces to enact their own jail laws for general prison management. The Act created prisoner classification and abolished the whipping sentence. The medical facilities previously provided to convicts in 1866 were enhanced, and more amenities were provided to female captives to safeguard them from contagious diseases⁹⁷.

The Act intended to establish consistency in convict treatment. Despite these changes, the Act's prison approach remained, for the most part, unchanged. The Reformatory Schools

⁹⁴ *Ibid*

⁹⁵ *Ibid*

⁹⁶ The Prisons Act of 1894

⁹⁷ *Ibid*

Act of 1897⁹⁸, which called for the transfer of criminals under the age of 15 to Reformatory Schools rather than prisons, was a landmark moment in the subject of prison reform. In reaction to the Prisoners Act of 1900⁹⁹, this was enacted. More serious efforts were made to improve the circumstances of juvenile and teenage criminals beginning in 1907, and they were now kept isolated from hardened adult offenders to avoid contamination. However, before to 1919, the primary goal of the prison system was deterrent, with minimal emphasis on rehabilitation. The system failed to recognise the potential benefits of individualising offenders¹⁰⁰.

The Indian freedom struggle had a considerable impact on jail conditions in the country at the time. The political inmates were split into two groups by the jail supervisors, who were mostly British officers: violent and nonviolent. Because most political prisoners were educated middle-class or financially affluent Indians, British prison authorities had to devise elaborate and meticulous jail regulations for the freedom fighters, including minute details about prisoners' food, medical facilities, visitors, and parole, among other things. With the increased pressure on the prison system as a consequence of the deluge of political prisoners, typical jail budgets were strained, and as a result, the non-political prisoner class, which was a traditional element of the system, was disregarded, and prison conditions worsened drastically. The final pre-independence prison reform effort came in 1919-1920 with the Cardew Committee, led by Sir Alexander Cardew, a former Inspector General of Prisons. This committee took a broader approach, visiting prisons not only in India but also in other Asian and Western countries. Their findings emphasized the need for a dual focus within prisons: deterrence and rehabilitation. The committee argued that prison administration should aim not just to punish offenders but also to prevent future crimes by facilitating their reintegration into society as rehabilitated individuals.

Their investigation covered a wide range of areas critical to achieving these goals. They examined prison staffing, the importance of prisoner classification and separation, labor programs, discipline measures, reform initiatives, hygiene and healthcare within prisons, and even aftercare programs for released inmates. The committee also advocated for a practical measure: determining a maximum capacity for each jail based on its physical size and layout.

⁹⁸ The Reformatory Schools Act of 1897

⁹⁹ The Prisons Act of 1900

¹⁰⁰ The Prisons Act of 1894

This comprehensive approach aimed to improve both the effectiveness and humanitarian conditions within the Indian prison system¹⁰¹.

Solitary confinement as a form of punishment was also criticised, with the state of Bombay taking the lead by eliminating solitary cells from its jails, and other provinces following suit and modifying their prisons. With the acceptance of the Montagu-Chelmsford Reforms Committee report, jail services became a State affair, and the provinces shown significant enthusiasm for jail reforms by creating a series of Jail Reforms Committees. The Pakwasa Committee proposed in 1949 that convicts be exploited as labour for road building with no meaningful control. The method of rewarding convicts for their labour was then adopted. Furthermore, legislation were implemented in jails that rewarded convicts who behaved well during their term with a proportionate reduction in the duration of their sentence. The ultimate purpose of these modifications was to protect society from criminals, to rehabilitate convicts, to prevent them, and to gain justice for acceptable illegal conduct¹⁰².

In the Seventh Schedule of the Indian Constitution, "prisons, reformatories, Borstal institutions, and other institutions of a similar nature, as well as those confined therein; agreements with other States for the use of jails and other facilities" are mentioned. As a result, the Union Government surrendered responsibility for improving state jails and administrative systems¹⁰³.

In 1951, at the request of the Indian government, the United Nations sent Dr. W.C. Reckless, a specialist in crime prevention and offender treatment, to advise on prison reforms. Dr. Reckless advocated for a multi-pronged approach:

- **Expanding probation and aftercare programs:** This aimed to provide support for released prisoners, reducing recidivism rates.
- **Specializing prison functions:** Creating prisons designed for specific purposes could improve rehabilitation efforts.

¹⁰¹ Dhiman, Dr. Bharat, Condition of Women Prisoners in Model Jail, Chandigarh: A Communication Study (August 26, 2022). Available at SSRN: <https://ssrn.com/abstract=4205096> or <http://dx.doi.org/10.2139/ssrn.4205096>

¹⁰² *Ibid*

¹⁰³ Indian constitution ,1950

- **Alternatives to short-term sentences:** Exploring options like fines or community service could reduce prison overcrowding.
- **Reducing pre-trial detention:** Addressing unnecessary delays in the judicial system could lessen the prison population.
- **Updating prison regulations:** Modernizing the Jail Manuals within the Indian Constitution could ensure alignment with evolving best practices.

The Indian government responded positively, giving unanimous endorsement to these key policy concepts for prison reform and rehabilitation. This visit marked a significant step towards a more progressive and comprehensive approach to the Indian prison system¹⁰⁴.

Correctional services should be incorporated into each state's Home Department, and a Central Bureau of Correctional Services should be established at the Centre.

- To reduce the jail population load, the reformatory processes of probation and parole should be used.
- Each state should develop aftercare institutions.
- That solitary confinement be forbidden as a method of punishment;
- That classification of prisoners was necessary for therapeutic purposes; and
- That state jail manuals be regularly updated.
- In response to Dr. Reckless' proposals, an All India Conference of Inspector Generals of Prisons was held in Bombay in 1952, and a Committee was constituted in 1953 to prepare a Draft All India Jail Manual¹⁰⁵.

The founding of the Central Bureau of Correctional Services, later called the National Organization of Social Defence, in 1975 was a watershed moment because this organisation performed research, training, and documentation on social defence issues and advised governments on them¹⁰⁶.

In 1972, the Indian government formed a Working Group on Prisons. Their 1973 report proposed two significant advancements:

¹⁰⁴ Sidhu, Sahibnoor Singh and Mishra, Utkarsh (2022) Prison reform In India : An incomplete saga. Journal of Positive School Psychology, 6 (7). pp. 2234-2250. ISSN 2717-7564

¹⁰⁵ *Ibid*

¹⁰⁶ *Ibid*

- **Dedicated Research Units:** The establishment of research units at the headquarters of each state's Inspector General of Prisons would allow for ongoing study and data collection to inform reform efforts.
- **State-level Training Schools:** Creating training schools within each state would provide prison staff with the knowledge and skills necessary to implement reforms effectively.

However, the Working Group's most critical recommendation focused on **integrating prison reform into the Five-Year Plan**. This crucial step aimed to secure dedicated budgetary allocations for reform initiatives. Linking funding directly to these efforts would ensure financial support for successful implementation of positive changes within the prison system¹⁰⁷.

In 1979, a Conference of Chief Secretaries put forth significant recommendations aimed at diminishing the jail population. These recommendations included the implementation of an efficient review system for undertrial prisoners, the engagement of either part-time or full-time law officers within jails to facilitate prisoners in contesting trials, the amendment of laws concerning prisoner transfer, and enhancements in the inspection and supervision systems within jails to mitigate corruption, indiscipline, and malpractices. Additionally, it was proposed to establish National and State Boards of Visitors to oversee these reforms. Furthermore, it was deemed necessary to revise the Jail Manuals, ensuring they are rewritten in easy-to-understand language to enhance accessibility and comprehension among other members¹⁰⁸.

In April 1980, the Indian government established the All India Jail Reforms Committee, led by retired Justice A.N. Mulla. This committee issued its first report in December 1980, focusing on Delhi's Central Jail, Tihar. Their final report, submitted in March 1983, advocated for the creation of a permanent body: a National Prison Commission. This commission would be tasked with overseeing the modernization of prisons across India. The establishment of such a permanent organization signaled the government's commitment to ongoing reform efforts within the prison system. The Committee also recommended getting rid of the division between Union and State jail management. They

¹⁰⁷ Jain, Amit Kumar; Tripathi, Upendra Nabh. Educational Quest; New Delhi Vol. 9, Iss. 1, (Apr 2018): 39-46. DOI:10.30954/2230-7311.2018.04.06

¹⁰⁸ McClish, M. (2019). FROM LAW TO DHARMA: STATE LAW AND SACRED DUTY IN ANCIENT INDIA. Journal of Law and Religion, 34(3), 284-309. doi:10.1017/jlr.2019.36

suggested separating mentally disturbed prisoners and moving them to mental health facilities. Additionally, they strongly advised against mixing juvenile offenders with hardened criminals in prisons, as it led to severe mistreatment and assaults on the young inmates. This issue came to light particularly in cases like the Tihar Jail Inmate cases and the Agra Protective Home case. Consequently, laws were enacted to ensure the security and proper care of delinquent minors. Another suggestion from the Mulla Committee was to categorize convicts based on fair and scientific criteria, following the international practice of appointing ombudsmen to address prisoner concerns¹⁰⁹.

The Mulla Committee's extensive report outlined 659 recommendations for prison reform. Some of the most significant proposals included:

- **Constitutional Recognition:** The committee advocated for enshrining a "Directive Principle of National Policy on Prisons" within the Indian Constitution (Part IV). This would elevate prison reform to a national priority.
- **Shared Legislative Responsibility:** They recommended including "Prisons and associated services" in the Concurrent List of the Seventh Schedule (Indian Constitution). This would allow for both central and state governments to enact legislation related to prisons.
- **Improved Living Conditions:** The report emphasized the need for better living conditions for prisoners, including improved food, clothing, sanitation, and ventilation within jail facilities.
- **Professionalized Staff:** They called for enhanced training for prison staff and the creation of distinct professional cadres within the prison system. Notably, they recommended establishing an "Indian Prisons and Correctional Service" as an All India Service for officer recruitment.
- **Focus on Rehabilitation:** The committee stressed the importance of aftercare, rehabilitation, and probation programs as integral parts of the prison system, aiming to reduce recidivism rates.
- **Open Rehabilitation:** They proposed developing a plan for media and public visits to prisons, promoting a more transparent and accountable prison system.

¹⁰⁹ *Ibid*

- **Reduced Pre-Trial Detention:** The report urged for expedited trials and a liberalization of bail provisions to reduce the number of people incarcerated while awaiting trial.
- **Separation of Inmates:** They recommended separating undertrial prisoners from convicted criminals within jails.
- **Financial Backing:** Recognizing the need for resources, the Mulla Committee emphasized the importance of securing adequate budgetary allocations for successful prison reform initiatives.

These comprehensive recommendations aimed to modernize India's prison system, focusing on improved conditions, professionalization of staff, rehabilitation efforts, and a more open and accountable approach¹¹⁰.

In May 1956, a National Expert Committee on Women Prisoners was established under the leadership of Justice V.R. Krishna Iyer. Their report, issued in June 1987, addressed the specific needs of female inmates. A key recommendation focused on increasing the number of women police officers. The committee believed this would enhance the handling of female and juvenile delinquents by officers who could better understand and address their concerns. The report also emphasized the importance of training women police officers in specific skills:

- **Non-violent Restraint:** The committee advocated for training in methods of restraint that rely on patience, empathy, and de-escalation tactics, rather than physical force.
- **Compassionate Crowd Control:** They highlighted the need for skills in managing protests and public disturbances with understanding and compassion¹¹¹.

The Committee primarily advocated for:

1. In India, a national policy for women convicts is being developed.
2. Adoption of new laws and regulations governing the sentencing and behaviour of female convicts;
3. Free legal representation for female convicts;
4. Construction of a women's jail; and

¹¹⁰ *Ibid*

¹¹¹ *Ibid*

5. Provision for the proper care of a child delivered to a female prisoner in terms of medical assistance and nourishment,¹¹²

The Supreme Court's landmark judgment in *Ramanmurthy v. State of Karnataka* (1996)¹¹³ addressed various aspects of India's prison system. The Court issued several key directives to improve conditions and practices:

1. **Reduce Under-Trial Detention:** The Court emphasized implementing recommendations from the Law Commission's 78th Report (Chapter 9) to address overcrowding caused by lengthy pre-trial detentions. (para 20A)
2. **Simplify Release Procedures:** The Court directed states to follow suggestions made by the Mulla Committee (Volume I, Chapter 20) regarding streamlining parole and early release mechanisms. (Para 23)
3. **Improve Under-Trial Prisoner Management:** The Court suggested exploring the possibility of prison personnel presenting under-trial prisoners in court on remand dates, potentially reducing unnecessary transfers and appearances. (Para 27)
4. **Modernize Prison Legislation:** The Court recognized the need for a new Prison Act to replace the outdated Indian Prisons Act of 1894. It acknowledged the National Human Rights Commission's efforts to draft model legislation and encouraged states to update their own laws to align with national standards. (Para 31)
5. **Develop a Model Jail Manual:** The Court directed authorities to explore the creation of a new, standardized All India Jail Manual. (Para 31)
6. **Ensure Proper Healthcare and Sanitation:** The Court emphasized the importance of implementing the Mulla Committee's recommendations (Chapter 29) regarding adequate medical facilities and maintaining sanitary conditions within prisons. (Paras 35 & 36)
7. **Establish Grievance Mechanisms:** The Court called for the installation of complaint boxes in all jails to provide inmates with a channel to voice their concerns. (Para 37)
8. **Improve Communication:** The Court directed consideration of liberalizing communication facilities for inmates. (Para 40)

¹¹² *Ibid*

¹¹³ *Ramanmurthy v. State of Karnataka* (1997) 2 scc 642

9. **Streamline Visits:** The Court stressed the need to streamline procedures for correctional visits to ensure smoother interactions between inmates and approved visitors. (Para 42)¹¹⁴

These directives from the Supreme Court aimed to address a range of critical issues within the Indian prison system, focusing on reducing overcrowding, improving pre-trial procedures, enhancing healthcare and living conditions, and ensuring better communication and grievance redressal mechanisms for inmates¹¹⁵.

In response to the judicial directives, a team was formed inside the Bureau of Police Research and to create a Jail Manual, which was adopted by the Central government and distributed to state governments in late December 2003.¹¹⁶

In an effort to modernize prison administration, the Indian government circulated a draft bill in 1999. The "Prison Administration and Treatment of Prisoners Bill" (1998) aimed to replace the outdated Prisons Act of 1894¹¹⁷. Unfortunately, this bill has yet to be passed.

Recognizing the need for reform, the Ministry of Home Affairs took further action in 2000. They established a committee specifically tasked with formulating a "Model Prison Handbook." This handbook would provide practical guidelines for improved prison management and administration within India¹¹⁸.

There has been a steady extension of the jurisprudence of prisoners' rights in India through a succession of studies produced by various committees, along with several court rulings on the issue of jail reforms. Several substantial reforms have occurred in India's jail system during the last few decades, however much more progress is required.¹¹⁹

The contemporary Indian jail is a therapy and rehabilitation facility for convicts. A categorization of inmates has been developed to accommodate the new treatment techniques; convicts may now access services such as furlough, medical help, educational

¹¹⁴ Indian Prisons Act of 1894

¹¹⁵ Ramanmurthv v. State of Karnataka (1997) 2 scc 642

¹¹⁶ *Ibid*

¹¹⁷ Indian Prisons Act of 1894

¹¹⁸ McClish, M. (2019). FROM LAW TO DHARMA: STATE LAW AND SACRED DUTY IN ANCIENT INDIA. *Journal of Law and Religion*, 34(3), 284-309. doi:10.1017/jlr.2019.36

¹¹⁹ Ayushi R. Saxena (2019), The candle burns: human rights violations of under trial prisoners in India with particular emphasis on Madhya Pradesh, *The International Journal of Human Rights*, Volume 24, 2020 - Issue 5, <https://doi.org/10.1080/13642987.2019.1663341>

or occupational training, and so on. The most recent topics under consideration include open-air jails and community service as an alternative manner of punishment. Liberal therapeutic approaches are rapidly replacing conservative and outmoded methods of dealing with offenders¹²⁰.

Despite all reformatory initiatives, the general state of Indian jails remains far from good. Because of the social scorn for jail life, all segments of society are unaware, if not misinformed, about life inside the prison. The media seldom spotlights prison life; it only does so when a high-profile individual is involved, and even then, prison life is presented favourably or badly, with the criminal in mind and the specific media's pre-existing beliefs, if not a persistent funded campaign for or against the criminal. Uninformed and ill-informed public opinion appears to be least concerned with even humanising, let alone modernising, jails. Unfortunately, most of India's excellent work on this issue has remained merely academic, with little improvement for the prisoner, for whose fundamental rights the system has been issuing fresh and newer scientific suggestions and even court instructions. To this day, prisoners in India are denied not just their human rights, but also their basic right to be human¹²¹.

The Government of India established a Committee on Jail Reform in 1980, chaired by Justice A. N. Mulla. The Committee's primary goals were to evaluate laws, rules, and regulations in India with the overarching goal of safeguarding society and rehabilitating criminals in mind. In 1983, the Mulla Committee issued its report. According to the committee, jail conditions in India are severe and are attacked by all sections of society, including the media and the press¹²².

The committee also illustrated the negative impact of prison culture on non-violent criminals.

The Justice Krishna Iyer Committee was constituted by the Government of India in 1987 to conduct a study on the plight of women inmates in India. It has advised that more women be recruited into the police force due to their unique role in dealing with women and children criminals¹²³.

2.2 Classification Of Prisoners: Pre-Trial, Under Trial And Convicted

¹²⁰ *Ibid*

¹²¹ *Ibid*

¹²² *Ibid*

¹²³ *Ibid*

Prisoners are classified into three types, as shown below.:-

1. Pre-trial prisoners,
2. Under-trial prisoners, and
3. Convicted prisoners¹²⁴.

Pre-trial detainees are the accused who have been held by The state machinery utilized for questioning and conducting investigations based on First Information Reports (F.I.R.) or evidence found during the investigation process.

Pre-trial Detention Individuals are held in state custody for a limited period before their trial. During this time, no formal charges (**charge sheet**) are filed by either the police or the court. They are considered innocent until proven guilty (**burden of proof rests on the prosecution**) and are entitled to treatment reflecting their pre-trial status, which includes the presumption of innocence (**benefit of the doubt**). Until proven guilty, the accused is presumed innocent. The state is entitled to take the initiative to regulate crime at the first level in order to maintain law and order in society, as well as to acquire evidence and details of the alleged offence. These powers are broad, yet they cannot be used arbitrarily and negatively against a person's personal dignity and liberty. Because the police force is monopolised and permitted to be used as state apparatus. There are numerous constraints on police authority in order to protect the Human Rights of pre-trial detainees¹²⁵.

An under-trial inmate is someone held in state custody while awaiting their trial. They may have been arrested and charged by the police, but the case hasn't yet gone to court. In simpler terms, an under-trial prisoner is in jail awaiting trial, and the police investigation might still be ongoing or charges might not have been formally filed (chargesheeted) yet¹²⁶.

A convicted prisoner is one who has been judged to be guilty of an offence committed by him through due process of law. He is sentenced to jail by the appropriate court as a criminal action. There are many possibilities for pre-trial and undertrial prisoners to be acquitted as innocent after a just and fair trial, whereas convicted prisoners must suffer the punishment for their offences because they were found guilty of the offence and thus,

¹²⁴ Arvind Verma(2002), Taking Justice Outside the Courts: Judicial Activism in India, The Howard journal of crime and justice, Volume40, Issue2, <https://doi.org/10.1111/1468-2311.00198>, Visited on, 10.12.2022

¹²⁵ *Ibid*

¹²⁶ *Ibid*

their liberties are restricted by the State with the help of the judiciary and jail authority as a penal action¹²⁷.

2.3 HISTORICAL REVIEW OF PRISON REFORMS ON INDIA

2.3.1 Pre Independence Reforms

The administrative organisation of the country, Britain, has made little changes to the current legal system. It was undoubtedly difficult for the English to take on the responsibility of administering criminal justice all at once, but they couldn't avoid it for long. The Regulating Act of 1773 established the Supreme Court of Calcutta to exercise "all civil, criminal, admiralty, and ecclesiastical jurisdiction" and signalled the British Government's desire to apply English norms of law and English superintendence of law and justice¹²⁸.

In 1832, the British Parliament, frustrated by the "anomalous and often contradictory judicatures by which laws were formerly administered," passed the Great Reform Act, followed by the Judicature Act of 1833. These acts significantly reformed the legal system, introducing standardized procedures, creating central courts, and professionalizing the judiciary. This marked a major turning point towards a more centralized and consistent legal framework in Britain.¹²⁹

An Indian Law Commission was established to offer a cohesive set of legal norms. The Royal Proclamation was issued in 1858, and the British monarch seized primary authority from then on. The Civil Procedure Code¹³⁰, the Indian Penal Code¹³¹, and the Criminal Procedure Code¹³², all of which had been in the works for a long time, were all adopted during the following three years. In India, an unified system of legal justice was established. The Indian Penal Code outlined each offence and imposed penalty for it. Imprisonment became the most visible and widely employed device of criminal

¹²⁷ *Ibid*

¹²⁸ The Regulating Act of 1773

¹²⁹ Tamara Makarenko, Foundations and evolution of the crime–terror nexus, Routledge Handbook of Transnational Organized Crime, 2021, 9781003044703, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003044703-18/foundations-evolution-crime-terror-nexus-tamara-makarenko>

¹³⁰ The Code Of Civil Procedure, 1908. Act No. 5 Of 1908

¹³¹ The Indian Penal Code. Act No. 45 Of 1860

¹³² The Code Of Criminal Procedure, 1973, Act No. 2 Of 1974

punishment. The first jail reform project in India began in 1835. There were 43 civil, 75 criminal, and 68 mixed jails this year¹³³.

These facilities were governed by District Magistrates who were notorious for their apathy and aversion to this element of administration, and as a result, circumstances were appalling. There was little food, poor clothes, and inadequate medical care for the convicts. The deplorable state of Indian jails under the East India Company caught the attention of a key figure: Thomas Macaulay. The Company directors were reluctant to spend money on improving prison conditions for inmates. However, Macaulay successfully lobbied the Government of India to address the issue. In 1836, the first ever prison reform committee in India was established. This committee, formed on January 2nd, was tasked with investigating prison conditions and reporting back. Their findings, presented in 1838, were scathing. The report documented rampant corruption within the prison system, lax discipline among staff, and the concerning practice of utilizing prisoners for extramural labor on public roads. This marked a crucial turning point, highlighting the urgent need for prison reform in India¹³⁴.

The committee's proposed reforms were surprisingly harsh, rejecting all efforts to improve prisoners through moral, religious teachings, education, or even reward systems for good behavior. Instead, they advocated for the construction of central prisons where inmates would be subjected to "dull, monotonous, wearisome, and uninteresting work." This grueling labor wouldn't even offer the incentive of potentially earning an earlier release through hard work. Their recommendations prioritized punishment and deterrence over rehabilitation, representing a particularly punitive approach to prison reform.

The 1836 Prison Committee, reflecting contemporary British penal philosophies, prioritized deterrence over rehabilitation. Their proposals emphasized harsh punishments and monotonous labor for inmates. This approach influenced the construction of India's first central jail in Agra in 1846, followed by several others across the country.

However, the committee's report also sparked positive changes. Their recommendation for centralized leadership within the prison system led to the appointment of the first Inspector-

¹³³ Tamara Makarenko, Foundations and evolution of the crime–terror nexus, Routledge Handbook of Transnational Organized Crime, 2021, 9781003044703, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003044703-18/foundations-evolution-crime-terror-nexus-tamara-makarenko>

¹³⁴ *Ibid*

General of Prisons in the North-Western Province (present-day Uttar Pradesh) in 1844. Initially a trial position, its success led to its permanent establishment in 1850. Other provinces followed suit, with appointments in Punjab, Bengal, Bombay, and Madras by 1854.

Another important development stemmed from the successful experiment of utilizing doctors (Civil Surgeons) as District Jail Superintendents in the North-Western Province. Recognizing the benefits of this approach, the Government of India mandated this practice across India in 1864. This move aimed to improve the overall health and well-being of inmates within the prison system.

While the 1836 Committee's focus on deterrence remained controversial, it did initiate a period of reform in Indian prisons. The establishment of central jails and improved leadership structures laid the groundwork for further advancements in prison administration and care for inmates¹³⁵.

The Macaulay Committee deserves credit for elevating the issue of prison reform to a higher level than it would have been otherwise.

However, significant progress could not have been expected all at once. In 1864, the Government of India created a second commission to study jail administration issues, motivated in part by the high death rate in jails and in part by other related reasons.

The 1864 committee established a minimum space in jail for each prisoner, i.e. 54 superficial feet and 640 cubic feet per prisoner, advised improvements in nutrition, clothes, and bedding, and insisted on frequent medical inspections of convicts. They also proposed that every central jail have cellular housing for 15% of its population, that minors be kept separate from other convicts, and that they be educated¹³⁶.

There appears to have been a big debate in 1864 over whether jails should have cells accommodation or association barracks. Solitary confinement was used in both the Pennsylvania and Auburn systems in the United States. In England, the Lords Committee of 1863 advocated the distinct system, which was approved by the Prison Act of 1865. The cellular system was popular with prison reformers in other nations as well. Cellular

¹³⁵ *Ibid*

¹³⁶ *Ibid*

housing was also thought to be the best option for jail life in India, but it could not be implemented due to the high costs involved¹³⁷.

The Government of India established the Prisons Act in 1870 to reform the country's jail laws. It stipulated the appointment of a superintendent, a medical officer, a jailer, and any other subordinate officers deemed essential by the local administration¹³⁸. The superintendent was given authority to designate the jailor and Deputy Jailor with the consent of the Inspector General of Prisons. The Act¹³⁹ outlined the superintendent's responsibilities, which included managing the prison in all things pertaining to discipline, labour, spending, punishment, and control, as well as communicating with and via the Inspector-General on all topics pertaining to the prison. The Act¹⁴⁰ provided for the division of convicts into men and females, children and adults, and criminals and civils. Civil inmates were permitted to practise their particular skills and professions with the consent of the superintendent. Prisoners condemned to ordinary imprisonment were also allowed to work, and no prisoner who had not been sentenced to hard imprisonment was to be penalised for job neglect. The Act¹⁴¹ defined a list of prison offences and empowered the superintendent to punish such offences with solitary confinement for no more than seven days, close confinement for no more than three days, a diet restricted to the extent prescribed by the local government, corporal punishment, and hard labour for no more than seven days. The Act¹⁴² went into effect on December 1, 1870, and it, along with the Prisons Act of 1894, provides the legal foundation of India's current jail system. The Act¹⁴³ attempted to give effect to the recommendations of the 1864 committee by bringing the issue of prison management to the forefront. The Inspector-General of Prisons was already in place in North-Western Province, and efforts were underway to improve conditions.

In 1877, the third All India Jail Committee was formed. The group was made up exclusively of professionals who worked in prisons. It assessed the jail management in general and was largely focused with the details of prison labour rather than the overall goals and principles of administration. The 1889 Indian Jails Committee marked a

¹³⁷ Prison Act of 1865

¹³⁸ Prisons Act in 1870

¹³⁹ *Ibid*

¹⁴⁰ *Ibid*

¹⁴¹ *Ibid*

¹⁴² *Ibid*

¹⁴³ Prisons Act of 1894

significant shift in approach. Unlike previous reports laden with lengthy debates, this committee presented a "business-like report" focusing on practical reforms. Their investigation covered a broad range of internal prison administration issues and yielded comprehensive recommendations for improved prison management. A key proposal was the separation of under-trial prisoners from convicted criminals. They also advocated for classifying prisoners based on their criminal history (casual or habitual offenders). These recommendations, widely adopted by various provincial Jail Manuals, had a lasting impact on prison administration. The legacy of the 1889 committee's work was further solidified by the following All India Committee in 1892, which delved deeper into the system by addressing prison offenses and appropriate punishments¹⁴⁴.

The Committee's report was adopted by the Government of India, which enacted the Prisons Act of 1894¹⁴⁵. This Act stipulated that convicted criminals might be imprisoned in groups or individually in cells, or both, or in a combination of the two. The Act mandated nine hours of labour every day for a criminal prisoner condemned to labour or engaged on his own volition¹⁴⁶. It went on to specify what constituted a jail offence and imposed sanctions ranging from a written warning to six months of solitary confinement. Subject to certain conditions, any two of the penalties might be imposed for any offence. This Act was mostly founded on deterrent principles and mirrored current public opinion in England on the matter¹⁴⁷.

Despite growing calls for reform, politicians often prioritized prison operations over prisoner well-being. Their concerns mainly centered on managing prison offenses and punishments, neglecting the potential consequences of incarceration.

However, a crucial step toward rehabilitation emerged in 1897 with the passage of the Reformatory Schools Act. This act superseded previous, largely ineffective legislation on juvenile offenders. It mandated courts to send "youthful offenders" under the age of fifteen to specialized Reformatory Schools instead of regular prisons. These schools aimed to provide a more rehabilitative environment for young people, offering detention periods of three to

¹⁴⁴ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023).in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

¹⁴⁵ Prisons Act of 1894

¹⁴⁶ *Ibid*

¹⁴⁷ *Ibid*

seven years. The Reformatory Schools Act marked a shift in recognizing the need for alternative approaches for juvenile offenders, separate from the adult prison system¹⁴⁸.

Uttar Pradesh took a concrete step towards juvenile rehabilitation with the establishment of a Reformatory School at Chunar under the Reformatory Schools Act. Notably, the school initially fell under the Education Department's purview (until 1942), reflecting the growing recognition of education and rehabilitation within the justice system for young offenders. This approach mirrored progressive trends in England, where prison reform philosophies were also evolving. As the 19th century drew to a close, a shift in perspective was underway, moving away from purely punitive measures and towards a more holistic approach to prison management¹⁴⁹.

These new concepts were expressed by the Indian Jails Committee in 1919. The group researched the prison system in England, Scotland, the United States, Japan, the Philippines, and Hong Kong and issued a thorough report proposing far-reaching improvements in numerous elements of prison management.

The Committee identified a critical shortcoming in Indian jail administration: a lack of focus on prisoner rehabilitation. They argued that the system had failed to recognize prisoners as individuals, treating them merely as cogs in the administrative machinery. This approach neglected the potential impact of humane and civilizing influences on prisoners' mindsets. The Committee emphasized the need for a fundamental shift in perspective, one that goes beyond isolated reforms. They called for a broader recognition of the importance of keeping people out of prison in the first place, urging collaboration between prison authorities and judges. Furthermore, the Committee declared a clear goal for prison administration: to prevent future crimes by rehabilitating offenders and successfully reintegrating them into society¹⁵⁰.

¹⁴⁸ *Ibid*

“Section 8 in The Prisons Act, 1894

8. This section establishes a clear hierarchy within the prison, with all officers ultimately reporting to the Superintendent. The Jailer holds authority over lower-ranking personnel, assigning their duties with the Superintendent's consent or in accordance with established rules.

¹⁴⁹ Divya Dubey, “Overview of Correctional Reform In India: A ‘Different’ Approach to Offender Rehabilitation by Divya Dubey :: SSRN” available at:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023).in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

¹⁵⁰ *Ibid*

The Committee addressed various aspects of prison administration, including staffing, separation of inmates, labor, discipline, rehabilitation efforts, hygiene, medical care, and post-release support programs like probation and borstal treatment.

A key recommendation focused on strengthening prison staff. They proposed assigning a full-time superintendent to manage every central prison and all district jails with an average population exceeding 300 inmates. The Committee also endorsed the existing practice of recruiting superintendents for central prisons from the Indian Medical Service, valuing their combined medical and administrative expertise.

To improve overall staff efficiency, the report advocated for a two-tiered recruitment system within the prison establishment.

- **Executive Staff:** This category would comprise jailors and deputy jailors, responsible for the direct supervision and security of inmates.
- **Clerical Staff:** This category would include clerks, accountants, and storekeepers, handling administrative and logistical functions within the prisons.

The Committee further recommended establishing a mandatory training and probation period for all newly appointed officers to ensure they possess the necessary skills and qualifications for their roles within the prison system¹⁵¹.

While the Committee didn't recommend a separate jail medical service, they did advocate for improved medical care within prisons. Their proposal called for assigning at least one full-time medical subordinate to each central and district jail.

The Committee also recognized the issue of overworked prison officers. They recommended streamlining the structure of convict officers, suggesting there should only be two remaining grades in the future:

- **Convict Night Watchmen:** These inmates would assist with nighttime security within the prison.
- **Convict Overseers:** These inmates would have supervisory roles over other prisoners, potentially assisting with tasks or maintaining order.

¹⁵¹ *Ibid*

These recommendations aimed to address staff workload while ensuring some level of oversight and assistance within prison facilities¹⁵².

In terms of prisoner categorization, the committee developed a new meaning of the word "habitual" in order to make the presence of one or more previous convictions, or an order to find security under sections 110¹⁵³ and 118¹⁵⁴ of the Criminal Procedure Code, a necessary prerequisite. It advised further subclassification of all nonhabituals into two categories:

(a) star and

(b) ordinary¹⁵⁵.

The Committee's views on allowing prisoners to spend nights together (association) or apart (separation) were divided. Three members supported association, two favored separation for all, and one advocated for a mixed approach based on offender type.

The Committee recommended limiting corporal punishment to extreme situations like mutiny or attacks on prison staff or visitors. Instead, they emphasized using positive incentives like increased remission time, additional letter writing privileges, and visits with family and friends to promote good behavior.

The Committee balanced two objectives for prison labor: reforming criminals through work and producing marketable goods. They recognized the importance of using power-driven

¹⁵² *Ibid*

¹⁵³ Section 110 in The Code Of Criminal Procedure, 1973

This section deals with putting restrictions on people who repeatedly break the law. It allows a (Magistrate) to take action if they believe someone:

- Steals things often (robber, housebreaker, thief, forger)
- Buys stolen stuff knowing it's stolen
- Helps criminals hide or sell stolen stuff
- Kidnaps abducts, threatens, cheats, damages property, or commits certain other crimes often
- Breaks the peace frequently
- Breaks laws related to drugs, foreign currency, employee funds, food safety, essential goods, discrimination, customs, or other specific laws about hoarding, profiteering, or corruption.
- Is so dangerous that letting them roam free puts the community at risk.

¹⁵⁴ Section 118. If the police investigate someone suspected of needing to behave better to keep the peace, but the investigation doesn't find enough evidence-

- The judge writes down that the person doesn't need to promise good behavior.
- If the person was arrested for this investigation, they get released.
- If the person wasn't arrested, they are officially free of this investigation. Under act of THE CODE OF CRIMINAL PROCEDURE, 1973, ACT NO. 2 OF 1974

¹⁵⁵ THE CODE OF CRIMINAL PROCEDURE, 1973, ACT NO. 2 OF 1974

machinery to modernize prison industries. However, they cautioned against harming private businesses by carefully selecting industries for prison manufacturing. The goal was to avoid competing with vulnerable sectors or emerging industries within the free market.

Recognizing the importance of rehabilitation, the Committee proposed educational programs within prisons. They recommended offering basic education (up to elementary level) for inmates under 25 years old across all central and district jails. Additionally, they emphasized the need for libraries stocked with appropriate reading materials for prisoners. Finally, the Committee advocated for religious and moral training programs, but stressed the importance of avoiding any practices that could exploit or reinforce existing religious or caste prejudices within the prison population. These recommendations aimed to equip inmates with knowledge, positive influences, and a stronger foundation for reintegration into society upon release.

The Committee also recommended dietary changes, better cuisine, better clothes, electric light installations, modern hospital equipment, a specific institution for the mentally ill, and improved jail sanitation and medical treatment¹⁵⁶.

To assist released inmates, it was suggested that a central association in each province's capital city and a local society for each central and district jail outside the capital society be established. The Committee believed that if residences, workshops, or labour yards were established to aid ex-prisoners, the assistance or employment offered should be absolutely transitory.

The Committee also established safeguards to prevent certain types of criminals from being sentenced to jail. According to the committee, the commitment to incarceration of youngsters and young inmates, whether after conviction or while on remand, was opposed to national policy. Remand For such children, homes and children's courts should be created, and the procedure in these courts should be as casual and flexible as feasible. Probation officials should be established to assist courts in gathering information about children and supervising them once they are released.

¹⁵⁶ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023).in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

Adolescent criminals should not be transferred to regular jails, but rather to special facilities with a reformatory mission¹⁵⁷.

The Committee's Report is a massive amount of work and a watershed moment in Indian prison reform. It believed competent supervision, a properly recruited and compensated staff, correct categorization and separation of convicts, useful labour, reformatory influences, and help to prisoners on release to be the elements of prison management, and it emphasised the genuine economy of reform expenditure.

The Report's publication provided an immediate and significant push to jail reforms throughout India. The Government of India took its strictures and recommendations seriously and gave directives to all local governments to read the report and execute its recommendations. Not only were prison departments affected, but penal reform also received a significant boost¹⁵⁸.

The passage of the Borstal Act¹⁵⁹, the Children and Probation Acts¹⁶⁰, and the Punjab Good Conduct Prisoners' Provisional Release Act¹⁶¹ were clearly the direct or indirect outcome of the Report's public interest. It might be said that the Report "laid the foundation stone of India's contemporary jail system." Unfortunately, the jail reform campaign was hampered by constitutional amendments brought about by the Government of India Act, 1919.

The passage of this Act resulted in the transfer of control of the prison department from the Government of India to the Provincial Government. Prisons were placed on the reserved list under the province's dyarchical structure, delaying the jail reform movement for a decade¹⁶².

In terms of jail reform, England and India are very similar. In the United Kingdom, interest in prison reform was heightened when a significant number of educated, public-

¹⁵⁷ *Ibid*

¹⁵⁸ *Ibid*

¹⁵⁹ The Punjab Borstal Act, 1926. Act 11 of 1926

¹⁶⁰ THE CHILDREN ACT, 1960 1. ACT NO. 60 OF 1960

¹⁶¹ THE GOOD CONDUCT PRISONERS' PROBATIONAL. RELEASE ACT, 1926. (Punjab Act No. 10 of 1926)

¹⁶² Government of India Act, 1919

spirited, and conscientious men and women were imprisoned as a result of the women's suffrage movement¹⁶³.

They were disheartened by their own experiences and sorrows when they came out. They critically observed what they saw and recounted it after they were released. The years 1921-22 in India were marked by the Non-cooperation Movement, in which supporters of independence willingly risked incarceration¹⁶⁴.

They were outraged by the deplorable prison conditions and urged the provincial administration to investigate them. As a result, the U.P. Government established a Jails Inquiry Committee to conduct investigations into jail administration and jail service organisation, with a focus on the management of central prisons and bigger district jails. The Committee's Report is especially significant since it addresses issues such as prison administration, categorization of inmates, prison labour, prison offences, and sanctions for the first time in connection to situations in this region. But, before any progress could be made, war broke out on the continent of Europe, and the fire quickly engulfed the entire world. The popular administrations were ousted from office over the question of war, putting a period of vigorous criminal reforms to an end. During the conflict, no significant legislative reforms were implemented in the jail system. The authorities were completely busy with military issues and had little time to deal with jail issues. They were confronted with the most vehement Satyagraha agitation initiated by the Congress in 1942. Thousands of Congressmen were imprisoned in jails that were overcrowded. Due to overcrowding, effective care for these satyagrahis was not possible, and the treatment of regular convicts was considerably worse¹⁶⁵.

This exceptional condition persisted until, upon recovery of power, popular governments resumed the work left undone by them in 1939.

The individual states formed committees to investigate jail conditions and give recommendations for improving prison management. The Uttar Pradesh government formed three committees: the U.P. Jail Reforms Committee in 1946, the Women's Jail

¹⁶³ McClish, M. (2019). FROM LAW TO DHARMA: STATE LAW AND SACRED DUTY IN ANCIENT INDIA. *Journal of Law and Religion*, 34(3), 284-309. doi:10.1017/jlr.2019.36

¹⁶⁴ *Ibid*

¹⁶⁵ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023). in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

Committee in 1946, and the U.P. Criminal Tribes Enquiry Committee in 1947. Later that year, in 1955, it formed the U. P. Jail Industries Inquiry Committee. Rajasthan established a Jail Reforms Commission in 1964¹⁶⁶.

In 1951, the Government of India took a significant step forward in the field of prison reform by requesting that the United Nations Technical Assistance Administration send an expert to impart a training course to selected jail officers and to suggest progressive programmes for the scientific care and treatment of offenders¹⁶⁷.

2.3.2 Post Independence Reforms

Following India's independence, prison reform efforts gained momentum. A significant milestone came in 1956 with the replacement of transportation sentences with life imprisonment. This move reflected a shift towards more humane punishments.

The 1949 Pakawasha Committee further advanced reform by approving the use of paid convict labor in road construction projects. This initiative provided inmates with the opportunity to earn income and potentially acquire valuable skills.

In 1951, Dr. W.C. Reckless, a technical expert, contributed another key piece to reform efforts by issuing a comprehensive report on Indian jails. His recommendations then formed the foundation for the 1957 committee tasked with developing a standardized All India Jail Manual.

It's important to note a slight error in the original passage. The All India Jail Handbook Committee was actually established in 1960 (not 1857) by the Government of India. Their mandate was to investigate current jail administration practices and propose improvements that could be implemented consistently across the nation. Their report, issued in 1960, likely incorporated valuable insights from Dr. Reckless' earlier work, aiming to create a standardized manual for improved prison administration throughout India.

¹⁶⁶ *Ibid*

¹⁶⁷ *Ibid*

The 1980s witnessed a renewed focus on prison reform in India. The All India Committee on Jail Reforms, led by Justice Anand Narain Mulla (1980-1983), conducted a comprehensive review of existing laws, rules, and regulations governing prisons. This review likely played a role in the passage of the Juvenile Justice Act in 1986. This landmark legislation established a separate system for juvenile offenders, with dedicated observation homes, special homes, and juvenile homes to provide appropriate care and rehabilitation for neglected children and delinquents, removing them from the adult prison system.

Recognizing the specific needs of another vulnerable population, the Government of India further commissioned the Justice Krishna Iyer Committee in 1987. This committee delved into the specific challenges faced by women inmates in Indian prisons, paving the way for further reforms aimed at improving their conditions and well-being within the justice system¹⁶⁸.

2.4 MANDELA'S LAW, UN STANDAR MINIMUM RULES FOR TREATMENT OF PRISONERS

According to the UN Charter, basic principles for the treatment of prisoners were officially adopted and announced by General Assembly resolution 45/111 on December 14, 1990. These principles include: ensuring that all prisoners are treated with full respect and dignity as human beings, preserving their fundamental rights and human rights as outlined in the Universal Declaration of Human Rights and other relevant documents, and providing equal access to health services without discrimination.¹⁶⁹

According to the Universal Declaration of Human Rights (UDHR), individuals are entitled to certain rights and protections: No individual should endure torture, cruel, inhuman, or degrading treatment or punishment. Every person has the right to life, liberty, and security of person. No one should face arbitrary arrest, detention, or exile. Anyone accused of a criminal offense has the right to be presumed innocent until proven guilty in a fair and public trial, with all the necessary guarantees for their defense¹⁷⁰.

In accordance with the Universal Rules for Women Prisoners, male staff members are prohibited from entering the area of the institution designated for women unless

¹⁶⁸ *Ibid*

¹⁶⁹ Universal Declaration of Human Rights - the United Nations

¹⁷⁰ *Ibid*

accompanied by a female officer. Women prisoners shall receive attention and supervision exclusively from female officers¹⁷¹.

2.5 UNODC¹⁷² PRISON REFORMS

The UNODC emphasizes that successful prison reform hinges on a broader approach to criminal justice. This includes:

- **Crime Prevention:** Effective strategies to address the root causes of crime can help reduce prison populations and the need for incarceration.
- **Sentencing Policies:** Relying less on imprisonment and considering alternative sentencing options can decrease strain on prison systems.
- **Community-based Care:** Providing treatment and support programs outside of prison can be beneficial for vulnerable populations within the justice system.

The UNODC highlights the importance of a holistic approach. Prison reform should not exist in isolation, but rather work in synergy with other components of the criminal justice system. This includes collaboration with:

- **Judiciary:** Judges can play a role in reducing unnecessary incarceration through sentencing practices.
- **Prosecution:** Efficient prosecution processes can streamline the justice system and potentially reduce pre-trial detention times.
- **Police:** Effective policing strategies can contribute to lower crime rates and potentially fewer arrests leading to imprisonment.

By adopting a comprehensive and integrated approach, prison reform efforts can have a more lasting impact and create a more effective criminal justice system overall¹⁷³.

An integrated approach to prison reform extends beyond the traditional confines of the criminal justice system. This includes exploring alternative solutions for offenders, such as establishing community-based programs. For example, substance abuse treatment programs or psycho-social counseling could be offered outside of prison walls. By directing individuals towards these resources instead of incarceration, the prison system

¹⁷¹ *Ibid*

¹⁷² United Nations Office on Drugs and Crime, 2005

¹⁷³ *Ibid*

can avoid becoming overburdened. This strategy not only tackles the root causes of criminal behavior but also ensures that prison services can adequately address the existing population of inmates with diverse needs. Ultimately, a holistic approach that considers both traditional and non-traditional elements paves the way for a more sustainable and effective criminal justice system.¹⁷⁴

Building strong partnerships and collaboration with other UN agencies, international organizations, and national bodies involved in relevant programs can significantly enhance the effectiveness of the integrated strategy for prison reform.

The UNODC's¹⁷⁵ jail reform programme addresses the following themes:

- pre-trial detention;
- prison management;
- alternative measures and sanctions;
- social reintegration¹⁷⁶.

Pre-trial detention

There are three major difficulties that must be addressed in the context of pre-trial detention: To begin with, most nations throughout the world misuse pre-trial imprisonment, and in many developing countries, the pre-trial prisoner population is higher than the convicted prisoner population. This position runs counter to international principles, particularly the ICCPR¹⁷⁷, which allow for the restricted use of pre-trial detention under specified situations.

Secondly, the period of pre-trial confinement stands out as the most precarious stage in the criminal justice system. Acknowledging the inherent vulnerability of pre-trial detainees, international human rights agreements offer a range of highly specific protections. These protections aim to ensure that the rights of detainees are safeguarded,

¹⁷⁴ *Ibid*

¹⁷⁵ *Ibid*

¹⁷⁶ *Ibid*

¹⁷⁷ International Covenant on Civil and Political Rights, 1976, Article 9(3) guarantees the right to liberty and security of person. However, it allows for arrest or detention in specific situations, such as a lawful arrest or detention on a criminal charge. This implies that pretrial detention might be permissible under certain conditions.

prevent any mistreatment, and guarantee that their access to justice remains unimpeded¹⁷⁸.

Thirdly, although pre-trial detainees should be presumed innocent until proven guilty in a court of law and treated accordingly, conditions in pre-trial custody can often be more severe than those experienced by convicted inmates in jails. Furthermore, due to a lack of funding for prisons in many low-income countries, prisoners in custody do not have access to legal counsel and support, which means they may overstay on remand and/or do not obtain a fair trial, contributing to jail overcrowding.

As a result, expanding access to justice, supporting legal and paralegal aid programmes, improving information management, and cooperating with courts and prisons to expedite case processing are all priorities, important parts of UNODC's assistance in the sphere of criminal reform include aiding with the creation of protections for pre-trial inmates, such as independent monitoring and inspection systems¹⁷⁹.

Prison Management

Effective prison systems require a strong foundation in human rights principles. National legislation, policies, and procedures should adhere to international standards to ensure fair and humane treatment of inmates. Prison officials have a critical responsibility: to supervise and care for individuals according to the rule of law, respecting their human rights, and ultimately preparing them for successful reintegration into society upon release.

Unfortunately, many countries face challenges in achieving these ideals. Outdated legislation and a lack of specialized training for prison administrators and staff are frequent hurdles. Additionally, low staff morale and weak leadership can hinder reform efforts. Furthermore, the absence of robust data collection and management systems within prison systems makes it difficult to develop effective policies based on reliable information.

The UNODC plays a vital role in supporting prison reform initiatives around the world. They offer assistance in several key areas:

¹⁷⁸ United Nations Office on Drugs and Crime, 2005

¹⁷⁹ *Ibid*

- **Legislative Reform:** The UNODC can help countries update their national legislation to align with international human rights standards for prisoner treatment.
- **Training Programs:** Developing training programs equips prison administrators with strong leadership skills and ensures staff are well-versed in applying international norms and best practices in their daily work.
- **Institutional Capacity Building:** The UNODC's support strengthens the institutional capacity of prison administrations, enabling them to function more effectively and deliver positive outcomes.

Alternative Measures and Sanctions

Jails all over the world are bursting with people, like a house packed with too many guests! This is partly due to harsh laws and a lack of help for people in trouble outside of jail. This overcrowding makes life in jail really tough, often leading to human rights violations. Basically, lots of countries need to figure out how to fix this overcrowding problem to make jails fairer and more humane¹⁸⁰.

Expanding prison capacity might seem like a quick fix for overcrowding, but history shows it's a fleeting solution. Building and maintaining new prisons is expensive, draining resources that could be better spent elsewhere. International agreements advocate for a smarter approach: rationalizing sentencing policies. This means exploring alternatives to incarceration, particularly for non-violent offenders. By keeping people out of prison and in their communities, we can reduce both the human cost of isolation and the financial burden of prison systems.

Imagine we think of crime like a sickness. Instead of just locking people away when they get sick (punishment), we can try different ways to help them get better (non-custodial measures). This means focusing on healing (restorative justice) and helping them rejoin society (reintegration) instead of just punishing them. When we also offer support (offender assistance), it can actually help stop people from getting "sick" again (relapsing) and hurting others. By helping people stay in their communities and getting better, we actually make everyone safer in the long run. Supporting the adoption and

¹⁸⁰ *Ibid*

execution of non-custodial punishments and procedures is thus a critical component of UNODC's¹⁸¹ prison reform activity.

Social Reintegration

The United Nations prioritizes successful reintegration of released prisoners back into society. To maximize impact, social reintegration efforts should start as early as possible within the criminal justice system. This means diverting vulnerable populations away from incarceration and towards appropriate treatment programs or non-custodial sanctions. Additionally, prisons can play a crucial role by offering purposeful activities and programs that prepare inmates for life after release.

Effective post-release support is also essential. A "continuum of care" within the community ensures former prisoners have the resources they need to succeed. However, this approach requires strong collaboration between various entities:

- **Criminal Justice Institutions:** Courts, law enforcement, and prison systems need to work together towards rehabilitation.
- **Community Social Services:** Programs providing housing assistance, job training, and mentorship can be vital for reintegration.
- **Healthcare:** Access to mental health and addiction treatment services can address underlying issues that contribute to criminal behavior.
- **Probation Services (where available):** Probation officers can provide supervision and support to help former prisoners stay on the right track.

The UNODC plays a significant role in supporting these efforts. They can assist with:

- **Development of Prison-Based Reintegration Programs:** The UNODC can help design and implement programs within prisons that equip inmates with the skills and knowledge necessary for successful reintegration.
- **Planning and Implementing Community-Based Support:** The UNODC can offer expertise and guidance in establishing a comprehensive network of community services to support formerly incarcerated individuals.

¹⁸¹ *Ibid*

Healthcare

The principle of healthcare equivalence dictates that prisoners deserve the same level of medical care as the general public. However, this right is often unrealized within prison walls. Prison healthcare systems are plagued by chronic underfunding, understaffing, and in some cases, a complete lack of services. Furthermore, they often operate in isolation from national health authorities, including crucial programs like HIV and TB control. Women's specific healthcare needs are frequently neglected as well.

The right to health encompasses not just access to treatment but also access to the factors that influence overall well-being. This includes essentials like clean water, sanitation, nutritious food, and safe living conditions. Additionally, it incorporates access to preventative and dental care, a healthy work environment, and relevant health education. Ultimately, achieving true health equity within prisons requires a systemic shift, ensuring prisoners have access to the same comprehensive healthcare services available to the general population.

UNODC's¹⁸² technical support in this field is based on the idea that criminal reform and health in prisons are inextricably linked, and that an integrated approach is required to meet the immense issue of HIV¹⁸³/AIDS¹⁸⁴ and other transmissible illnesses like tuberculosis (TB) in prison settings. Improved prison administration and environment are critical to implementing a long-term health plan in prisons. Furthermore, jail health is an intrinsic aspect of public health, and enhancing prison health is critical for public health policy success.

2.6 TECHNIQUES OF PRISON REFORMS

Probation:

Probation is a crucial tool in reformatory penology, representing a period during which a convicted individual, instead of being incarcerated, remains under supervision. This release serves as a rehabilitative measure ordered by the convicting court. During

¹⁸² United Nations Office on Drugs and Crime, 2005

¹⁸³ Human immunodeficiency virus

¹⁸⁴ Acquired immunodeficiency syndrome

probation, the individual resides within their community and adjusts their life according to conditions set by the court, all while being supervised by a probation officer¹⁸⁵.

Parole:

Parole signifies the release of a criminal from a reformatory institution while remaining under the supervision of correctional authorities to assess their readiness for unsupervised life in society. It represents the final stage in the correctional process, with probation potentially being the initial step. Following thorough evaluation and demonstration of potential for rehabilitation, individuals are permitted to reintegrate into society under certain conditions¹⁸⁶.

Furlough:

Furlough is another rehabilitative measure often mistaken for parole. While both are tools within the penal system aimed at reform, they serve different purposes. Furlough must be periodically granted to the prisoner without requiring a specific reason. Its primary objective is to allow the individual to maintain family and social connections and mitigate the adverse effects of continuous imprisonment. The duration of furlough is considered as a remission of the sentence.

Pardon:

Imagine a prisoner who has been punished for a crime. A pardon is like a special forgiveness granted by the government, letting them off the hook for some or all of their punishment. This can happen in two ways:

Complete freedom: This is an absolute pardon, where the prisoner is totally free and doesn't have to face any more punishment.

Conditions apply: With a conditional pardon, the prisoner is released but has to follow certain rules, like staying out of trouble.

In India, two important Person have the power to grant pardons:

The President: They can pardon people for crimes against the national government.

The Governors: They can pardon people for crimes within their own states.

¹⁸⁵ Volume 2, July 2018 ISSN 2581-5504 Pen Acclaims (www.penacclaims.com) Page 9

¹⁸⁶ *Ibid*

This power is used very carefully and only in special cases, like when someone is wrongly convicted or there are extraordinary circumstances.

Open Prisons:

Open prisons, also referred to as open air camps or open jails, represent a significant tool in criminal rehabilitation. These institutions, often considered a modern approach to reintegrating prisoners into society, emphasize intensive aftercare programs aimed at facilitating a return to normal life. Instead of allowing inmates to remain idle in prison cells, open prisons provide opportunities for work in areas such as forests, agricultural farms, and construction sites. They play a crucial role in the process of prisoner reformation, aligning with the principles of rehabilitative management. In India, the first open prison was established in Bombay Presidency in 1905; however, it closed in 1910. Subsequently, in 1953, Uttar Pradesh established the first open prison in the country.

Self governance by inmates:

In the system of self-government within prisons, inmates have the opportunity to elect certain fellow prisoners as their representatives. These elected individuals form a governing body responsible for managing various aspects of prison life. They may have complete or partial control over matters such as mess operations and are tasked with safeguarding the interests and welfare of their fellow prisoners.

Work Release:

Work release is regarded as a highly effective tool for rehabilitation in modern criminal justice. Under this method, prisoners are permitted to work for pay in society on a part-time basis. This provides them with an opportunity to integrate into society in a normal manner without restrictions. It helps prisoners adjust to the work environment before their release.

Vipassana:

Vipassana meditation offers a direct path to attaining peace of mind and leading a fulfilling, productive life. The first Vipassana course held in a prison occurred in Jaipur, India, in 1975. However, it wasn't until nearly 20 years later, in the 1990s, that Vipassana firmly established itself as a tool for social and prison reform. With the aim of addressing emotional and psychological issues among prison inmates, Vipassana became an integral

component of prison programs. It played a significant role in fostering a sense of community and facilitating positive personal development among inmates.

The current Mulaqat system in prisons, allowing family visits for inmates, needs significant improvement. While the intent is positive, several issues hinder its effectiveness as a tool for reformation.

Firstly, the duration and environment of these meetings are inadequate. Short, uncomfortable visits with a lack of privacy create an emotionally charged and stressful environment for both the prisoner and their loved ones. This hampers meaningful interaction and limits the emotional support crucial for rehabilitation.

Secondly, the presence of prison guards during these meetings creates an unnecessary power imbalance and inhibits open communication. Prisoners might feel hesitant to express themselves freely, hindering trust-building and genuine connection with their families.

Finally, the current restrictions on who can visit (only "near relatives") can be exclusionary and limiting. Excluding friends, legal advisors, and other important figures can hinder emotional well-being and access to crucial support systems, further impeding reform efforts.

Therefore, it is essential to reform the Mulaqat system to

Expand the definition of "near relatives" to include friends, legal advisors, and other important support Member.

By implementing these changes, the Mulaqat system can become a powerful tool for fostering rehabilitation, strengthening family bonds, and ultimately, reducing recidivism rates. It is vital to recognize the importance of human connection and emotional well-being for individuals navigating the prison system, and the reformed Mulaqat system can act as a bridge towards a more humane and effective correctional approach.

Reformers suggest expanding the scope of festivals and other ceremonial occasions beyond just providing delicious dishes for prisoners. They advocate for incorporating celebrations filled with joy and meaningful programs. This approach allows prisoners to momentarily escape the constraints of their incarcerated life¹⁸⁷.

¹⁸⁷ Volume 2, July 2018 ISSN 2581-5504 Pen Acclaims (www.penacclaims.com) Page 11

Appraisal

The current regulations governing the restrictions and monitoring of inmates' postal mail should be relaxed. This would foster trust and confidence between inmates and prison officials. Often, the primary justification for these restrictions by prison authorities is the maintenance of prison security.

Education and skill training for prisoners serve as essential tools in keeping them engaged and facilitating their rehabilitation upon release from jail. There should be an increased focus on providing vocational training to inmates, offering them dignified avenues to earn a livelihood post-release. The aim is to equip them with the skills and qualifications necessary for employment upon their release.

Some penologists advocate for spiritual training for prisoners, viewing it as a positive step towards rehabilitation. It is believed that practices like yoga and meditation can help inmates control their minds and shift negative attitudes to positive ones. Incorporating spiritual elements into prison reform efforts can lead to a positive change in prisoners' attitudes and contribute to their rehabilitation¹⁸⁸.

¹⁸⁸ *Ibid*

CHAPTER – III

INDIAN STATUTORY LAWS AND JUDICIAL DIRECTIVES

Prelude

The prisoner's sentence can be mitigated or decreased by the relevant State government, the Apex Court, and the President of India. The Indian Penal Code of 1860 has several clauses that favour inmates. This Act primarily defines numerous offenses under criminal law and sets the penalties for such acts. The state is crucial in the administration of criminal justice. In criminal cases, the State is always present. The State files the case on behalf of the victim because the wrongful conduct has a societal impact¹⁸⁹.

Two provisions of the Penal Code apply to convicts. The first is that Section 54 of the IPC, 1860 authorises the relevant authority to commute a death sentence to life imprisonment¹⁹⁰.

3.1 INDIAN STATUTORY LAWS

i) The Indian Penal Code, 1860

Commutation is not a right, but if the proper authority believes it is acceptable, the sentence can be reduced. Similarly, Section 55¹⁹¹ of the Act authorises the relevant authority to reduce a life sentence to fourteen years in jail. This authority is granted to the state since the state is not financially healthy, and they cannot keep the convicts for life,

¹⁸⁹ THE INDIAN PENAL CODE. ACT NO. 45 OF 1860

¹⁹⁰ Section 54. Commutation of sentence of death.—In every case in which sentence of death shall have been passed, 1[the appropriate Government] may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

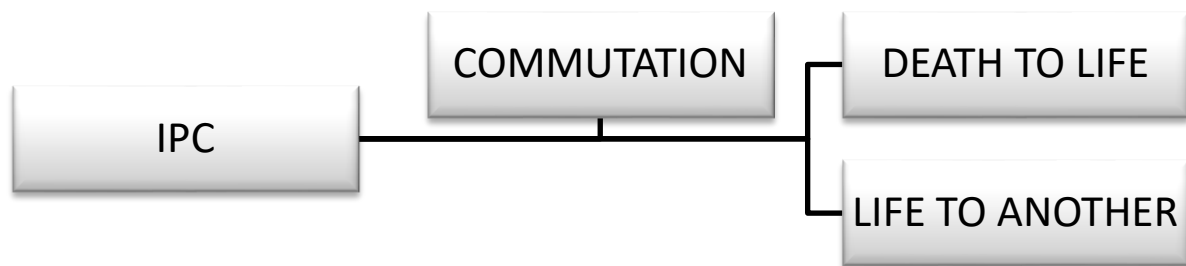
Bharatiya Nyaya Sanhita (BNS): [Commutation of sentence](#). The appropriate Government may, without the consent of the offender, commute any punishment under this Sanhita to any other punishment in accordance with section 474 of the Bharatiya Nagarik Suraksha Sanhita, 2023

THE INDIAN PENAL CODE. ACT NO. 45 OF 1860

¹⁹¹ Section 55. Commutation of sentence of imprisonment for life.—In every case in which sentence of 1[imprisonment] for life shall have been passed, 2[the appropriate Government] may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

THE INDIAN PENAL CODE. ACT NO. 45 OF 1860

which is expensive, and if the prisoner demonstrates reformation, he can be freed before the conclusion of his term.



ii) The Prisons Act, 1894

The Prisons Act of 1894 was the first piece of law relating to India's jail system. Commenting about the Prisons Act, of 1894, Dr. Amarendra Mohanty in her book Prison system in India stated the following: "This Act was mostly founded on deterrent principles mirrored mainly the British stance on the topic. Politicians showed no inclination to explore the opposing viewpoint. Their focus leaned heavily towards the management of the jail rather than the well-being of the inmates. With few alterations, the Prisons Act has remained virtually unchanged for over a century¹⁹²."

Among the various supplementary clauses of the Prisons Act of 1894, the following provisions are connected to the rehabilitation of convicts to some extent.

¹⁹² Indian Prisons Act of 1894

Section 4 of the Prisons Act of 1894 ensures that inmates are provided with accommodation that ensures their safety and security within the facility¹⁹³.

Section 7 - Temporary accommodation for convicts entails promptly arranging a temporary arrangement for them upon their arrival in jail.¹⁹⁴

Section 8- Prison authorities' authority and responsibilities.

Guidelines are provided to prison employees to guarantee the safety and security of prisoners¹⁹⁵.

Section 12 - The Superintendent is required to keep prisoner records¹⁹⁶.

Section 15 -In the event of a prisoner's death, friends or relatives of the prisoner are notified, or in the event of an emergency¹⁹⁷,

Section 19- A jailer must be present at night to ensure the security of the prisoners¹⁹⁸.

¹⁹³Section 4 Accommodation for prisoners.—The State Government shall provide, for the prisoners in the territories under such Government, accommodation in prisons constructed and regulated in such manner as to comply with the requisitions of this Act in respect of the separation of prisoners.

Indian Prisons Act of 1894

¹⁹⁴ Section 7 of the Prisons Act stipulates that in cases where the number of prisoners in a particular prison exceeds safe capacity, or when circumstances such as an epidemic outbreak necessitate temporary shelter for inmates, arrangements shall be made, as directed by the State Government, to accommodate the surplus prisoners in temporary prisons, ensuring their safe custody. Indian Prisons Act of 1894

¹⁹⁵Section 8 of the Indian Prisons Act of 1894 outlines the control and responsibilities of prison officers as follows: All prison officers are required to adhere to the instructions provided by the Superintendent. Additionally, officers subordinate to the Jailer are obligated to carry out duties assigned by the Jailer with the approval of the Superintendent or as prescribed by rules under the Act.

¹⁹⁶ Section 12 of the Prisons Act mandates that prison (Superintendent) has to keep track of some important things

1. A register of admitted prisoners.
2. A book indicating each prisoner's release date.
3. A punishment book recording penalties imposed on prisoners for infractions.
4. A visitor's book noting any visitor observations relevant to prison administration.
5. A log of money and items confiscated from prisoners.

Additionally, any other records required by regulations under section 59 must also be maintained. Indian Prisons Act of 1894

¹⁹⁷ Section 15 of the Indian Prisons Act of 1894 mandates that upon the death of any prisoner, the Medical Officer must promptly record certain details in a register. These particulars include:

1. The day when the deceased first exhibited signs of illness.
2. The type of work, if any, the deceased was engaged in on that day.
3. The diet scale provided to the deceased on that day.
4. The date of admission to the hospital.
5. The day when the Medical Officer was initially informed of the illness.
6. The nature of the disease.
7. The last time the deceased was seen by the Medical Officer or Medical Subordinate before death.
8. The date and time of death.
9. In cases where a post-mortem examination is conducted, a description of the post-mortem findings, along with any necessary remarks deemed by the Medical Officer.

Section 24 states that once a prisoner is entered, he must be searched and all weapons and forbidden materials confiscated¹⁹⁹.

Section 27 - Prisoner separation provisions, including female and male inmates, civil and criminal prisoners, and convicted and undertrial prisoners²⁰⁰

Section 33- Provision of clothes and bedding to civil and non-criminal detainees²⁰¹.

Section 34- Civil prisoners' employment²⁰².

Section 35- Employment of convicted criminals Section 37: Sick in

mates and their care. There are provisions in place to ensure that sick convicts are properly diagnosed and treated. Doctors and other medical personnel are readily available²⁰³.

¹⁹⁸ Section 19 of the Indian Prisons Act of 1894 states that the Jailer is required to be present at the prison overnight. Permission in writing from the Superintendent is necessary if the Jailer needs to be absent from the prison overnight. However, if the Jailer is unavoidably absent without permission for a night, they must promptly report the situation and the reason for their absence to the Superintendent.

¹⁹⁹ Section 24 of the Indian Prisons Act of 1894 stipulates the following:

1. Upon admission into prison, every prisoner shall undergo a search, during which all weapons and prohibited items shall be confiscated.
2. Criminal prisoners must also undergo a medical examination under the general or special directives of the Medical Officer. The Medical Officer shall record the prisoner's health status, any wounds or marks on their body, their suitability for labor (if sentenced to rigorous imprisonment), and any additional observations deemed relevant.
3. For female prisoners, the search and examination shall be conducted by the matron under the general or special instructions of the Medical Officer.

²⁰⁰ Section 27 of the Indian Prisons Act of 1894 outlines the requirements for the separation of prisoners as follows:

1. In prisons housing both male and female inmates, females must be accommodated in separate buildings or designated areas within the same building to prevent interaction with male prisoners.
2. Prisons holding male prisoners under the age of twenty-one must have provisions to separate them from other inmates and to differentiate between those who have reached puberty and those who have not.
3. Unconvicted criminal prisoners must be segregated from convicted criminal prisoners.
4. Civil prisoners must be kept separate from criminal prisoners.

²⁰¹ Section 33 of the Indian Prisons Act of 1894 specifies the provisions for supplying clothing and bedding to civil and unconvicted criminal prisoners as follows:

1. The Superintendent shall provide necessary clothing and bedding to every civil prisoner and unconvicted prisoner who cannot afford them.
2. In cases where a civil prisoner has been imprisoned due to a decree in favor of a private individual, that individual or their representative must pay the Superintendent the cost of the clothing and bedding provided to the prisoner within forty-eight hours of receiving a written demand. Failure to make this payment may result in the release of the prisoner.

²⁰² Section 34 of the Indian Prisons Act of 1894 pertains to the employment of civil prisoners:

Civil prisoners are permitted, with the Superintendent's authorization, to work and engage in any trade or profession.

Civil prisoners who provide their own tools and are not supported by the prison's resources are entitled to retain all of their earnings. However, those who use prison-provided tools or are supported by the prison must have a portion of their earnings deducted by the Superintendent for tool usage and maintenance costs.

Section 50 -Medical Officer must confirm prisoner's fitness for punishment²⁰⁴.

Section 55 of the Act states that it is the Jail Superintendent's obligation to take adequate steps to guarantee the safe custody and security of the prisoners²⁰⁵.

iii) The Prisons Act, 1900

This statute contains several rules that provide light on the prison system and its reformation:

Section 14- All references to jails, incarceration, or confinement will be read to include reformatory schools and detention therein²⁰⁶.

Section 29 -Provisions relating to the transfer of detainees from one jail to another in the event of an emergency or need²⁰⁷.

²⁰³ Section 35 addresses the employment of criminal prisoners as follows:

No criminal prisoner sentenced to labor or voluntarily employed shall work for more than nine hours in any single day without written authorization from the Superintendent, except in emergencies.

The Medical Officer is responsible for periodically examining laboring prisoners and documenting their weight on a history-ticket at least once every two weeks.

If the Medical Officer determines that a prisoner's health is adversely affected by a particular type of labor, the prisoner will not be assigned to that labor. Instead, they will be assigned to a different type of labor deemed suitable by the Medical Officer

²⁰⁴ Section 50 of the Indian Prisons Act of 1894 addresses the certification of a prisoner's fitness for punishment by the Medical Officer:

1. No punishment, such as penal diet, whipping, or change of labor under section 46(2), shall be administered until the prisoner has been examined by the Medical Officer.

2. If the Medical Officer deems the prisoner fit for the punishment, they shall certify accordingly in the punishment-book.

3. If the Medical Officer finds the prisoner unfit for the punishment, they shall record their opinion in writing, specifying whether the prisoner is entirely unfit for the awarded punishment or if modifications are necessary.

4. In the latter case, the Medical Officer shall indicate the extent of punishment that the prisoner can undergo without risking their health.

²⁰⁵ Section 55 of the Indian Prisons Act of 1894 pertains to extramural custody, control, and employment of prisoners

When a prisoner is being transported to or from any lawful prison where they are confined, or when they are working outside or otherwise beyond the limits of such prison under the lawful custody or control of a prison officer, they shall be considered to be in prison. As such, they shall be subject to all the same regulations and conditions as if they were physically within the prison premises.

²⁰⁶ Section 14 of The Prisons Act, 1900 states that all mentions of prisons, imprisonment, or confinement within this Part shall also encompass reformatory schools or detention therein.

²⁰⁷ Section 29 of The Prisons Act, of 1900 authorizes the State Government to issue general or specific orders for the transfer of prisoners held in a prison:

a) Sentenced to death,
b) Serving a sentence of imprisonment or transportation, or in lieu of it,
c) Detained due to failure to pay a fine, or
d) Detained for failure to provide security for maintaining peace or good behavior,
to any other prison within the state.

Section 30- How the government will deal with insane detainees. Staff will monitor their time in prison and rehab²⁰⁸.

Section 33: Prisoner recommended for release on recognisance by high court order²⁰⁹.

iv) The Identification of Prisoners Act, 1920

This act encompasses several regulations concerning the collection of measurements and photographs, including finger-print and foot-print impressions, of individuals convicted of offenses punishable with rigorous imprisonment for a duration of one year or more, or offenses that would subject them to enhanced punishment upon subsequent conviction. These individuals may have their measurements and photographs taken by a Police Officer in the prescribed manner.

Section 6 of the legislation addresses obstruction to the process of taking measurements:

If an individual convicted of a crime obstructs or resists authorities when ordered by the court to provide their finger impression, footprint, or other identity marks, authorities are authorized to utilize all necessary methods to obtain these identification markings.²¹⁰

Section 7 states that if the accused is acquitted, his images and measuring data must be destroyed²¹¹.

(2) Additionally, the Inspector-General of Prisons, subject to the orders and control of the State Government, is empowered to similarly arrange for the transfer of such prisoners to any other prison within the state.

²⁰⁸ Section 30 of The Prisons Act, 1900 outlines the procedures for dealing with lunatic prisoners as follows

1. If the State Government determines that a person detained or imprisoned under a court order or sentence is of unsound mind, they may issue a warrant for the person's transfer to a lunatic asylum or other safe custody facility within the state. The person shall be kept and treated according to the State Government's directions for the remainder of their sentence. If necessary for the safety of the prisoner or others, the person may be further detained under medical care or treatment until discharged according to law.

2. If the State Government determines that the prisoner has regained soundness of mind, they shall issue a warrant either remanding the prisoner back to the prison from which they were removed, to another prison within the state, or ordering their discharge if no longer liable to be kept in custody.

3. The provisions of Section 9 of the Lunatic Asylums Act, 1858 apply to every person confined in a lunatic asylum under subsection (1) after the expiration of their term of detention or imprisonment. The time spent in the lunatic asylum is counted as part of the term of detention or imprisonment ordered by the court.

4. The State Government may, if competent under subsection (1), order the transfer of a prisoner to a lunatic asylum or other safe custody facility within another state or part of India by agreement with the respective State Government. The provisions of this section regarding custody, detention, remand, and discharge shall apply to prisoners transferred under this subsection, to the extent applicable.

²⁰⁹ Section 33 of The Prisons Act, 1900 allows any High Court to authorize the release of a prisoner, on their own recognizance, in cases where the High Court has recommended to the Government the granting of a free pardon to that prisoner.

²¹⁰ The Identification of Prisoners Act, 1920

v) The Constitution of India, 1950

The basic rights provided by the Constitution are not absolute, and they are subject to several limits. The right to personal freedom is one of the most essential fundamental rights. When a person is condemned or imprisoned, his or her status differs from that of an ordinary person. A prisoner cannot exercise all of the fundamental rights that a regular person has. Certain rights specified in Part III of the Constitution, however, are also available to inmates since a prisoner remains a "person" inside the jail. Other judgements have been addressed by the Supreme Court of India and various High Courts in India.

The Preamble of the Constitution of India declares that

"We, the people of India": This establishes the source of power and legitimacy for the Constitution, emphasizing its foundation in the will of the people.

"Sovereign, socialist, secular, democratic republic": These terms define the basic character of the Indian state:

Sovereign: India is independent and not subject to any other external power.

Socialist: The constitution initially envisioned a mixed economy with a focus on social welfare and reducing economic inequalities, though the exact interpretation has evolved.

Secular: No religion holds special status, and all faith traditions are respected.

Democratic: Power lies with the people, exercised through elected representatives.

Republic: Head of state is not a hereditary monarch, but an elected official.

"Secure justice—social, economic, and political": The state strives to ensure:

Social justice: Equal opportunities and a just social order free from discrimination.

Economic justice: Fair distribution of resources and opportunities.

Political justice: Equal access to political participation and representation.

"Liberty of thought and expression, belief and faith": Individual freedoms are guaranteed, including:

²¹¹ *Ibid*

Freedom of thought and expression: Right to hold and express ideas without fear of censorship.

Freedom of belief and faith: Right to practice any religion or no religion at all.

"Equality of status and opportunity": Everyone enjoys equal rights and opportunities regardless of background or status.

"Promote fraternity, ensuring the dignity of individuals and unity and integrity of the nation": The state promotes:

Fraternity: A sense of brotherhood and solidarity among all citizens.

Dignity of individuals: Respect for the inherent worth and fundamental rights of every person.

Unity and integrity of the nation: Maintaining a united and strong India.

It suggests that the constitution, since its inception, has prioritized individuals before its implementation, aiming to safeguard and uphold the well-being of its citizens while fostering societal peace and harmony. It endeavors to ensure a secure environment for citizens to reside in, echoing the principles advocated by the Universal Declaration of Human Rights. The following rights are entitled to all individuals listed below:²¹².

Right to Equality: Article 14

“The state shall not deny to any person equality before law or the equal protection of laws within the territory of India”

This is the case. Article 14, which embodies the idea of equality, is one of the major articles of the Indian Constitution that is typically enforced by courts. The rule that "like should be treated similar," as well as the idea of reasonable categorization as provided in Article 14, have been highly valuable guides for courts in determining the category of convicts and their foundation of classification in different categories.

Limitation On Right To Freedom: Article 19

²¹² The Constitution of India, 1950

Six liberties are guaranteed to Indian people under Article 19 of the Constitution. Certain liberties, such as "freedom of movement," "freedom to stay and settle," and "freedom of profession, occupation, trade, or business," cannot be enjoyed by inmates due to the nature of these freedoms and the conditions of detention. Other freedoms, such as "freedom of speech and expression," "freedom to join an association," and so on, can be enjoyed by a prisoner even when incarcerated, and his detention or sentence has nothing to do with these freedoms. However, these will be subject to the constraints of jail legislation²¹³.

Protection Against Conviction of Offences: Article 20(1)

According to this provision, individuals cannot be convicted of any offense unless it was considered a violation of the law in effect at the time the act was committed. Furthermore, they cannot be subjected to a penalty more severe than what could have been imposed under the law in effect at the time of the offense.”

This provision restricts the legislature from retroactively applying any criminal statute. Essentially, if an act is not considered an offense at the time it is committed, it cannot be deemed an offense at any later date.²¹⁴

Protection Against Double Jeopardy: Article 20(2)

This provision says that “no one shall be prosecuted and punished for the same offence more than once”. This integrates the notion that no one should face prosecution for the same offence twice. If a person is charged again for the same offence for which he has previously been charged, he can use his previous acquittal or conviction to his advantage. This article requires that proceedings take place before a "court" or judicial panel²¹⁵.

Prohibition Against Self Incrimination: Article 20(3)

It provides that “No person accused of any offence shall be compelled to be a witness against himself.”

The general norm in criminal law is that the accused must be believed innocent unless proven guilty. This constitutional safeguard encompasses the provision that safeguards any accused's self-incrimination. The protection is applicable only in cases of coercion, not when the accused waives his privilege by entering the witness box or when he freely

²¹³ The Constitution of India, 1950

²¹⁴ *Ibid*

²¹⁵ *Ibid*

offers testimony on request. In the case of *Nandini Satpathy vs. P.L. Dani*²¹⁶, the Supreme Court broadened the reach of this provision and stated that coerced testimony is not just confined to physical torture but also includes psychological interrogation tactics that inflict mental suffering

Scope of Right to Life and Personal Liberty : Article 21

“No person shall be deprived of his life or personal liberty except according to procedure established by law”.

The Indian Constitution doesn't explicitly address prisoners' rights. However, the Supreme Court has interpreted the right to personal liberty (Article 21) quite broadly, extending its protection to those incarcerated. This means that even behind bars, individuals retain fundamental rights such as a fair and speedy trial, access to legal aid, freedom from torture, and protection from cruel and degrading treatment.

Article 21 has become a cornerstone for legal arguments concerning prisoners' rights in India. The Supreme Court, citing the landmark *Maneka Gandhi case*²¹⁷, has used this article to safeguard essential rights for inmates. Following this case, the Court established the principle of a "fair and reasonable procedure" being necessary for any deprivation of life or personal liberty, even within the prison system. This effectively restricts arbitrary actions by prison officials and ensures some level of due process for those incarcerated.

India's fight for independence laid the groundwork for establishing specific rights for prisoners. The Constitution's Article 21 guarantees the right to personal liberty, prohibiting any form of inhumane, cruel, or degrading treatment for all individuals, regardless of citizenship.

The Supreme Court of India has played a crucial role in interpreting Article 21 and building a legal framework for protecting prisoners' rights and upholding human dignity. While the Constitution allows for the lawful deprivation of liberty under Article 21, the Court has emphasized that such deprivation cannot be arbitrary, unjust, or unreasonable. This principle was established in the landmark case of *Maneka Gandhi vs. Union of India* (1978), where the Court ruled that any procedure leading to the deprivation of life or liberty must be fair and

²¹⁶ *Nandini Satpathy vs. P.L. Dani*, 1978 AIR 1025

²¹⁷ *Maneka Gandhi vs Union Of India* AIR 1978 SC 597

rational. This decision was further reinforced in the case of Francis Coralie Mullin vs. The Administrator (1981). Essentially, the Supreme Court has acted as a check on the state's power by ensuring that procedures for depriving individuals of their liberty are fair and well-defined.²¹⁸

“Article 21 mandates that no individual shall be deprived of their life or personal liberty except by a process established by law. This process must adhere to principles of reasonableness, fairness, and justice, and must not be arbitrary, whimsical, or fanciful”.

Right to Education for Prisoners

International treaties and India's commitment to prison reform acknowledge the right of incarcerated individuals to access reasonable public education, albeit with necessary security and public order considerations. This right extends to all detainees and prisoners, with a particular emphasis on providing educational opportunities for women and children within the prison system. By offering educational programs, prisons can contribute to the rehabilitation and personal growth of inmates, fostering positive development during their incarceration.

The state must establish a new educational institution, together with teachers, so that when prisoners are freed, they may continue their studies. The courts must keep an eye on this issue so that the basic right to education is not undermined by the state's jail management. Education for juvenile prisoners should be made mandatory²¹⁹.

Rights of Person Under Arrest and Detention: Article 22(1)

Article 22 (1) of the Constitution states that no one who is arrested has the right to consult with and be represented by a legal practitioner of his choosing. This legal entitlement is also enshrined in Section 304 of the Criminal Procedure Code²²⁰. Through various judicial rulings, it has been established that this right is applicable to individuals from the moment of their arrest, granting them the privilege to select legal representation.

Even if the accused opts not to engage legal counsel, the court is obligated to appoint an Amicus Curiae to advocate on their behalf. In instances where the accused remains unrepresented, it becomes the court's duty to designate legal representation at the

²¹⁸ “Francis Coralie Mullin vs The Administrator, Union - Law Times Journal,” *available at*: <https://lawtimesjournal.in/francis-coralie-mullin-vs-the-administrator-union/> (last visited February 17, 2024).

²¹⁹ Indian constitution, 1950

²²⁰ THE CODE OF CRIMINAL PROCEDURE, 1973, ACT NO. 2 OF 1974

government's expense for their defense. The Supreme Court of India, in a series of verdicts, deliberated on the extent of prisoners' or detainees' entitlement to meet with family members, friends, and legal representatives. For instance, in the case of Dharmbir vs. State of Uttar Pradesh, the court directed the state government to facilitate visits from family members for convicts and ensure prisoners have the opportunity to meet with their relatives at least once annually.

The following points are critical in relation to these requirements.

- **Right to Inform Others:** An arrested person has the right, if they choose, to have someone they know (friend, relative, or another person) informed of their arrest and detention location. This notification should be made "as far as possible," taking into account practical limitations.
- Upon arrival at the police station, the arresting officer has a responsibility to inform the arrested person of their legal rights.
- A record should be kept in the journal of who was notified of the arrest. These protections from authority must be recognised to follow from Articles 21 and 22 (1) and carefully implemented²²¹.

Right to be Produced before Magistrate: Article 22(2)

Applicability of this right: This right only applies to people arrested for a crime, not those already convicted and sentenced. Once sentenced, their detention is based on the court's decision, not just an arrest.

The case of Keshav Singh serves as a legal precedent affirming this interpretation. This means it strengthens the understanding that the 24-hour rule only applies to the early stages of a criminal case, not after a conviction.

Right to Constitutional Remedies: Article 32

When individuals are unlawfully deprived of their personal liberty by authorities, they have the recourse of filing Writs under Article 226 of the Constitution before the High Courts, and Writs under Article 32 of the Constitution before the Supreme Court.²²²

According to Article 32,

²²¹ Indian constitution, 1950

²²² *Ibid*

“When individuals are illegally deprived of their personal liberty by authorities, they can seek redress by filing Writs under Article 226 of the Constitution before the High Courts and Writs under Article 32 of the Constitution before the Supreme Court.”²²³

Article 226 says

“Independent of Article 32 (which protects fundamental rights), each High Court within India has the power to issue various legal writs throughout its jurisdiction. These writs, including habeas corpus, mandamus, prohibition, quo warranto, and certiorari, can be directed towards any person or authority within that territory, even the government itself. The primary purpose of these writs is to enforce the fundamental rights guaranteed by Part III of the Indian Constitution. However, High Courts can also use them for other appropriate legal purposes”.

Dr. B.R. Ambedkar referred to this article as

“The fundamental of the fundamental right and “heart and soul of the constitution”.

The Indian Constitution guarantees a critical human right: the right to seek legal remedies for violations of fundamental rights. Articles 32 and 226 empower individuals to directly approach the Supreme Court and High Courts respectively. This allows individuals to seek judicial correction, redress grievances, and enforce their fundamental rights. In such cases, the courts have the authority to issue powerful legal writs like Habeas Corpus, Mandamus, Prohibition, Quo Warranto, and Certiorari, depending on the nature of the violation. Notably, the Constitution doesn't impose a time limit on filing for these writs, giving individuals flexibility in seeking judicial intervention. Ultimately, the courts have the discretion to determine the appropriate course of action²²⁴.

Writ of Habeas Corpus : Preventive as Well as Remedial

The Latin term "Habeas Corpus" translates to "you shall have the body." This powerful writ safeguards an individual's personal liberty from arbitrary detention by both the state and private actors. Its reach is extensive, applicable to any situation where someone's freedom of movement is restricted.

²²³ *Ibid*

²²⁴ *Ibid*

Before seeking Habeas Corpus relief, the petitioner (person requesting the writ) must be subject to physical restraint, meaning their ability to move freely is significantly limited. When the writ is issued, it compels the detaining authority (government official or private individual) to physically produce the detained person before the court. Additionally, the detaining party must explain the justification for holding the individual in custody. The court then reviews the legality of the detention. If deemed unlawful, the court orders the release of the detained person.

In essence, Habeas Corpus acts as a critical check on power, ensuring individuals are not held without legal justification.

The authority of the court under Article 32 is not solely preventive but also remedial, allowing for the possibility of awarding compensation. The court, in the case of *M.C. Mehta v. Union of India*²²⁵, stipulated that compensation may be granted only in "appropriate cases," rather than in every instance. These appropriate cases are characterized by blatant and evident violations of fundamental rights.

Article 39-A : Equal Justice and Free Legal Aid

This article expresses the notion of fair procedure in judicial trials. The state should guarantee that the operation of the judicial system promotes justice and that no citizen's prospects for attaining justice are denied due to economic or other disadvantages. If a prisoner is unable to exercise his constitutional and legal rights or requires legal aid, he cannot be neglected only because he is poor. If a prisoner is unable to afford a lawyer, the court has the authority under the constitution and other legislative requirements to appoint counsel for that prisoner in order to provide complete justice.

Free legal assistance was regarded 'an important part of reasonably fair and just procedure for a person accused of an offence. *Khatri v. Bihar State*²²⁶.

Seventh Schedule and Article 246

Our constitutional structure divides authority between the federal government and the states. This section is broken into three sections: legislative, administrative, and executive. The legislative section is broken down into three lists: the Union list, the States list, and the Concurrent list. As a result, parliament can make laws for topics included in

²²⁵ *M.C Mehta v Union of India* 1987 SCR (1) 819

²²⁶ *Khatri And Others vs State Of Bihar & Ors* 1981 SCR (2) 408

the union list, whilst state legislatures can make laws for matters included in the state list. Both the parliament and the state can pass legislation on issues on the concurrent list²²⁷.

ARTICLE 246 (3) says.

“The Legislature of any State holds the exclusive authority to enact laws for that State or any of its regions concerning the subjects listed in List II of the Seventh Schedule of the Indian Constitution, known as the "State List." However, this provision is not absolute, as the powers of the State Legislatures are subject to the authority of the Parliament, which can assume the powers of State Legislatures under specific circumstances²²⁸.

State list entry IV includes

“Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein, arrangements with other States for the use of prisons and other institution”.

So, according to the Indian constitution, 'jail' is essentially a state issue, and state legislatures are charged with making laws for them, but they must be consistent with laws enacted by parliament, because the latter has primacy in cases of ambiguity.

vi) The Transfer of Prisoners Act, 1950

This Act outlines procedures for transferring inmates from one state to another, however in order for the provisions to be implemented, both the transferring and receiving states must grant their prior agreement. This Act assists in moving people from overcrowded prisons to less congested facilities.

Section 3 of the act says,

When an individual is detained in a state prison for:

- (a) A death sentence,
- (b) Imprisonment or transportation,
- (c) Defaulting on fine payment, or
- (d) Failure to provide security for peace or good behavior,

²²⁷ Indian constitution ,1950 1950

²²⁸ *Ibid*

The government of that state may, with the consent of another state's government, order the transfer of the prisoner from one state's prison to another.

In this regard, prison officials in the receiving state must prepare provisions for the prisoner's confinement²²⁹.

viii) The Prisoners (Attendance in courts) Act, 1955

This Act includes provisions for those who are incarcerated to appear in court to give evidence or answer criminal charges.

Section 3 of this Act empowers any criminal court to issue an order directing the officer-in-charge of a prison, even if it is situated outside the state where the court is convened, to produce a person imprisoned there if their testimony is deemed crucial for any ongoing case before the court²³⁰.

Section 4 - Section 4 grants the State Government the discretion to exempt certain inmates from appearing in court under specific circumstances.

- a) The nature of the offence for which detention has been imposed in relation to the individual or class of persons;
- b) The possibility of a disruption in public order if the individual or class of people is allowed to be released from jail;
- c) In general, the public interest²³¹.

Section 5- Prisoners must be brought up in court by the officer-in-charge of the jail where his presence is necessary and the person specified there is held²³².

Section 7- A commission will be appointed by the court to examine detainees in certain instances²³³.

ix) The Probation of Offenders Act, 1958

²²⁹ THE TRANSFER OF PRISONERS ACT, 1950 ACT NO. 29 OF 19501

²³⁰ *Ibid*

²³¹ *Ibid*

²³² *Ibid*

²³³ *Ibid*

Probation regulations in India were adopted by this legislation in response to global developments in human rights jurisprudence and requests from different non-governmental groups. This act's distinguishing qualities include

Section 3 - The court is empowered to release certain offenders after issuing a warning. In cases where an individual is convicted of theft under sections 379-381, 404, or 420 of the Indian Penal Code, or any other offence punishable by imprisonment for up to two years, and no prior convictions are established against them, the court may opt to release the offender with a caution. This decision is based on various factors, including the circumstances of the offence and the character of the offender. Instead of imposing a penalty or placing the individual on probation for good behavior, the court may choose to admonish them and release them accordingly. The Court should have granted the appellant probation instead of issuing a punishment, according to the decision in *Keshav Sitaram Sali v. State of Maharashtra*²³⁴.

Section 4 grants the court the power to grant probation to certain offenders for demonstrating good behavior.

In cases where an individual is convicted of an offence not punishable by death or life imprisonment, and the court determining the guilt deems it suitable, considering factors such as the nature of the offence and the character of the offender, to release them on probation contingent upon good behavior²³⁵.

x) The Code of Criminal Procedure, 1973

The Criminal Procedure Code of 1973 governs criminal procedure. This Code specifies the procedure to be followed once a person commits a crime. Authorities must follow the approach outlined in this code. They do not have the authority to stray from the method. In the event of a deviation, the court may dismiss/discharge/notify the authority. This Code offers provisions in favour of the prisoner in terms of sentence commutation, suspension, and remission. To begin, Section 164²³⁶ of the CrPC specifies the procedure to be followed if the accused makes a confession. According to this clause, any gap might

²³⁴ Probation of Offenders. Act, 1958. [Act 20 of 1958]

²³⁵ *Ibid*

²³⁶ THE CODE OF CRIMINAL PROCEDURE, 1973, ACT NO. 2 OF 1974

be contested as violative and inadmissible. Secs. 432²³⁷ and 433²³⁸ contain another essential requirement. Sec. 432²³⁹ authorises the competent authority to delay the execution of a sentence or remit all or part of the punishment at any moment, without restrictions. Similarly, Section 433²⁴⁰ addresses sentence commuting by the relevant agency. This part is interpreted in conjunction with other sections (Sections 54 and 55) inserted into the IPC, 1860. Sec. 436²⁴¹ applies to an accused or detained individual in the case of a non-bailable offence. It goes on to say that such a person should be freed on bond. The court before which an accused appears and is brought has the authority to grant bail under Sections 436²⁴² and 437²⁴³ of the Code. Sec. 436A²⁴⁴ is the most crucial provision. This section deals with undertrial inmates who are imprisoned for a period of time that exceeds the maximum sentence for the accused offence. According to new Section 436A²⁴⁵, an undertrial prisoner who has been detained for a period extending to one-half of the maximum period of imprisonment provided for the alleged offence should be released on his personal bond, with or without sureties, unless he is accused of an offence for which death has been prescribed as one of the punishments. Recently, the Supreme Court repeatedly directed the lower judiciary to implement Section 436A²⁴⁶ of the CrPC.

²³⁷ *Ibid*

²³⁸ *Ibid*

²³⁹ *Ibid*

²⁴⁰ *Ibid*

²⁴¹ *Ibid*

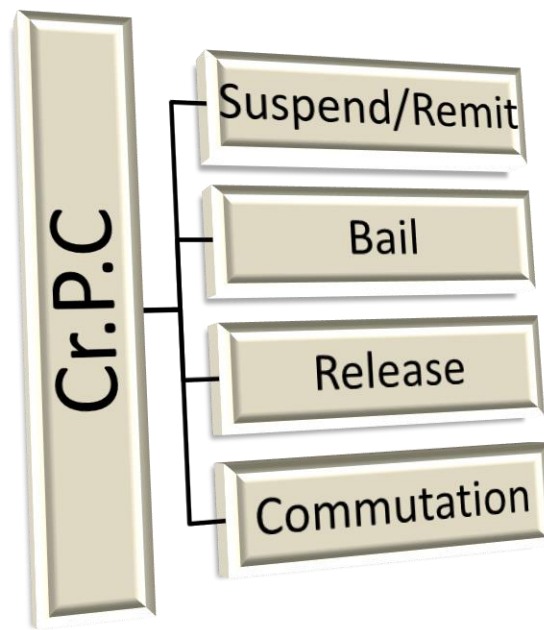
²⁴² *Ibid*

²⁴³ *Ibid*

²⁴⁴ *Ibid*

²⁴⁵ *Ibid*

²⁴⁶ *Ibid*



xi) The Juvenile Justice (Care & Protection) Act, 2000

This act's Chapter IV²⁴⁷ addresses Rehabilitation and Social Reintegration, as well as juvenile-related laws, which are as follows:

Rehabilitation and social reintegration process

Rehabilitation and social reintegration of a child should begin during the child's stay in a children's home or special home, and social reintegration of children shall be carried out alternately via adoption, foster care, sponsorship, and referral to an after-care agency²⁴⁸.

Adoption

Adoption must be used for the rehabilitation of orphaned, abandoned, or surrendered children after assuring the child's safety.

The Court may enable a kid to be adopted -

- To everyone, regardless of marital status; or

²⁴⁷ The Juvenile Justice (Care & Protection) Act, 2000 Act No. 56 of 2000

²⁴⁸ *Ibid*

- To parents, regardless of the number of live biological sons or daughters, to adopt a child of the same sex; or
- To couples without children²⁴⁹

Foster care

Sometimes, babies who need adoption are first placed in temporary foster care. This means they live with another family for a while, either for a short or long time depending on the situation. It's important to know

Their birth parents might still visit them often. This helps babies stay connected to their families.

The goal is usually for the babies to eventually return home. If their parents can get the help they need, the babies might go back to live with them.

But sometimes, adoption is the best option. If this happens, their foster family or another loving family may adopt them permanently.²⁵⁰

Sponsorship

The sponsorship program helps kids in need have a better life! It gives extra support to families, children's homes, and special homes where kids live. This support could be

Making sure they have enough healthy food to eat (nutritional needs)

Helping them learn in school (educational needs)

Caring for their health (medical needs)

And lots of other things (other needs)

By providing this extra help, the program aims to make life better for these kids in all sorts of ways²⁵¹.

After-care organization.

According to this provision, the state government is empowered to establish regulations governing the establishment, operation, and training of diverse after-care organizations tasked with the rehabilitation and character development of such juveniles. Additionally,

²⁴⁹ *Ibid*

²⁵⁰ *Ibid*

²⁵¹ *Ibid*

any juvenile or child aged seventeen but below eighteen would be under the care of the after-care organization until they reach twenty years of age²⁵².

xii) The Repatriation of Prisoners Act, 2003

The process of returning a person to his or her place of origin or citizenship is referred to as repatriation. This involves the procedure of relocating refugees or military troops following a conflict. So, if a contracting nation requests that India repatriate a prisoner to his home country, the central government may do so if certain reasonable criteria are met²⁵³. This act's key provisions are as follows:

Section 4- Application for transfer by a prisoner.—

Any prisoner who is a citizen of a contractual State may apply to the Central Government for the transfer of his custody from India to that contracting State, provided that the prisoner is unable to submit the application himself due to illness, mental illness, old age, or being a juvenile²⁵⁴.

Section 5 -consideration of request by Central Government if –

- a) There is no investigation, trial, or other process underway against the prisoner.
- b) The prisoner has not received the death punishment.
- c) The prisoner has not been convicted of a martial law offense; and
- d) The transfer of the prisoner's custody to the contracting State must not compromise India's sovereignty, security, or any other interest²⁵⁵.

If the central government agrees to the transfer, it shall be legal for the authorized individual from the contracting State to receive and detain the prisoner, escorting them out of India. Should the prisoner escape custody within India, they may be apprehended without a warrant by any person authorized by the contracting State²⁵⁶.

Section 10 of the Act empowers the Central Government to request records pertaining to a prisoner being transferred to a contracting State. This includes judicial proceedings, and

²⁵² The Juvenile Justice (Care & Protection) Act, 2000 Act No. 56 of 2000

²⁵³ Repatriation of Prisoners Act, 2003 Act no. 49 of 2003

²⁵⁴ *Ibid*

²⁵⁵ *Ibid*

²⁵⁶ *Ibid*

the Government may direct the relevant court or office to send these records to the Government of the contracting State²⁵⁷.

Section 11 - The transfer of a prisoner from India to a contracting State must not affect the power of the court which gave the verdict to review its judgement, or the right of the Central Government or State Government to suspend, remit, or commute the sentence in line with any legislation now in effect²⁵⁸.

xiii) Model Prison Manual, 2016

The Union Home Minister has approved a brand new Model Prison Manual, which basically sets the rules for how prisons across the country are run. This new manual, with its 32 chapters, aims to:

Make things consistent: No matter which state you're in, prisons will follow the same basic rules and regulations for managing prisoners and running the facilities.

Create a better system: The goal is to improve the overall environment and experience for both prisoners and prison staff.

This is a big step towards modernizing India's prison system. Hopefully, it will lead to more humane treatment of prisoners, better rehabilitation programs, and overall safer and more efficient facilities²⁵⁹.

The following are the primary topics addressed in the updated Manual:

To ensure inmates have access to legal representation, a three-pronged approach is recommended:

- **Appointing Jail Visiting Advocates:** Designating lawyers specifically dedicated to visiting prisons and consulting with inmates about their legal cases.
- **Establishing Legal Aid Clinics:** Setting up legal aid clinics within prisons themselves, where inmates can receive legal advice and assistance from qualified professionals.

²⁵⁷ *Ibid*

²⁵⁸ *Ibid*

²⁵⁹ Model Prison Manual, 2016

- **Organizing Legal Literacy Seminars:** Providing educational seminars within prisons to help inmates understand their legal rights and the legal processes involved in their cases²⁶⁰.

Upon intake, female prisoners should undergo thorough health screenings to assess for sexually transmitted infections (STIs), blood-borne infections (BBIs), mental health concerns, and substance use issues²⁶¹.

The Supreme Court, in the landmark case of *Shatrughan Chauhan v. Union of India* (1988), reaffirmed that due process rights extend to death row inmates. The Court emphasized that the legal procedures leading to the deprivation of life or liberty must be fair, just, and reasonable. This protection under Article 21 of the Constitution applies to everyone, including those sentenced to death, until the very end of their lives.

To ensure their well-being, regular physical and mental health assessments are mandatory for death row prisoners. These reports help in verifying their physical and mental fitness throughout the process.

Modernisation & Prison computerisation :

The Manual has been revised to promote the adoption of technology and software systems whenever feasible, including the establishment of a Personal Information System for recording prisoner data²⁶².

Focus on after-care services :

The Manual acknowledges that it is the obligation of the states to establish and implement methods for the rehabilitation of freed criminals²⁶³.

Provisions for children of women prisoners :

establish instructions to guarantee the complete development of children of female convicts and pregnant inmates²⁶⁴.

²⁶⁰ *Ibid*

²⁶¹ *Ibid*

²⁶² *Ibid*

²⁶³ *Ibid*

²⁶⁴ *Ibid*

Inspection of Prisons :

A new chapter on prison inspection has been added as Chapter providing for

- a. Senior jail officers will conduct informal inspections, and
- b. A formal inspection will be conducted by an authorised Inspector Officer²⁶⁵.

3.2 Judicial Directives

Summary of these cases in Judicial directives portion

In the landmark case of *Ramamurthy v. State of Karnataka* (1997)²⁶⁶, the Supreme Court of India highlighted nine critical areas requiring immediate attention for effective prison reform. These nine problems outlined the harsh realities of prison conditions in India:

1. **Overcrowding:** Prisons were operating well beyond their intended capacity.
2. **Delay in Trials:** Inordinate delays in the justice system were leading to extended pre-trial detentions.
3. **Torture and Ill-Treatment:** Inhuman treatment and torture of inmates were identified as serious issues.
4. **Neglect of Health and Hygiene:** Unsanitary conditions and inadequate healthcare posed significant health risks to prisoners.
5. **Insufficient Food and Inadequate Clothing:** Basic needs for sustenance and proper clothing were not being adequately met.
6. **Deficiency in Communication:** Limited access to communication with family and the outside world was a concern.
7. **Management of Open Prisons:** The proper management and oversight of open prison facilities required improvement.

Sunil Batra v. Delhi Administration AIR 1978 SC1675

The Supreme Court, in *Sunil Batra II*, underscored that prisoners retain all fundamental rights that are compatible with their confinement. Stressing the importance of treating prisoners humanely and safeguarding their basic human rights, the Court remarked:

²⁶⁵ Model Prison Manual, 2016

²⁶⁶ *Ramamurthy v. State of Karnataka* (1997) 2 SCC 642

"Fundamental rights do not desert individuals upon their entry into prison, although they may undergo some limitations due to incarceration."

Enumerating the substantive and procedural rights that prisoners should enjoy, the Supreme Court remarked:

"Forms of suffering can extend beyond physical violence. Placing a prisoner in solitary confinement, depriving them of essential amenities, or, more severely, transferring them to a distant prison where contact with friends or relatives is severed, assigning demeaning tasks, or associating them with a dangerous or harsh group may have punitive consequences. Any such restriction or curtailment constitutes an infringement of liberty or life in its broader sense and cannot be justified"²⁶⁷.

D. K. Basu v. State of West Bengal 50 AIR 1997 SC 610

The court emphasized that informing the friend or relative of the accused promptly upon arrest is essential. This communication serves the crucial purpose of enabling the accused's relatives or friends to gather facts about the situation, seek legal advice, and prepare a defense against any application for remand. It also allows them to make necessary arrangements for securing bail²⁶⁸.

Rudal Shah v. State of Bihar 1983 AIR 1086

It was established that upon acquittal in a trial, the prisoner has an unequivocal right to immediate release. Following an acquittal order, the individual cannot be detained any longer within the confines of the prison²⁶⁹.

Sanjay Suri v. Delhi Administration (1988) Cr LJ 705 (SC)

The Supreme Court emphasized that prison authorities must adopt a more humane approach towards inmates and safeguard their human rights out of a sense of humanity.²⁷⁰

Sheela Barse v. State of Maharashtra AIR 1983 SC 378

In response to complaints of custodial violence against female prisoners, the Supreme Court directed that these vulnerable victims of prison injustice should be granted legal assistance at the state's expense and shielded from torture and mistreatment. The court

²⁶⁷ Sunil Batra v. Delhi Administration AIR 1978 SC1675

²⁶⁸ D. K. Basu v. State of West Bengal 50 AIR 1997 SC 610

²⁶⁹ Rudal Shah v. State of Bihar 1983 AIR 1086

²⁷⁰ Sanjay Suri v. Delhi Administration (1988) Cr LJ 705 (SC)

further ruled that while interviews with prisoners are necessary to collect accurate information, such access must be controlled and regulated²⁷¹.

In *Dharambir v. State of U.P* (2010)

the court mandated that state governments facilitate family visits for prisoners. This directive included allowing family members to visit prisons under supervision and permitting inmates, under guard, to visit their families at least once a year.²⁷²

Re Inhuman Conditions in 1382 Prisoners case

A petition filed before the Supreme Court under Article 32 of the Constitution (*Re Inhuman Conditions in 1382 Prisoners case*) brought the issue of prison reform in India to the forefront. The Court emphasized a fundamental principle: that all prisoners, including those awaiting trial, deserve to be treated with dignity and respect as human beings.

In a landmark judgment issued on March 14, 2016, the Supreme Court reaffirmed the legal and constitutional rights of prisoners in India, particularly those yet to be convicted (undertrial prisoners). Following this decision, the Model Prison Manual 2016 was established, mandating the creation of Undertrial Review Committees. These committees, chaired by the district judge, include representatives from the district legal services authority, the district magistrate, and the district superintendent of police. Their purpose is to oversee the conditions of confinement for undertrial prisoners and ensure their rights are upheld.²⁷³

Appraisal

This article essentially offers two rights:

- a) Everyone who gets arrested, no matter if they're a man or a woman, has the right to see a judge within 24 hours of their arrest. This doesn't include the time it takes to travel from the arrest location to the court. It's like saying, "You can't keep someone locked up for too long without letting a judge decide what happens next."

²⁷¹ *Sheela Barse v. State of Maharashtra* AIR 1983 SC 378

²⁷² *Dharambir v. State of U.P* (2010) 5 SCC 344

²⁷³ *Re Inhuman Conditions in 1382 Prisoners case*

- b) Right to speedy appearance before a magistrate: No one can be held for more than 24 hours without a judge (magistrate) reviewing the case. This protects people from arbitrary detention and ensures their rights are respected.

CHAPTER: IV

CONDITION OF WOMEN IN INDIAN AND CANADIAN PRISONS

Prelude

4% of total prison population

As of December 31st, 2021, India's dedicated women's jails held 3,808 inmates, representing only 56.3% of their total capacity (6,767). This includes five transgender individuals. In other types of jails housing female prisoners, the occupancy rate was higher at 84.4%. These facilities held 19,115 women inmates compared to their total capacity of 22,659.

This information suggests that while dedicated women's jails have significant unused capacity, overcrowding remains an issue in other types of jails housing female prisoners²⁷⁴.

The United Nations General Assembly has played a key role in establishing international standards for prisoner treatment. In 2011, they adopted the Bangkok Rules, which specifically address the treatment of women in prison and promote alternative sentencing options for female offenders. Four years later, in 2015, the UN General Assembly adopted the Nelson Mandela Rules. These comprehensive rules establish minimum international standards for the treatment of all prisoners, encompassing both men and women.

4.1 - WOMEN IN INDIAN JAILS

Kiran Bedi, in her book "It's Always Possible," highlights the grim reality faced by women prisoners, emphasizing the dehumanizing experiences that strip away their dignity and self-respect upon entering prison. Despite enduring immense challenges, these women remarkably hold onto their sanity amidst adversity. Female inmates encounter compounded difficulties such as overcrowding, unsanitary conditions, and inadequate access to basic necessities like sanitary napkins. Studies reveal that women in prison are subjected to physical abuse and sexual harassment, further exacerbating their trauma. Rather than facilitating rehabilitation, incarceration often leaves lasting scars on individuals. Reintegration into society post-release poses another hurdle, with many

²⁷⁴ Office of the Correctional Investigator, Annual Report of the Office of the Correctional Investigator 2012-2013, prepared by Howard Sapers (28 June 2013), online: [Office of the Correctional Investigator, 2013 Annual Report]

women abandoned by their families and lacking support networks. Illiteracy further compounds their struggles, rendering them unable to advocate for their rights. Shockingly, some inmates perceive life in prison as preferable to the societal stigma awaiting them outside its walls²⁷⁵.

The ratio of women prisoners to men prisoners varies, with women constituting a smaller percentage of the incarcerated population. Prisons and jails serve as secure facilities for individuals who have violated the law, aiming to hold them accountable and facilitate rehabilitation. However, both types of institutions often conceal instances of violence occurring within their walls. Therefore, it is crucial to acknowledge and uphold the rights of all prisoners, regardless of gender.

Women inmates encounter unique challenges and rights violations within the prison system. The facilities were primarily designed for male inmates, exacerbating the difficulties faced by women. Common issues and violations of rights experienced by women in prisons include:

- i) Delays in trial proceedings, which hinder access to justice.
- ii) Challenges with prison staff, including instances of abuse or misconduct.
- iii) Accommodation problems stemming from overcrowding, leading to substandard living conditions.
- iv) Inadequate access to legal aid services, impeding their ability to navigate the legal system.
- v) Limited educational opportunities, hindering their personal development and future prospects.
- vi) Exposure to violence, both from other inmates and sometimes from prison staff.
- vii) Concerns regarding the care and well-being of their children, especially if they are incarcerated mothers.
- viii) Health issues exacerbated by the prison environment, including inadequate medical care and mental health support.

²⁷⁵ Office of the Correctional Investigator, Annual Report of the Office of the Correctional Investigator 2012-2013, prepared by Howard Sapers (28 June 2013), online: [Office of the Correctional Investigator, 2013 Annual Report]

ix) Sanitation challenges, such as insufficient access to clean water and hygiene facilities.

x) Personal hygiene needs not being adequately met, impacting their dignity and well-being.

xi) Limited connection with the outside world, including restricted visitation rights and communication with loved ones.

xii- Acceptance and adjusting in the community after serving in prison

xiii- Vocational training Many released prisoners lack marketable skills. Providing vocational training programs equips them with the qualifications needed to secure employment and achieve financial stabilityxiv- Nutrition

xv- Bath and Latrine Access to basic hygiene facilities like baths and latrines is essential for dignity and public health. Reintegration programs should ensure access to these facilities.

xvi- Clothing and bedding Proper nutrition is essential for physical and mental well-being. Nutritional guidance or access to food assistance programs can ensure released prisoners maintain a healthy diet.

xvii- Family management issues Prison time can strain family relationships. Programs providing guidance on conflict resolution, communication skills, and parenting can help rebuild healthy family dynamics.

xviii- Impact on their child/children due to staying away in prison A parent's incarceration can significantly affect children. Support services may include access to counseling for both the former prisoner and their children to address the emotional and social consequences of separation.²⁷⁶

Addressing the Plight of Women Prisoners: A Comprehensive Approach

1. Legal Support and Awareness:

Provide legal aid camps and workshops within prisons to educate women about their rights and support them in navigating the legal system.

2. Maternity Care and Family Ties:

²⁷⁶ Public Safety Canada, 2013 Annual Report Corrections and Conditional Release Statistical Overview (2013) at 39

Ensure access to proper prenatal care, safe childbirth facilities, and support groups for mothers.

Facilitate regular parent-child visits in comfortable, child-friendly spaces.

Explore alternatives to incarceration for pregnant women and mothers of young children.

3. Dignified Living Conditions:

Upgrade living arrangements to ensure basic hygiene, privacy, and safety.

Recruit sufficient qualified staff, including female officers, for sensitive and professional care.

4. Education and Rehabilitation:

Implement comprehensive educational programs focusing on literacy, vocational skills, and personal development.

Offer rehabilitation programs that address the root causes of their offenses and prepare them for reintegration into society.

5. Safety and Security:

Establish zero tolerance for violence within prisons and implement effective reporting and accountability mechanisms.

Conduct regular inspections to ensure adherence to human rights standards and address any shortcomings.

6. Addressing Specific Needs:

Implement specialized programs and support systems for foreign nationals to address cultural and communication barriers.

Provide access to appropriate healthcare, including mental health services, tailored to women's needs.

7. National Action and Oversight:

Establish or strengthen national commissions focused on prisoners' rights, particularly those of women.

Promote collaboration between government agencies, NGOs, and community organizations to develop and implement effective solutions.²⁷⁷

4.2 CONDITION OF FEMALE PRISONERS IN INDIAN JAILS

4.2.1 Prison Staff

The National Model Prison Manual 2016, also known as the ‘National Prison Manual,’ acknowledges the principle of having one guarding staff member for every six prisoners. Additionally, it stipulates that each prison should be staffed with executive personnel, medical professionals, welfare officers, educators, and other staff members to facilitate the effective operation of the institution²⁷⁸. As of 2015, the total number of women jail officers/staff was 4,391²⁷⁹, which is only 8.28%²⁸⁰ of the total. The National Prison Manual specifies the appointment of one lady Deputy Inspector General (DIG) assigned to the Prison Headquarters to oversee women's prisons, staff, and prisoners within the state. However, in May 2017, the Hon’ble Supreme Court observed a significant shortage of staff in nearly every jail across the country.

4.2.2 Overcrowding and Accommodation Problems

Overcrowding stands out as a prominent issue afflicting Indian prisons, with the national average occupancy reaching 114.4% in 2015. States/UTs like Dadra and Nagar Haveli, Chhattisgarh, and Delhi have reported exceptionally high rates of overcrowding in prisons, reaching levels as alarming as 276.7%, 233.9%, and 226.9% respectively²⁸¹. Overcrowding in prisons not only signifies a shortage of space for inmates but also amplifies the strain on already scarce resources and facilities within correctional facilities. Importantly, even in prisons where overcrowding is not a significant concern, accommodation is often insufficient, compounding the challenges faced by the prison system²⁸².

4.2.3 Protectors Can Be Predators

²⁷⁷ (Prison Statistics India 2015, NCRB, 2015)

²⁷⁸ *Ibid*

²⁷⁹ Statistics Canada, Police-reported crime statistics, 2013 (23 July 2014) at 1, online: StatsCan

²⁸⁰ Mandy Wesley, “Marginalized: The Aboriginal Women's Experience in Federal Corrections”, Public Safety Canada (2012) at 33-34

²⁸¹ (Prison Statistics India 2021, NCRB)

²⁸² Referred from “Women in Prisons India, June 2018, Ministry of Women and Child Development, Government of India. Female prisoners in India and their conditions, Nidhi Singh, Llyod College.) (Volume 7, April 2020 ISSN 2581-5504 www.penacclaims.com Page 10)

The protocol requires prisoners to address any grievances with jail authorities or notify senior police officers during their inspection visits. However, the absence of complaint mechanisms, such as complaint boxes, deprives women prisoners of a safe avenue to voice their concerns without fear of repercussions. Consequently, women prisoners remain vulnerable to various forms of harassment or assault within jails, including physical and sexual abuse.

4.2.4 Living Conditions of Female Prisoners

The rules governing women prisoners are clearly outlined, yet they often remain confined to the pages of rulebooks. Despite their smaller population within the prison system, women face a heightened risk of health issues due to inadequate facilities and resources. Moreover, with limited opportunities for meaningful occupation or diversion, many women, often victims of harassment themselves, are left vulnerable to worsening mental health conditions, contributing to increased levels of depression among them.

4.2.5 Health and Diet is a Major Issue

At times, the prison hospital may face shortages of medicines despite the obligation to maintain a sufficient stock. The right to health encompasses the provision of healthcare that is available, accessible, acceptable, and of good quality. According to the National Prison Manual, every prison should have its own hospital equipped with separate wards for male and female inmates. Additionally, the manual mandates comprehensive health screenings for female prisoners, covering assessments for sexually transmitted or blood-borne diseases, mental health issues, and substance abuse disorders. Upon admission, all prisoners are to receive vaccinations, with special attention given to the healthcare needs of elderly inmates and those struggling with drug addiction.

However, akin to many government institutions, loopholes exist within the prison administration. It is important for authorities to recognize that due to the global lack of awareness and investment in women's health concerns, many female prisoners enter correctional facilities with pre-existing physical and psychological conditions that necessitate proper intervention and care.

4.2.6 Correctional Attitude is Missing

In correctional facilities across the country, various activities such as yoga, reading, handloom weaving, basket weaving, gardening, baking, ornament making, tailoring, and

beautician courses are offered to women inmates. However, some of these vocational courses, particularly tailoring and beautician training, may not be practical due to the lack of clients within the prison setting.

Moreover, detention facilities, regardless of gender or age, are plagued by serious issues of violence, abuse, including sexual and physical assault. It is imperative for prison authorities to take decisive action to eradicate these abuses, both by directly addressing them and by implementing systems that prevent such incidents from occurring. However, in some cases, correctional staff may be complicit in or actively perpetrate these abuses, highlighting the need for comprehensive reform and oversight within the correctional system.

4.2.7 The Number of Women in Prison in India is Gradually Growing

Women in Indian prisons face a multitude of challenges, despite existing rules meant to protect them. These challenges range from inadequate facilities and insufficient healthcare to limited educational opportunities and lack of legal aid. The overcrowded and understaffed prisons often lack female employees, creating further difficulties for inmates. Additionally, children living with imprisoned mothers encounter neglect in terms of education, health, and recreation.

These issues are compounded by limited contact with the outside world, high rates of violence, and insufficient reintegration support upon release. To address this, changes are urgently needed. Independent inspections, mandatory gender sensitivity training for staff, and accessible grievance redressal mechanisms are crucial steps. Moreover, efforts to keep women out of prison through alternative sentencing and addressing the root causes of crime are essential. Ultimately, improving prison conditions, providing better post-release support, and minimizing incarceration for women will lead to a more just and effective approach to female criminality in India.

Access to dedicated women's prisons in India varies greatly across states and territories. Only 13 out of 37 have established these specialized facilities. In the remaining regions, female prisoners are confined to designated women's sections within larger prisons, essentially creating a "jail within a jail" scenario. This lack of dedicated women's prisons is particularly concerning in states with high female prisoner populations. For instance, Uttar Pradesh, which houses the most women prisoners nationwide, has just one women's jail. Similarly, Madhya Pradesh, ranking third in female prisoner population, entirely

lacks dedicated women's prisons. In contrast, states like Tamil Nadu and Kerala, known for their focus on social welfare, boast a higher number of women's jails. This uneven distribution of resources highlights the need for a more standardized approach to ensure all female prisoners have access to appropriate facilities.

4.3 WOMEN IN CANADIAN JAILS

6% of total prison population.

This report comes from the Canadian Association of Elizabeth Fry Societies (CAEFS), a network of independent, community-based organizations across Canada. Together, these societies dedicate their efforts to supporting marginalized, victimized, criminalized, and institutionalized women and girls, with a particular focus on those incarcerated.

Through public education, research, and advocacy at regional, national, and international levels, CAEFS works towards achieving substantive equality in the delivery and development of programs and services that impact these vulnerable communities. They strive for a system that recognizes and addresses the unique needs of marginalized women and girls, ensuring they receive fair and equitable treatment.

The incarceration rate of women in Canada has seen a concerning surge in recent years. Between 2003 and 2013, there was a staggering 60% increase in the overall population of women in prison. Specifically, the number of federally imprisoned women surged by 13.9% during the same period.²⁸³ This is happening at a time when Canada's national crime rate is at its lowest since 1969.²⁸⁴ Indigenous and other racialized women,²⁸⁵ as well as women with disabling mental health issues,²⁸⁶ are disproportionately incarcerated. Indigenous women are now 39% of federally sentenced women.²⁸⁷ The overwhelming majority of women in prison have histories of abuse and suffer from posttraumatic stress.²⁸⁸ 85.7% of all incarcerated women and 91% of Indigenous incarcerated women

²⁸³ Public Safety Canada, 2013 Annual Report Corrections and Conditional Release Statistical Overview (2013) at 39

²⁸⁴ Statistics Canada, Police-reported crime statistics, 2013 (23 July 2014) at 1, online: StatsCan

²⁸⁵ Mandy Wesley, "Marginalized: The Aboriginal Women's Experience in Federal Corrections", Public Safety Canada (2012) at 33-34

²⁸⁶ Correctional Services Canada, File #394-2-88 Evaluation Report: Intensive Intervention Strategy for Women Offenders (March 2010) at 21-22

²⁸⁷ Statistics Canada, Study: Women in Canada: Women and the Criminal Justice System (6 June 2017) at 2, online: StatsCan

²⁸⁸ Canadian Association of Elizabeth Fry Societies, "Long Term Effects of Abuse and Trauma" Elizabeth Fry Society Resources, online: [CAEFS, "Long Term Effects of Abuse and Trauma"].

have experienced physical and/or sexual abuse.²⁸⁹ Many have never received therapeutic support; rather, they are likely to be medicated and pathologized. Imprisoned women are more likely to be impoverished, under-educated²⁹⁰ and unemployed²⁹¹ than the general public. 64.2% of federally incarcerated women are single mothers;²⁹² 57.1% had primary responsibility for their children before they were imprisoned;²⁹³ and the majority of their children end up in the care of the state. Most women are criminalized for behaviour occasioned by their attempts to negotiate poverty,²⁹⁴ violent racism, and other forms of discrimination related to their marginalization and victimization²⁹⁵. So slight is the risk that women pose to public safety that this risk can and should be managed in the community.

A recent report commissioned by Public Safety Canada has brought to light the alarming issue of over-incarceration among Indigenous and racialized women, characterizing it as a crisis²⁹⁶. This phenomenon reflects systemic discrimination entrenched within Canada's justice system. The disproportionate imprisonment of Indigenous women across the country is a stark manifestation of this systemic injustice²⁹⁷. Factors such as systemic discrimination, poverty, violence, and social isolation contribute directly to the escalation of marginalization, victimization, criminalization, and subsequent imprisonment among Indigenous and other racialized women.

- I. Indigenous women are the most concerning demographic in Canada's prison system, with their incarceration rates skyrocketing. Between 2003 and 2013 alone, the number of Indigenous women prisoners witnessed a staggering increase of

²⁸⁹ *Ibid*

²⁹⁰ Correctional Service Canada, *Twenty Years Later: Revisiting the Task Force on Federally Sentenced Women*, prepared by Meredith Robeson Barrett et al (July 2010) at 49, online: [CSC, *Twenty Years Later*].

²⁹¹ *Ibid*

²⁹² *Ibid*

²⁹³ *Ibid*

²⁹⁴ 21 Margaret Beare, *Women and Organized Crime*, Catalogue No PS4-106/2010EPDF, Department of Public Safety, (2010) at 10, 24, 29

²⁹⁵ "Women's Inequality in Canada Report to the Human Rights Council on Canada's Third Universal Periodic Review."

²⁹⁶ "Marginalized: The Aboriginal Women's experience in Federal Corrections," *available at*: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/mrgnlzd/index-en.aspx> (last visited February 17, 2024).

²⁹⁷ "Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act | OCI | BEC," *available at*: <https://oci-bec.gc.ca/en/content/spirit-matters-aboriginal-people-and-corrections-and-conditional-release-act> (last visited February 18, 2024).

over 83.7 percent. This alarming statistic highlights a critical issue in the Canadian justice system²⁹⁸.

- II. A troubling trend in 2007 saw Indigenous women comprise a staggering 45% of the population classified as "maximum security" in Canadian prisons. Even more concerning, they also accounted for a disproportionate 75% of reported incidents of self-injury.²⁹⁹
- III. The classification system employed by the Correctional Service of Canada (CSC), responsible for overseeing federal prisons, was originally developed with a focus on a predominantly white male demographic³⁰⁰. While the Correctional Service of Canada (CSC) asserts that it has made adjustments to the classification system, it continues to overlook cultural or gender-specific concerns. As a result, Indigenous women are disproportionately classified as medium or maximum security compared to non-Indigenous women.³⁰¹
- IV. Prisoners of African Canadian heritage accounted for 2.9% of the Canadian population in 2011. However, Black women comprised 9.12% of the federal prisoner population in 2011-2012.³⁰²
- V. The majority of African Canadian women in federal penitentiaries are imprisoned for drug trafficking, often involving carrying drugs across international borders. Many of these women were living in poverty, and a significant portion had been coerced or threatened with violence into engaging in trafficking.³⁰³ The over-representation of Indigenous women within the Canadian justice system is a growing concern, stemming from systemic issues such as women's inequality,

²⁹⁸ "Annual Report of the Office of the Correctional Investigator 2012-2013 | OCI | BEC," *available at*: <https://oci-bec.gc.ca/en/content/annual-report-office-correctional-investigator-2012-2013> (last visited February 18, 2024).

²⁹⁹ Office of the Correctional Investigator, Annual Report of the Office of the Correctional Investigator 2012-2013, prepared by Howard Sapers (28 June 2013),

³⁰⁰ Mandy Wesley, "Marginalized: The Aboriginal Women's Experience in Federal Corrections", Public Safety Canada (2012) at 33-34

³⁰¹ Correctional Service Canada, Twenty years later: Revisiting The Task Force on Federally Sentenced Women, (July 2010),

³⁰² Office of the Correctional Investigator, Annual Report of the Office of the Correctional Investigator 2012-2013, prepared by Howard Sapers (28 June 2013),

³⁰³ *Ibid*

marginalization, and victimization. This disparity is exacerbated by factors like the inadequate availability of economic support, housing, and essential services, including therapeutic and mental health resources, especially in non-urban and northern regions of Canada.³⁰⁴ Moreover, the absence of accessible community-based services leads to women being removed from their families and cultural communities, compelling them to serve their prison sentences in isolation.³⁰⁵

- VI. Treatment of Women Prisoners Although the Task Force on Federally Sentenced Women,³⁰⁶ the Arbour Commission,³⁰⁷ the Auditor General, the Public Accounts Committee, the Correctional Investigator and the Canadian Human Rights Commission³⁰⁸ have consistently concluded³⁰⁹ the Despite evidence showing that women prisoners present a minimal risk to public safety and are less prone to recidivism compared to men, the Correctional Service of Canada (CSC) persists in employing identical risk and needs assessment tools for both genders.³¹⁰
- VII. Women prisoners are excessively classified, worsening their already restricted access to diverse programming, limited opportunities for employment-related training, and overall diminished access to services.³¹¹ Sections 77 and 80 of the Corrections and Conditional Release Act mandate that the CSC must offer gender-specific and culturally appropriate programming. Nevertheless, women still receive programs and services tailored for a predominantly white, male prison population.³¹²

³⁰⁴ “Talking prisons and human rights - Yukon News,” *available at*: <https://www.yukon-news.com/news/talking-prisons-and-human-rights-6976259> (last visited February 18, 2024).

³⁰⁵ “Department of Justice | Government of Yukon,” *available at*: <https://yukon.ca/en/departement-justice> (last visited February 18, 2024).

³⁰⁶ “Creating Choices: The Report of the Task Force on Federally Sentenced Women,” (1990).

³⁰⁷ Solicitor General of Canada, Commission of Inquiry into certain events at the Prison for Women in Kingston (Ottawa: Public Works and Government Services Canada, 1996)

³⁰⁸ 36 Canadian Human Rights Commission, Protecting Their Rights A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women (December 2003) at 31

³⁰⁹ The Société Elizabeth Fry du Québec, “Fact Sheets About Criminal Justice Criminalized & Imprisoned Women”

³¹⁰ Colleen Anne Dell & Roger Boe, “Research Reports: An Examination of Aboriginal and Caucasian Women Offender Risk and Needs Factors” (2000) Correctional Service of Canada at “Need”,

³¹¹ Office of the Correctional Investigator, Annual Report of the Office of the Correctional Investigator 2012-2013, prepared by Howard Sapers (28 June 2013), online: ; Mandy Wesley, “Marginalized: The Aboriginal Women's Experience in Federal Corrections”, Public Safety Canada (2012)

³¹² Corrections and Conditional Release Act, SC 1992, c 20 Mandy Wesley, “Marginalized: The Aboriginal Women's Experience in Federal Corrections”, Public Safety Canada (2012),

- VIII. In its 2006 Concluding Observations following a review of Canada's fifth report, the United Nations Human Rights Committee recommended: "The State should cease the practice of employing male staff working in direct contact with women in women's institutions."³¹³ The Government of Canada continues to employ male front line staff in its women's prisons.³¹⁴ Despite the fact that 91% of federally imprisoned Indigenous women and the majority of all federally sentenced women have histories of physical and/or sexual abuse, the Correctional Service of Canada (CSC) has continued to employ men as front line workers in women's prisons since 1995. Furthermore, many of these men are inadequately trained and have not been properly screened to work with women.³¹⁵ Female prisoners frequently report instances of inappropriate comments, sexual harassment, and even assault by male staff members. However, they often refrain from filing formal complaints against these staff members due to fear of retaliation.³¹⁶
- IX. In 2006, the Human Rights Committee requested that Canada provide information regarding the establishment of an independent external redress body for federally sentenced prisoners and independent adjudication for decisions related to involuntary segregation, or alternative models."³¹⁷ In 2015, the Human Rights Committee issued a critical recommendation to Canada. They urged the country to significantly restrict the use of administrative and disciplinary segregation, emphasizing it should only be employed as a last resort, for the shortest possible duration, and never against inmates with serious mental illness. This strong statement highlighted concerns about the potential misuse of solitary confinement in Canadian prisons, particularly its impact on vulnerable individuals.³¹⁸ The Government of Canada has not developed an external redress body,³¹⁹ and women

³¹³ UN. Human Rights Committee (87th sess. : 2006 : Geneva), "Concluding observations of the Human Rights Committee :: United States of America" (UN, 2006).

³¹⁴ "Reports on United Nations human rights treaties - Canada.ca," *available at*:

<https://www.canada.ca/en/canadian-heritage/services/canada-united-nations-system/reports-united-nations-treaties.html> (last visited February 18, 2024).

³¹⁵ CSC, Twenty Years Later, at 60-1; Correctional Services Canada, The Cross Gender Monitoring Project 3rd and Final Annual Report, 2013

³¹⁶ *Ibid*

³¹⁷ "UN Human Rights Committee: Concluding Observations, Canada | Refworld," *available at*:

<https://www.refworld.org/policy/polrec/hrc/2006/en/38904> (last visited February 18, 2024).

³¹⁸ *Ibid*

³¹⁹ "Ashley Smith inquest: Key recommendations from the jury | Globalnews.ca," *available at*:

<https://globalnews.ca/news/1041116/ashley-smith-inquest-key-recommendations-from-the-jury/> (last visited February 18, 2024).

in Canadian prisons continue to be disproportionately segregated. The 1996 Arbour Commission documented how women are affected by the isolation of segregation.³²⁰ Segregation aggravates and/or creates mental health issues,³²¹ reduces motivation and opportunities to participate in reintegration activities,³²² and has been defined as an act of torture by the United Nations.³²³

- X. Segregation refers to both a status and a physical space. Women who are segregated from the general prison population endure overly restrictive conditions of confinement. This includes being isolated for more than 18 hours a day, limited human interaction only with correctional staff, occasional interaction during physical restraints or counts, and when food or medication is passed through a slot in the door.
- XI. In 2012-2013, there were 390 women in involuntary segregation.³²⁴ 18.2% of the women stayed in segregation for longer than 30 days³²⁵.
- XII. Indigenous women are disproportionately subjected to involuntary segregation and endure longer periods of segregation compared to non-Indigenous women.³²⁶
- XIII. It is common for women held in segregation to face additional criminal charges, leading to longer sentences.³²⁷

³²⁰ Jena McGill, “‘An Institutional Suicide Machine’: Discrimination Against Federally Sentenced Aboriginal Women by the Correctional Service of Canada in Violation of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women,” 2008.

³²¹ Mandy Wesley, “Marginalized: The Aboriginal Women’s Experience in Federal Corrections”, Public Safety Canada (2012)

³²² *Ibid*

³²³ “Solitary confinement should be banned in most cases, UN expert says | UN News,” *available at*: <https://news.un.org/en/story/2011/10/392012> (last visited February 18, 2024).

³²⁴ “Why are Women Canada’s Fastest-Growing Prison Population and Why Should We Care? - Doing Peace the Rights Way,” *available at*: <https://www.cambridge.org/core/books/abs/doing-peace-the-rights-way/why-are-women-canadas-fastestgrowing-prison-population-and-why-should-we-care/8E6FDCD67E45BDF362C0735487537D41> (last visited February 18, 2024).

³²⁵ Public Safety Canada, 2013 Annual Report Corrections and Conditional Release Statistical Overview (2013) at 65

³²⁶ Public Safety Canada, 2013 Annual Report Corrections and Conditional Release Statistical Overview (2013) at 65

³²⁷ Correctional Services Canada, “Response to the Coroner’s Inquest Touching the Death of Ashley Smith”, December 2014, online: CSC ; Kim Pate, “Why are Women and Girls Canada’s Fastest Growing Prison Population; And, Why Should You Care?” (Grant Lowery Lecture delivered at the Annual Defence for Children International – Canada Grant Lowery Lecture, 26 April 2011) at 5, online: CAEFS ; Marion Botsford Fraser, “Life on the Instalment Plan”, *The Walrus* (March 2010),

- XIV. The Canadian Medical Association and the UN Special Rapporteur on torture have characterized solitary confinement as "cruel and unusual punishment." The Special Rapporteur has advocated for a complete prohibition of solitary confinement for youth and individuals with mental health issues.³²⁸
- XV. The tragic death of Ashley Smith in prison custody sparked a call to action. Following an inquest, the jury recommended an outright ban on placing prisoners with mental health issues in solitary confinement (segregation) [1]. This recommendation has been echoed by numerous organizations, including the Honourable Louise Arbour, the Canadian Association of Elizabeth Fry Societies, the Native Women's Association of Canada, the Disabled Women's Network of Canada, and the Canadian and Ontario Human Rights Commissions. These entities advocate for the complete abolition of solitary confinement and related isolation practices, regardless of the label used – "segregation," "intensive psychiatric care," "medical observation," or any other euphemism. Their focus is on ending the isolation of women prisoners, particularly those who are Indigenous or grappling with mental health challenges.³²⁹
- XVI. In light of growing scrutiny surrounding the treatment of women in prison, Canada's Correctional Service (CSC) has significantly reduced its use of solitary confinement. Recognizing this progress, the Canadian Association of Elizabeth Fry Societies (CAEFS) has expressed its willingness to collaborate with CSC to achieve the complete elimination of this practice.

Solitary confinement, also known as segregation, has emerged as a critical concern in Canada's prison system. A disturbing trend revealed that between 2011 and 2014, nearly half of all suicides within federal prisons occurred in segregation cells. This raises serious

³²⁸ "Why are Women Canada's Fastest-Growing Prison Population and Why Should We Care? - Doing Peace the Rights Way," *available at*: <https://www.cambridge.org/core/books/abs/doing-peace-the-rights-way/why-are-women-canadas-fastestgrowing-prison-population-and-why-should-we-care/8E6FDCD67E45BDF362C0735487537D41> (last visited February 18, 2024).

³²⁹ "CAEFS / Elizabeth Fry Ottawa 2016 Conference – The A Word: Reclaiming Advocacy," *available at*: <https://nationtalk.ca/story/caefs-elizabeth-fry-ottawa-2016-conference-the-a-word-reclaiming-advocacy> (last visited February 18, 2024).

questions about the impact of isolation on vulnerable individuals, particularly those with documented mental health issues. Despite these documented needs, many prisoners in segregation have little to no access to therapeutic interventions.

The disproportionate impact of solitary confinement on women, especially Indigenous women and those struggling with mental health, demands immediate action. Abolishing segregation entirely, not just limiting its duration, is a vital step. Historical evidence demonstrates that time restrictions often prove arbitrary and fail to safeguard the most at-risk individuals.

The root causes of this issue extend beyond prison walls. Cuts to essential social services, such as affordable housing, have contributed to the rise of women with mental health problems within the prison system. Furthermore, a lack of adequate community-based support for women fuels the growth of the incarcerated female population. This disproportionately affects Indigenous women, those facing economic hardship, and individuals with mental health issues or intellectual disabilities. In what has been dubbed a “revolving door”³³⁰ syndrome, there is ample evidence that homeless women with mental health issues are more likely to be imprisoned, and if released find it almost impossible to find housing, so too often find themselves re-incarcerated.³³¹

Adding international weight to the call for reform, the United Nations Human Rights Committee issued its 2006 Concluding Observations following a review of Canada's prison system. Their recommendations were clear:

- **Prioritize Community Housing:** All levels of government, federal and provincial/territorial, must prioritize the development of ample and suitable community-based housing options for individuals with mental disabilities. This would provide a crucial alternative to incarceration.
- **End Unjustified Detention:** The Committee emphasized the importance of ensuring that individuals with mental health issues are not subjected to prolonged detention when there is no longer a legal or medical justification for their confinement.

³³⁰ Stephen Gaetz and Bill O’grady, “Challenge of Effective Discharge Planning: A Canadian Case” (2009).

³³¹ “Justice-focused Mental Health Supportive Housing in Toronto Needs Assessment and Action Plan [],” (2020).

These recommendations highlight the urgent need for a two-pronged approach: expanding community support systems and ensuring that solitary confinement is not used as a substitute for appropriate mental health care.³³² The UN Human Rights Committee revisited Canada's prison system in 2015 and expressed serious concerns. They pointed to the "inadequate medical assistance provided to detainees with severe mental illnesses." To address this critical issue, the Committee urged Canada to implement significant measures that would:

- **Enhance Access to Treatment:** Substantially increase access to mental health treatment facilities across the entire prison system, ensuring all levels (federal and provincial/territorial) have adequate capacity.
- **Improve Treatment Quality:** Elevate the quality and effectiveness of the treatment provided to incarcerated individuals with mental health conditions.

These recommendations underscore the need to invest in robust mental health care within Canada's prisons. By providing proper treatment and increasing accessibility, the prison system can better serve the needs of this vulnerable population.³³³ This is a dual-layered issue: women with mental health challenges face a heightened risk of incarceration, and once inside prisons, they do not receive adequate treatment or suitable care.

Federally sentenced women are twice as likely as men to have a mental health disorder upon being admitted to prison;³³⁴ and in 2012/2013 approximately 75% of women prisoners received a CSC-based mental health service.³³⁵

The Office of the Correctional Investigator (OCI) has evaluated that the Correctional Service of Canada (CSC) lacks the capacity to effectively address mental health concerns, particularly among federally sentenced women. The OCI discovered that CSC excessively relies on measures such as force, physical restraints, restricted movement, limited interaction with other inmates, and constrained access to transfers to suitable psychiatric or mental health facilities.³³⁶

³³² Human Rights Committee, 2006 Concluding observations, at para 17

³³³ HRC 2015 Concluding Observations, at para 14

³³⁴ Correctional Services Canada, File #394-2-88 Evaluation Report: Intensive Intervention Strategy for Women Offenders (March 2011) at 21-2, online: CSC

³³⁵ Office of the Correctional Investigator, Annual Report of the Office of the Correctional Investigator 2013-2014, prepared by Howard Sapers (27 June 2014),

³³⁶ *Ibid*

Appraisal

Women released from prison, particularly those grappling with mental health issues, face a critical barrier: a dearth of effective transition programs. This lack of support makes it extremely challenging for them to successfully reintegrate into society.

In a glimmer of hope, Prime Minister Trudeau acknowledged this issue in a November 2015 mandate letter to the Minister of Public Safety. He recognized the need for improved services for incarcerated individuals with mental health concerns, specifically mentioning the need to address service gaps for Indigenous Peoples and those with mental illness across the criminal justice system.³³⁷

However, this promising directive has yet to translate into concrete action. Existing provisions within the Corrections and Conditional Release Act (sections 29, 76, 77, 80, 81, and 84) offer potential pathways for transferring women from prisons to mental health facilities, women's rehabilitation programs, and Indigenous communities. Unfortunately, overly restrictive corrections policies and practices render these provisions largely inaccessible, leaving women without the crucial support they need upon release.

³³⁷ Prime Minister of Canada, “Minister of Public Safety and Emergency Preparedness Mandate Letter” (13 November 2015),

CHAPTER V

REHABILITATION OF THE PRISONERS

Prelude

The worldwide jail administration has reached an agreement to develop a consistent method to dealing with this challenge. As a result, the notion of rehabilitation as a solution both inside and outside of jail must be established in such a way that prisons are optimally correctional institutions³³⁸.

The rehabilitation idea is based on the notion that Certain elements contribute to criminal behaviour. The individual's social environment, psychological development, or biological makeup determines or heavily influences his or her criminal judgement³³⁹.

5.1 REHABILITATIONS AND ITS NEED

Individual variations influence people's conduct and the probability of criminal activity. If numerous circumstances contribute to criminal activity, one can take remedial action and limit the logical replication of crime by modifying the factors or surroundings of the criminal. These are still considered hypotheses, but in practise, things are different, particularly in the rehabilitation or after-care system, which is almost non-existent³⁴⁰.

With the aforesaid characteristics, the offender is no longer considered a dangerous person; but, because he or she may choose to play an atypical position in society, he or she becomes a socially acceptable one, and persons require treatment to recover. The rehabilitation theory premise mandates that punishment be imposed to crime, but in terms

³³⁸ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023).in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

³³⁹ Dhiman, Dr. Bharat, Condition of Women Prisoners in Model Jail, Chandigarh: A Communication Study (August 26, 2022). Available at SSRN: <https://ssrn.com/abstract=4205096> or <http://dx.doi.org/10.2139/ssrn.4205096>

³⁴⁰ Sidhu, Sahibnoor Singh and Mishra, Utkarsh (2022) Prison reform In India : An incomplete saga. Journal of Positive School Psychology, 6 (7). pp. 2234-2250. ISSN 2717-7564

of rehabilitation policy, this must be replaced by new principles that require treatment to fit the needs of perpetrators. Individual variations, together with sociocultural elements such as varied discrimination meted out by the criminal at various levels, all contribute to the aetiology of crime³⁴¹.

Parental affection and lack of supervision, exposure to unlawful peers, internalisation of antisocial values, impulsive temperament, and other risk factors for crime are more likely to create crime than individuals who do not have these experiences or qualities³⁴².

When this becomes the basis for the causation of crime and imprisonment, the Correctional Institution's rehabilitation method should be based on the offender's categorization. No one rehabilitation strategy would be sufficient to rectify the criminal. The categorization alone might constitute the rehabilitation strategy, and if used correctly, it would reflect the outcome. In terms of hygiene and other health requirements in prisons, which are intended to be a universal need of jail management, it is rare to find any prison in India that has met the criteria. Prisoners are forced to live in an environment that frequently generates health dangers, resulting in inadequate living conditions³⁴³.

Under trials and convicted make up the jail population. It was a habit during trials to occupy the jail for an excessively extended amount of time, resulting in more incarceration than the penalty granted. However, the Supreme Court of India has ordered that those facing trials would be freed after serving half of their maximum sentences. Their maximum sentence is half a year in prison. In India, the terms jail and detention are used interchangeably, which may reflect the fact that no considerable attempt has been made to separate inmates from those awaiting trials. The Indian Supreme Court rule asks for captives to be separated from offenders, however this ruling is often disobeyed³⁴⁴.

The National Crime Records Bureau's 2021 prison data reveal that the number of convicted increased by 3.0 percent from 2020 to 2021, however the number of people

³⁴¹ M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, *Journal of Criminal Justice Education*, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022

³⁴² Jain, Amit Kumar; Tripathi, Upendra Nabh. *Educational Quest*; New Delhi Vol. 9, Iss. 1, (Apr 2018): 39-46. DOI:10.30954/2230-7311.2018.04.06

³⁴³ Ayushi R. Saxena (2019), The candle burns: human rights violations of under trial prisoners in India with particular emphasis on Madhya Pradesh, *The International Journal of Human Rights*, Volume 24, 2020 - Issue 5, <https://doi.org/10.1080/13642987.2019.1663341>

³⁴⁴ Varghese, J., & Raghavan, V. (2019). Restoration of Released Prisoners to Society: Issues, Challenges and Further Ways; Insights from Kerala, India. *International Annals of Criminology*, 57(1-2), 61-74. doi:10.1017/cri.2020.5

awaiting trial reduced by 0.3% over the same period. The majority of the jail population is made up of first-time offenders (approximately 90%), the majority of them are men (almost 96%)³⁴⁵. The Supreme Court of India has issued instructions to ensure that jail officials adhere to minimal criteria while considering women with children. According to the Asian Human Rights Committee's assessment, the court ordered children under the age of six to remain with the imprisoned mother and, if satisfied, to organise agents and maintain social welfare services. Children living in jail with their moms should not be considered detainees or inmates by the department. It is vital to prepare food, clothes, other furnishings, adequate sleeping equipment, and other necessary equipment for children's health. They must also provide enough educational and leisure facilities, as well as medical and immunisation services.

The fundamental question that has remained unanswered for a long time is whether Indian jails provide an environment or climate in which inmates may fulfil their sentences without risk, harm, stress, or strain on the human body and mind. Is it possible for a prisoner to live a regular life free of discrimination, just like the rest of the community? If the responses to the above two questions are affirmative, the Indian jail system must label it a correctional facility; otherwise, negative conclusions may be drawn. It is called a correctional facility because an offender may commit a crime for sociological or other reasons, and the rehabilitative technique used on him in prisons has the impact of altering his perspective about living a decent life³⁴⁶.

The first and most important consideration is location, approach road, connectivity/communication, hospitals, and better locality. Visitors, family members, concerned stakeholders, corporate, public, and non-governmental organisations (NGOs) will be able to come regularly to promote rehabilitative activities. Electronic devices, barbed wire fences, jammers, dispensaries, agricultural regions, and industrial units, among other things, should be installed across the site. It has been observed that the majority of prisons lack infrastructure and upkeep owing to a lack of timely funding assistance. Few jails are located in remote areas with limited infrastructure. Thus, the creation of a jail should invite a consultant with a suitable project road map that includes

³⁴⁵ National Crime Records Bureau's 2021 <https://ncrb.gov.in/en/prison-statistics-india-2021>

³⁴⁶ Varghese, J., & Raghavan, V. (2019). Restoration of Released Prisoners to Society: Issues, Challenges and Further Ways; Insights from Kerala, India. *International Annals of Criminology*, 57(1-2), 61-74. doi:10.1017/cri.2020.5

all required elements. It has been observed that jail personnel are going alone, oblivious to the fact that they require the majority of reformative items within the jail, which will ultimately benefit the convicts when they are settling outside³⁴⁷.

Jail Capacity, Inmate Population, and Occupancy Rate in 2021

A few infrastructural necessities:

- 1) Enough land for vertical building
- 2) Firm boundaries.
- 3) Boundary buffer land
- 4) Lighting along the road.
- 5) In-jail hospital/dispensary.
- 6) There is no mobile tower in the area.
- 7) Water storage tank.
- 8) Rainwater collection.
- 9) Residential construction should be prohibited within a one-kilometer radius.

5.1.1 Security

To minimise inner/group disputes, it should have outer and inner peripheral walls, guard towers, barracks, toilets, bathing areas, parade and play ground. Security is now endangered by cell phone devices, guns, ammunition, narcotics, and contraband discovered during searches in various jails. Thus, crimes are committed both inside and outside of jails, with criminals conveying extortion demands to their rivals for illicit gains. These profits are used to pay gang members, run their families' expenses, and pay advocates' costs. When a person outside the jail receives a call from an inmate, it has a tremendous physiological effect, and the family suffers anguish until the police handle the situation sensitively. As a result, both convicts and jail officials are losing public support.

The security of the convict, especially in under trial situations, becomes critical, and it has been discovered that dreaded murders have occurred while producing in court or on the way by rival gangs. It is still a murky area, and it appears that if a gang decides to light its competitors, they may also kill security personnel. In general, it has been seen

³⁴⁷ Arvind Verma(2002), Taking Justice Outside the Courts: Judicial Activism in India, The Howard journal of crime and justice, Volume40, Issue2, <https://doi.org/10.1111/1468-2311.00198>, Visited on, 10.12.2022

that gangs use lethal weapons, rudimentary explosives, and IEDs, among other things, to create panic in the region and maintain their dominance. Thus, most innocent victims are reported in broad daylight, whether in court, on the road, or in hospitals, for example. The security outside the jail becomes so fragile that even a minor lapse results in large casualties of innocent people, including convicts. There are various examples of this³⁴⁸.

In this day and age of modern technology, jails are battling to maintain discipline. The interaction of jail personnel, as well as a lack of education and awareness, has aided offenders. In smaller jails, it has also been shown that offenders pose a threat to jail warders. It became especially common in small state prisons, where most of the warders and convicts are from the same neighbourhoods or communities. As a result, whether jails in tiny states are a scourge or a benefit for jail discipline is a major topic that requires a separate investigation³⁴⁹.

Few security necessities;

1. Proper training, defined duty hours, and rotational deployment.
2. A prison intelligence unit will be established.
3. Escorts should be readily available.
4. Effective surveillance of convicts, employees, and intruders
5. DFMD for explosives
6. Pole Metal detectors for cell phones (sim)
7. Drug detectors for drugs.
8. Uniform staff
9. PT drills
10. Connectivity between crime criminal tracking network system and the prison.
11. Drone monitoring

5.1.2 Planning and Budgetary Support

Prison being a state list subject, the complete development is in the hands of the state government. The central government (MHA) makes advises from time to time and

³⁴⁸ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN"available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023).in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

³⁴⁹ Dhiman, Dr. Bharat, Condition of Women Prisoners in Model Jail, Chandigarh: A Communication Study (August 26, 2022). Available at SSRN: <https://ssrn.com/abstract=4205096> or <http://dx.doi.org/10.2139/ssrn.4205096>

provides a few budgets under modernisation. However, it has since been halted. As a result, the Prison has significant challenges in fulfilling reformatory aims. At this level, the PPP (Public Private Partnership) model and corporate social responsibility might be considered for at least giving jobs / vocational trainings³⁵⁰.

5.1.3 Overcrowding

According to "crime in India," over 50³⁵¹ lakh cognizable crimes are filed each year under major and minor headings. The police chargesheet rate is roughly 70%³⁵², with conviction rates ranging from 30 to 40%³⁵³. Thus, acquittals account for another third of the total. There are around 80 lakh³⁵⁴ arrests in India. Few of these people win bail because they are bailable, but the vast majority end themselves in jail because local police always argue for detention. In the year 2021, a large population remained incarcerated in prisons for different cognizable offences, out of the total number of arrests made. The statistic in the Report does not include the number of people arrested in preventative measure instances, which are far greater than the total number of FIRs received each year. Concerning the 4 lakhs (2.7 lakhs Under Trial and 1.3 lakhs Convicted)³⁵⁵ prison population, it should be noted that this figure is for one day, December 31st, and not for the entire year. As a result, imprisonment in India is comparable to that of any other wealthy country. Overcrowding should be measured on a specific day when the maximum number of convicts are present in a jail, not on the last day of the year. Thus, overcrowding must be estimated based on the entire number of individuals available in jails on a given day, including preventative arrest. This statistics will provide real available jail space as well as the overall number of convicts, whether convicted or on trial.

It is not accessible with NCRB; rather, NCRB calculates the available prison population on the last day of the year, which is around 4 lakhs³⁵⁶ on average, indicating an overcrowded scenario. The data provided before paints a bleak image of the

³⁵⁰ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023). in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

³⁵¹ National Crime Records Bureau's 2021 <https://ncrb.gov.in/en/prison-statistics-india-2021>

³⁵² *Ibid*

³⁵³ *Ibid*

³⁵⁴ *Ibid*

³⁵⁵ *Ibid*

³⁵⁶ National Crime Records Bureau's 2021 <https://ncrb.gov.in/en/prison-statistics-india-2021>

overcrowding issue in various Indian jails till the end of 2021, and while accurate data is not accessible between 2022 and 2024, the problem can be seen as massive.

Consider the following:

1. Alternative conflict resolution technique to be used. An FIR does not imply that the accused must be imprisoned. Allow the appropriate agency to conduct scientific research. At the moment, police believe that filing a FIR automatically results in quick arrest. Why arrest persons engaged in these instances when two-thirds of them are either acquittals or non-charge sheeting?
2. Arrest when clinching evidence (police and court) if interrogation in custody is required.
3. Avoid stigma and media persecution.
4. Using plea bargaining to promote restorative justice and victim compensation programmes.
5. No one should be detained without being given an opportunity to explain his or her actions in writing.
6. People are afraid to file a complaint against them at the police station/court because of social shame, unethical practises, and high attorney expenses for protracted battles³⁵⁷.

5.1.4 Training

It is an essential part of jail management. Rehabilitation, i.e. reformation approaches, must be emphasised in jail training. However, it has been observed that the majority of deployment is directed at preserving administration/discipline³⁵⁸.

In jails, vocational training and health services are underutilised. In reality, personnel has been hired for security reasons, therefore the jail need specialists for training and health care, among other things. The Southern States have a joint training facility in Vellore

³⁵⁷ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023). in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

³⁵⁸ Dhiman, Dr. Bharat, Condition of Women Prisoners in Model Jail, Chandigarh: A Communication Study (August 26, 2022). Available at SSRN: <https://ssrn.com/abstract=4205096> or <http://dx.doi.org/10.2139/ssrn.4205096>

where jail personnel are sent for instruction, but other institutions are also required to follow³⁵⁹.

In truth, jail administration is unable to recognise that they are not police (Khaki). They are positioning themselves close to the police in order for convicts to be in charge by using police technique. Giving khaki uniforms and spreading police subculture inside prison is the worst blunder. If rehabilitation is the aim, drastic root-level adjustments are essential. It is believed that the prison uniform, like that of modern countries, should be changed. The criterion for selection should be based on the tasks and functions. One size does not fit everyone. They should be schooled on human rights, prison legislation, judicial rulings in specific circumstances, and successful rehabilitation cases, among other things³⁶⁰.

5.1.5 Open Prisons

The notion of open prisons should be considered from the start, and appropriate infrastructure should be created alongside closed jails. The result of open prisons is much more encouraging toward extra money, living with family, reduced stress, and other factors that contribute to reintegration³⁶¹.

5.2 UNIFORM PRISON ACT

India requires a Uniform Prison Act. Nowadays, the BPRD's Modern Prison Manual is a useful tool for prison authorities, but it still requires a consistent jail legislation that includes rehabilitation as part of the package, so that inmates who are freed do not return to prison³⁶².

5.2.1 Technological Improvements

Prisons are now being incorporated into the CCTNS programme, which will provide many advantages to stakeholders. Duplicity in criminal records will not be present. One

³⁵⁹ Sidhu, Sahibnoor Singh and Mishra, Utkarsh (2022) Prison reform In India : An incomplete saga. Journal of Positive School Psychology, 6 (7). pp. 2234-2250. ISSN 2717-7564

³⁶⁰ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023). in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

³⁶¹ Dhiman, Dr. Bharat, Condition of Women Prisoners in Model Jail, Chandigarh: A Communication Study (August 26, 2022). Available at SSRN: <https://ssrn.com/abstract=4205096> or <http://dx.doi.org/10.2139/ssrn.4205096>

³⁶² Sidhu, Sahibnoor Singh and Mishra, Utkarsh (2022) Prison reform In India : An incomplete saga. Journal of Positive School Psychology, 6 (7). pp. 2234-2250. ISSN 2717-7564

entry data will be carried over from the police station. Thus, improved data management, analysis, and monitoring may be accomplished for reformation reasons. All data from India will be centralised in one location. This project is in its final stages and will be completed soon. Over 85% of police stations are already connected to the Broadband network. The Government of India's initiative to make digital technology available through Bharat Net in every village panchayats/local bodies in rural regions would undoubtedly aid in the rehabilitation process³⁶³.

5.3 FEW IMPORTANT EFFORTS MADE BY PRISONS MANAGMENT

5.3.1 Co-Ordination with Other

Prison will never be able to achieve its aims of social integration, limiting the impact of incarceration and stigma, and so on. There are provisions to invite various departments under the Chairmanship of the District Collector, with active cooperation of Horticulture, Agriculture, Health and Education, NGOs, and so on, where all departments are required to contribute and monitor their support to the inmate in generating employments according to classifications. As a result, offenders are involved in a variety of activities while also being trained for future careers³⁶⁴.

5.3.2 Intelligence Sharing Process

Everything is not in accordance with social integration within the four walls of a jail. Various criminal activities are also taking place in jail, despite the effective deployment of security forces. Few activities are serious in nature, such as cell phone use, SIM card availability, poisoning rival gangs, assault in groups/gangs, extortions within inmates and threatening call to outside for extortion. /illegal gain, homosexuality, venereal disease spread, hatred feelings on the name of caste corrupt practises, threatening staff family members, breeding ground for terror learning to new offenders, supply of drugs, arms, explosives, bleed are the primary factors influencing jail discipline on a daily basis. Similarly, the Probation Officer and his reports must be scrutinised on a case-by-case basis. To rule out any link between high-profile criminals and prison officials, the

³⁶³ M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, *Journal of Criminal Justice Education*, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022

³⁶⁴ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023).in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

intelligence system must be strengthened. A few smart correctional staff members are required to assist in obtaining criminal intelligence. Preventive measures have grown increasingly important in recent years³⁶⁵.

It has also been observed that media management has grown in importance. Every tiny or large concern that may be internal to jail management is publicised via numerous Apps from within the jails. Because of this, terrible murders have occurred at court premises outside/inside the prison. There is no institutional mechanism for gathering information and engaging with inmates. It necessitates an online interaction with the police department, and such information should be provided with officers. The lack of institutional intelligence arrangements and related human resources places a strain on jail administration to obtain significant intelligence and share it with concerned agencies on time, rather than employing inappropriate criminal means like a non-professional³⁶⁶.

5.3.3 Social Interaction

The ultimate goal of reformatory theory is social integration. However, it is less effective with hardened, persistent criminals and more effective with first-time and minor offenders who have a strong desire to leave the criminal environment. It has been discovered that there is no reliable evidence indicating that a significant proportion of persons have been socially integrated and are functioning well in society. It has also been observed that owing to an adverse external environment, i.e., in the community, a few offenders are attempting to return to the criminal activities, setting a very negative precedent. To promote social integration, prison officials, governments, and the judiciary must provide remissions, paroles, furloughs, and bail in worthy situations. According to Jail Statistics in India, over 1.25 lakh guilty individuals were found in prison as of December 31, 2021. Similarly, there are roughly 2.6 lakhs under trial, with a large proportion languishing for more than 7 years, while the bulk are granted bail. As a result,

³⁶⁵ Dhiman, Dr. Bharat, Condition of Women Prisoners in Model Jail, Chandigarh: A Communication Study (August 26, 2022). Available at SSRN: <https://ssrn.com/abstract=4205096> or <http://dx.doi.org/10.2139/ssrn.4205096>

³⁶⁶ Sidhu, Sahibnoor Singh and Mishra, Utkarsh (2022) Prison reform In India : An incomplete saga. Journal of Positive School Psychology, 6 (7). pp. 2234-2250. ISSN 2717-7564

this lot requires the same care as criminals in terms of rehabilitation or reformation. They are, however, ignored³⁶⁷.

Social integration is particularly hampered for those convicts who come from low-income families, are oppressed, illiterate, have a low level of education, or are unemployed. The researcher engaged with the convicts and discovered that the majority of persons who commit crimes are repentant and interested in suitable occupations³⁶⁸.

5.4 CORPORATE SOCIAL RESPONSIBILITY

The government has mandated that businesses spend 2% of their revenues on social responsibility. This component must be addressed with business organisations in order to give relevant employment and trainings to convicts. Tihar (Delhi) and Puzhal (Chennai) Central Jails are the greatest examples of enterprises operating on campus with the assistance of convicts. Similarly, Tihar has a semi-open jail that is also doing outstanding job. Despite these attempts, the jail population has not received real rehabilitation, particularly in its open prison system, which requires positive responses to be effective. People are normally interested in working after spending many years in prison, however the procedure ultimately depressed the convicts. In reality, convicts such as engineers, physicians, teachers, specialists, and managers may render services to society in the process of rehabilitation not only in open prison but also during trial, which will retain their expertise properly sharpened³⁶⁹.

5.4.1 Taking Support of Technology

Technology has been both a benefit and a curse in contemporary times³⁷⁰.

However, proper constructive use of technical breakthroughs will make jails and convicts the most advanced. In today's "Digital India," a jail is a location or dwelling for more than 4 lakh individuals on any one day. Thus, the jail authorities can use these moments

³⁶⁷ Dhiman, Dr. Bharat, Condition of Women Prisoners in Model Jail, Chandigarh: A Communication Study (August 26, 2022). Available at SSRN: <https://ssrn.com/abstract=4205096> or <http://dx.doi.org/10.2139/ssrn.4205096>

³⁶⁸ Sidhu, Sahibnoor Singh and Mishra, Utkarsh (2022) Prison reform In India : An incomplete saga. Journal of Positive School Psychology, 6 (7). pp. 2234-2250. ISSN 2717-7564

³⁶⁹ M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, Journal of Criminal Justice Education, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022

³⁷⁰ McClish, M. (2019). FROM LAW TO DHARMA: STATE LAW AND SACRED DUTY IN ANCIENT INDIA. Journal of Law and Religion, 34(3), 284-309. doi:10.1017/jlr.2019.36

to raise knowledge about the usage of social media, which they can very well employ after being acquitted or released from court³⁷¹.

5.4.2 The Juristic View

One may remark with pride that Indian courts have taken significant measures to protect prisons as an institution and inmates' rights, so that they might have another chance in their lives in jail to become decent citizens. The Supreme Court has addressed all aspects of human rights, including health and hygiene, vocational training, classification, overcrowding, infrastructure, removal of fetters, arrest guidelines, prisoner and PIL rights, media visits, supervision by District Courts, and the use of Video Conferencing for remands, among others. Recently, a few prisons have used internet connections for study and have established contact centres to give jobs, among other things.³⁷²

5.4.3 Visitors

Visitors play an important role in reintegrating convicts into society through contacts. It should be permitted liberally under CCTV surveillance and in the actual presence of correctional officials. Recording can be done at random and typically includes listening in on their conversation to check for damning remarks. NIC (National Information Center) has now built an e-prison system and has put a gateway in the majority of Indian jails. In compared to industrialised nations, the tourist system here is still highly unpleasant and underappreciated. Visitors are treated respectfully in industrialised nations, as witnessed by the undersigned during a visit to Management Component Training Protocol (MCTP)2012 at HMP Highpoint in England. Despite the fact that travellers to India face harassment, these attempts are done to reduce stigma. The system may be made considerably better and more user-friendly by providing a time line and freely enabling video conferencing and telephone conversations under systemic supervision. This will

³⁷¹ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN"available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023).in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

³⁷² Arvind Verma(2002), Taking Justice Outside the Courts: Judicial Activism in India, The Howard journal of crime and justice, Volume40, Issue2, <https://doi.org/10.1111/1468-2311.00198>, Visited on, 10.12.2022

aid in keeping a happy atmosphere in prisons. Few jails have already begun video calls, which is commendable³⁷³.

5.5 PRIVATIZATION OF PRISONS

The privatisation of prisons in India was suggested by the Neeti Aayog. "The Chief Executive Officer of Neeti Aayog argued that government bodies should withdraw from the management and maintenance of infrastructure projects³⁷⁴.

They should even look at handing over jails, schools and institutions to the corporate sector". However, there has been some criticism, as the majority of people are opposed to privatisation. Few jails in India are doing well by letting commercial companies such as Pharma, Agro, Horticulture, and Paper, among others, within their facilities. Thus, the paradigm of Public Private Partnership is steadily permeating the jail, finally improving not only the convicts' talents but also their daily earnings. Because the majority of jails in India are under-equipped, the PPP model should be encouraged while the statutory tasks remain with the government. Private prisons exist in industrialised nations such as Canada, where legislative functions are associated with jail management³⁷⁵.

5.5.1 Prison Integration

On the line of Crime Criminal Tracking and Network System, a Central Database Server to which all police stations in the nation (about 17000) are connected and obliged to provide information for the purpose of online data analysis. Similarly, a National Data Center for prisoners across India is required, with a single server connecting all 1400 jails. It will also aid in the gathering of all information as well as the planning, monitoring, and rehabilitation of schemes. It will be a huge help³⁷⁶.

Prison has now been constituted a stakeholder in the inter-operative criminal justice system (ICJS), which is chaired by Hon'ble Justice Supreme Court of India Madan B.

³⁷³ Varghese, J., & Raghavan, V. (2019). Restoration of Released Prisoners to Society: Issues, Challenges and Further Ways; Insights from Kerala, India. *International Annals of Criminology*, 57(1-2), 61-74. doi:10.1017/cri.2020.5

³⁷⁴ Ayushi R. Saxena (2019), The candle burns: human rights violations of under trial prisoners in India with particular emphasis on Madhya Pradesh, *The International Journal of Human Rights*, Volume 24, 2020 - Issue 5, <https://doi.org/10.1080/13642987.2019.1663341>

³⁷⁵ Jain, Amit Kumar; Tripathi, Upendra Nabh. *Educational Quest*; New Delhi Vol. 9, Iss. 1, (Apr 2018): 39-46. DOI:10.30954/2230-7311.2018.04.06

³⁷⁶ M. Z. Khan & N. Prabha Unnithan (2008) *Criminological and Criminal Justice Education in India: A Comparative Note*, *Journal of Criminal Justice Education*, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022

Lokur and includes other criminal justice system agencies. Because jail is a subject area of the State List in the Indian Constitution, no one agency is in charge of overseeing the complete operation, planning, and so on. However, the prison division of the MHA (Centre-State) Division serves as a coordinating wing for the whole jail administration in the State. Its primary function is to provide recommendations and budgetary assistance under the modernization project. Now, as a central agency, the MHA (Ministry of Home Affairs) has no functional jurisdiction over prisons. As a result, prisons have become a less relevant topic for both the state and the centre. Prison is the most vulnerable component of the criminal justice system, and it requires consistent policies and activities across the country so that developed prisons may serve as role models for backward institutions³⁷⁷.

5.5.2 Wages

In reality, salaries are the primary source of funding for numerous employment in jail. It has been observed that only a small number of criminals are rendered unreadable. They are not accepted for jobs in jails because they are undergoing trials. The reason for this is that they are thought to be innocent. However, if they willingly want a work, the jail administration may consider offering a job or training them. There are a few convicts who have committed significant crimes and have little possibility of being released on bail; they can be inspired to receive training in vocational jobs, etc., for a brighter future. Wages in prisons are also not consistent. Few states are contributing a pittance. In reality, attempts are being made to provide inmates with minimum pay recognised by the government after subtracting essential expenses. However, certain judicial perspectives hold that jail cannot be a place of earning or making life enjoyable at the expense of suffering or victims. There should be a balanced approach with victim rights. A prisoner/offender should not take pleasure from his crime, according to pain and pleasure theory. Thus, the ideal method is to treat the offender as a patient and to treat him for effective rehabilitation so that he/she may be a better released person; otherwise, it will

³⁷⁷ Sidhu, Sahibnoor Singh and Mishra, Utkarsh (2022) Prison reform In India : An incomplete saga. Journal of Positive School Psychology, 6 (7). pp. 2234-2250. ISSN 2717-7564

be an endless process that may develop hatred emotions in society with a possible goal for vengeance³⁷⁸.

5.5.3 Unwanted Incarcerations by Police and Court

In 2021, police will record around 50 lakh FIRs every year, in addition to direct cases accepted by courts. Preventive measure cases under Section 151³⁷⁹ read with Section 107³⁸⁰ Cr.P.C. are not included in this number. There are substantial populations who are detained in preventative measures as a result of events disrupting peace and tranquillity and are held in judicial custody for a few days. Few are able to provide bail bonds, sureties, or remain in jail. For example, in the North - Eastern States, if a person does not have a "inner line permission," he or she might be arrested and imprisoned. The detained individual is not a local, and they are either labourers or businessmen, for example, are primarily foreigners. These persons are unable to get bail or bond and hence remain in jail for an extended period of time. As a result, incarceration leads to a destroyed existence. In reality, the majority of these folks are from the working class, and they did not obtain an inner line pass, either inadvertently or willfully. However, punishment becomes excessively severe and out of context. Similarly, there are countless arrests performed by police or sometimes ordered by Indian courts, particularly lower courts, that are not merited at all. As a result, the first arrest and protracted suffering of a person may not satisfy his awareness, prompting him to become a bigger or harsher criminal. Furthermore, for a Rs100/- violation, the state is required to feed him/her for many days before releasing him/her on bail for one day, according to the Hon'ble Supreme Court's decision. It is necessary to reconsider the situation and the laws in a cooperative manner. Instead than detaining and pressuring local sureties for release, there are a variety of other ways and techniques to address the issues. It has been noticed, particularly in situations of inner line permit states and in the case of labourers.

Another situation is that after filing FIRs, around 30% of cases are dismissed, but the individual is usually apprehended by police. Thus, about 15-20 lakh FIRs will be dismissed out of 50 lakhs owing to inadequate proof, factual errors, fake complaints,

³⁷⁸ Dhiman, Dr. Bharat, Condition of Women Prisoners in Model Jail, Chandigarh: A Communication Study (August 26, 2022). Available at SSRN: <https://ssrn.com/abstract=4205096> or <http://dx.doi.org/10.2139/ssrn.4205096>

³⁷⁹ THE CODE OF CRIMINAL PROCEDURE, 1973, ACT NO. 2 OF 1974

³⁸⁰ *Ibid*

neither true nor false categories, or non-cognizable nature of crimes, among other reasons. However, in the majority of cases, the police arrest the suspect promptly. In fact, recent amendments to Section 41 Cr.PC³⁸¹, which require notifications before arrest, are also rarely used. When the police do not have proof, around 15 to 20 lakh arrests result in significant detention. These individuals may lose trust in the criminal justice system. Arrests can be made on a case-by-case basis, but this is not occurring. It has also been observed that the lower court is generally inconsistent with the continuing arrest procedure. It might be seen in another example of the country's conviction rate. In 2015, the conviction rate was about 28- 30%, which says volumes. If this is true, how come the system has imprisoned 70% of the population? Given that persons have been acquitted in various cases (about 40%), how can these arrests be justified? In actuality, many were imprisoned for 10-15 years before being exonerated by higher courts in some cases. At the time, the police and the courts require rational reasoning. As a result, in the absence of strong / specific evidence, arbitrary and unjustified arrests should be avoided. It will promote faith in the system rather than distrust, which will never be a deterrent. Reformatory theory is based on the belief in a better future and the provision of at least one initial opportunity to right oneself³⁸².

There is a need to implement alternative conflict resolution mechanisms to resolve minor issues, at least up to plea bargaining cases, rather than continuing along the route of incarceration and increasing jail overcrowding³⁸³.

Restorative justice, such as agreement in criminal cases to bury their differences and accept appropriate consideration, compensation, fine, compounding, and compromise, has become extremely common in industrialised nations. Few significant instances are prosecuted because the state and society want to establish deterrent effects, while the remainder are settled. As a result, excellent inquiry and maximum punishment are ensured. In this regard, it is advocated that the criminal justice system reconsider its penalty and jail policies, as they are ineffective in reducing crime occurrences/reporting.

³⁸¹ THE CODE OF CRIMINAL PROCEDURE, 1973, ACT NO. 2 OF 1974

³⁸² M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, *Journal of Criminal Justice Education*, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022

³⁸³ Arvind Verma(2002), Taking Justice Outside the Courts: Judicial Activism in India, *The Howard journal of crime and justice*, Volume40, Issue2, <https://doi.org/10.1111/1468-2311.00198>, Visited on, 10.12.2022

Thus, the aim should be to send fewer people to prison while concurrently implementing different ADRs in order to preserve a balance between punishment and social peace³⁸⁴.

5.6 IMPLEMENTATIONS OF JUDICIAL VERDICTS FOR REDUCTIONS OF IMPRISONMENTS

The Delhi High Court bench of S. Muralidhar and I. S. Mehta, JJ., requested that the Law Commission investigate a legislative framework for granting relief and rehabilitation to victims of unfair prosecution and incarceration. The panel is expected to investigate an omnibus law or plan that can meet the demands of the victim, the criminal, and the wrongly detained individual, as well as the prisoner's family and dependents. It was also suggested that the Law Commission particularly address compensating remedy that should be made accessible³⁸⁵.

5.6.1 Classification:

One of the most important aspects of jail management is classification.

In reality, if this element is handled correctly, overall development will occur naturally. It will increase an inmate's social acceptability while reducing stigma³⁸⁶.

However, categorization is hampered by a lack of infrastructure and a professional methodology. It mostly stays on paper. Prison eventually becomes a breeding ground for even regular criminals. In a prison, all sorts of suspects (those on trial) and convicts (those convicted) are housed. Lack of infrastructure often compels access to all sorts of jails at one location under one border with shared facilities (convicted, under trials, women prisoners), resulting in vulnerability, regressing appropriate jail administration as well as future rehabilitation programmes. Under one administration, common facilities such as training centres, kitchens, hospitals, and workforce management may be comprehended. The idea of having all institutions in one location may be easier for controlling convicts, but each group requires a particular sort of programme for their

³⁸⁴ Praveen Kumar, (2022), Prisoners Are Too 'Victims' of the Criminal Justice System. Can They Have an Idea of 'Fair Access to Justice'?, Journal of Victimology and Victim Justice, <https://doi.org/10.1177/25166069221134215> Visited on, 10.12.2022

³⁸⁵ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN"available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023).in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

³⁸⁶ Dhiman, Dr. Bharat, Condition of Women Prisoners in Model Jail, Chandigarh: A Communication Study (August 26, 2022). Available at SSRN: <https://ssrn.com/abstract=4205096> or <http://dx.doi.org/10.2139/ssrn.4205096>

profession. It has been stated that reformatory theory is fundamentally dependent on the patient-doctor-hospital connection. Thus, while the boundaries may be one, obvious division of properties with improved infrastructure is essential³⁸⁷.

The following areas for improvement are suggested:

1. Age, education, alleged offence, occupation, penalties, and health profile of both categories, i.e. under trial and convicted, should be properly classified³⁸⁸.
2. It has been observed that the majority of those convicted are first-time offenders, and the majority of their sentences are shorter than seven years. These lots can be separated since they have a proclivity to reintegrate into society³⁸⁹.
3. Segregation of hardened convicts implicated in significant offences. In truth, it should be resolved on a case-by-case basis or based on circumstances rather than on the requirements of the laws. People may be involved for the first time under Sections 302³⁹⁰, 304³⁹¹, 306³⁹², 307³⁹³ of the IPC, or there may be cases of corruption, forgery, cheating, or technical cases of robbery/dacoity under common aim or object, and this does not necessarily imply that they are hardened criminals. The circumstances or surroundings may exempt someone from such significant guilt. For example, a professor may be punished under Section 306 of the Indian Penal Code³⁹⁴ if a close relative jumps from a balcony following minor quarrels without mensrea and relatives file complaints. As a result, in most significant crimes, decent people are also victims of circumstance and become victims of crime. On the other hand, even if the sentence is less severe, the individual remains in prison as a key conspirator or as an abettor of a crime from behind the scenes with full guilt. Thus, in significant crimes, hardened criminals should be determined based on recidivism and mensrea, especially in the case of under trials, because an under trial is innocent until accusations are not proven and it takes a long time to discover justified purposes. Thus, before deciding on

³⁸⁷ *Ibid*

³⁸⁸ *Ibid*

³⁸⁹ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023). in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

³⁹⁰ THE INDIAN PENAL CODE. ACT NO. 45 OF 1860

³⁹¹ *Ibid*

³⁹² *Ibid*

³⁹³ *Ibid*

³⁹⁴ *Ibid*

the classification of convicts, the Jail Superintendent should consult with the Probation Officer. Probation Officers should evaluate family history, nature of offences, and other factors. During categorization, several categories might be formed based on the nature of the crimes: Similarly, in order to prepare offenders for the open prison system, the jail must establish an atmosphere in which a doctor, engineer, carpenter, teacher, tutor, businessman, and so on may readily integrate into society³⁹⁵.

4. Involvement of professional organizations/mentors in classification: It is preferable to engage management personnel and NGOs, as well as jail administration, in order for classification to be significant for effective rehabilitation. Such an approach was adopted in by notable NGOs such as the Shri Aurbindo Society³⁹⁶.
5. How to deal with gang leaders in jail is a common issue. The jail is a haven for all kinds of warring groups. The domination of gangs over one another continues even in prisons. As a result, appropriate classification of inmates may be used to verify this³⁹⁷.

5.7 STATUS OF REHABILITATION:

In India, there are around 1401 operational prisons of various types such as Central Prison, Sub-Jails, District Jails, Special Jails, and Women Jails, among others. These jails house both those on trial and those who have been convicted. As of the 31st of December 2021, 1.25 lacks of the total jailed convicts are convicted³⁹⁸.

A person above the age of 18 who has been arrested in various criminal charges and is facing trial in a court of law is said to be on trial. Under-trials are presumed innocent unless proven guilty by the court, according to criminal jurisprudence. As a result, the individual awaiting acquittal, conviction, or discharge is considered to be on trial. The vast majority of those on trial are charged with minor charges, but there are a significant number of those charged with serious and terrible crimes as well. In the case of horrific

³⁹⁵ *Ibid*

³⁹⁶ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023).in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

³⁹⁷ *Ibid*

³⁹⁸ *Ibid*

crimes, most courts would not issue bail since witnesses can be persuaded, threatened, and evidence can be tampered with. As a result, a significant proportion of accused remain in jail for an extended period of time. There is no hard and fast regulation in jails for under-trials to give work, but they willingly join requests for jobs from prison officials in order to get enough salaries³⁹⁹.

5.7.1 Co-Ordinating for Rehabilitation

Under trials who have been convicted by Courts are segregated and classed according to prison regulations and housed in convict's cells where they must serve their sentence. This sentencing length might range from a few months to the rest of a person's life. It can sometimes be more than 40-50 years, depending on the inmate's remaining life. As a result, the prison administration and other stakeholders have a significant difficulty in using inmates' time and transforming them into socially adaptable individuals through the use of reformative procedures, which are also case-by-case and person-by-person dependent on particular therapies. Through numerous programmes of formation and rehabilitation, convicts are being prepared to establish themselves as law-abiding citizens in their community, a process known as social integration. Furthermore, it is anticipated of convicts that they would not be involved in repeating the offences. Thus, the current discussion in this topic is primarily about the status of reformation, rehabilitation, and social integration within the prison by prison management as well as outside the prison with the assistance of concerned stakeholders such as the Prison Visiting Board, which includes District Collectors, officials from Social Welfare, Education, Agriculture, Horticulture, and Industry, among others. These parties must develop rules that allow released inmates to integrate into society, and such programmes should begin within the jails themselves. Institution employees or authorities have no authority outside of the prison. As a result, all parties must work together to ensure successful monitoring⁴⁰⁰.

5.7.2 On The Basic Of Crime Inmates Classification

Once a jail is classified based on specific norms and prison laws, it is the responsibility of prison authorities to participate in constructive activity and pay specified salaries as allowed by the related government. Unless the Prison Administration determines

³⁹⁹ Dhiman, Dr. Bharat, Condition of Women Prisoners in Model Jail, Chandigarh: A Communication Study (August 26, 2022). Available at SSRN: <https://ssrn.com/abstract=4205096> or <http://dx.doi.org/10.2139/ssrn.4205096>

⁴⁰⁰ Sidhu, Sahibnoor Singh and Mishra, Utkarsh (2022) Prison reform In India : An incomplete saga. Journal of Positive School Psychology, 6 (7). pp. 2234-2250. ISSN 2717-7564

otherwise, all convicts must participate in tasks here. Thus, rehabilitation, reformation, and social reintegration are dependent on the following factors⁴⁰¹:

Infrastructure, classification and overcrowding:-

In 2021, there were around 1.3 lakh inmates, including convicted, in all Indian jails. In terms of infrastructure, the majority of jails do not meet standards. Infrastructure necessitates decent construction, industrial sheds, playgrounds, sanitary kitchens, improved toilet and bathroom facilities, visiting rooms, specific vocational centres, and small-scale enterprises. It has been discovered that these facilities are not provided in any of the jails. However, due to financial constraints, the majority of states are focusing on the fundamental necessities of infrastructure. There was a 114% overcrowding, which made the jail extremely packed and impeded the categorization of the offenders in 2021⁴⁰².

Wages:-

Wages are a powerful motivator for convicts. Because prison is an issue of state government, there is no consistency in convict salaries. However, research shows that skilled workers in Indian jails are paid the maximum rate of around 180 rupees per day. Most jails withhold half of the cash for the prisoner's welfare fund and the victim's compensation fund. Thus, just a pittance of 80-90 rupees is paid every detainee per day. However, it all relies on the availability of jail works and funding at the time. Because prisons are unable to offer labour for every inmate, this has a discouraging impact on the convicts. The Supreme Court of India has stated that an equitable sum might be provided to the inmates. There are no extra sources of income from private enterprises or entrepreneurs⁴⁰³.

However, in recent years, a small number of jail employees have taken the initiative to invite pharmaceutical firms and other small businesses in order to generate additional revenue. As a result, generating the additional revenue is heavily reliant on the stakeholders' willingness to revitalise the convicts and prepare them for acceptable labour. There is a need to reconsider victim compensation, which is taken from inmates'

⁴⁰¹ *Ibid*

⁴⁰² *Ibid*

⁴⁰³ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023). in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

salaries, because the government of India, Ministry of Home Affairs, has already established a victim compensation policy in accordance with the directive of the Hon'ble Supreme Court of India and also under Cr.P.C⁴⁰⁴. Thus, in cases like as rape, acid assaults, and POSCO, there is no need for a victim compensation fund to be raised from the convicts. A similar case is pending before the Hon'ble High Court of Delhi, where the Court has delayed the deduction of inmates' pay towards the victim benefit fund and the State has been ordered to respond⁴⁰⁵.

Skill development and vocational training:

Correctional employees are primarily responsible for carrying out reformation and rehabilitation programmes in prisons. The jail personnel is organised into three groups. The majority of personnel are involved in maintaining prison discipline, followed by correctional staff who provide instruction to convicts, and finally medical staff who care for the inmates' health. In 2021, there will be 703 prisoners for every jail officer. It should be noted that the overall prison personnel remained 53009, with 44775 for disciplinary reasons, 597 for correctional purposes, and 1866 for medical purposes. As a result, the correctional personnel whose responsibility it is to provide diverse skill training and vocational training is relatively limited. Furthermore, it is unknown if these correctional employees have any professional training or not, as depicted by the Prison Statistics of India 2021 in terms of the number of inmates per worker throughout 2021⁴⁰⁶.

Placement in side as well as outside the Prison:

On the 30th of December 2021, it was discovered that there are 128428⁴⁰⁷ prisoners. The exact number of convicts freed over the whole year 2021 is unknown due to a lack of statistics. Based on the available evidence, efforts should be undertaken to rehabilitate convicts when they are released from jail. There are two scenarios that necessitate quick action. In one case, criminals are freed after serving their sentences; yet, in another case, life imprisonment has been granted and the State Remission Board is refusing to release the detainees owing to their unfitness for rehabilitation in society. In that case, the convict

⁴⁰⁴ THE CODE OF CRIMINAL PROCEDURE, 1973, ACT NO. 2 OF 1974

⁴⁰⁵ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023). in India: A " Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

⁴⁰⁶ Attar Chand, Politics of Human Rights and Civil Liberties - A Global Survey, UDH Publishers, Delhi 1985

⁴⁰⁷ Orissa Jail Reform Committees Report (chairmen- Justice Harihar Mahapatra), 1981

is incarcerated for the rest of his or her life. Thus, in a circumstance where an offender spends his or her whole life in jail, a powerful motivator is required. In general, such a circumstance emerges in court when a person is not an incorrigible member of society and may be very successfully reformed if capital penalty is not imposed. In worthy situations when convicts are not returning to society as incorrigible elements, judges are granting life imprisonment in place of capital penalty. As a result, prison administration must devise various programmes under the supervision of specialists for both types, namely those who are freed after serving their sentences and those who are not released due to their life incarceration. The second instance is a significant barrier for social integration, but it is justified by the fact that the individual can be changed and rehabilitated. It has been discovered that the jail administration is unprepared to face the second category challenge⁴⁰⁸.

In reality, in the event of life imprisonment, it is the prison officials' report that determines the inmate's good behaviour. As a result, for the long-term confinement of a few offenders, placement agencies such as call centres, BPOs, and other relevant and meaningful jobs may be supplied⁴⁰⁹.

Recidivism and Inmates:-

According to 2021 Prison Data, there are a total of 134168 inmates that have been convicted and are now incarcerated. Only 5576 habitual criminals were detected within the aforesaid population, which is less than 3% of the total population of India. However, there are just a few states where recidivism rates exceed 10% to 15%. It also demonstrates that more than 90% of convicts are first-time offenders, and it is widely recognised that first-time offenders have a high proclivity to relapse back to crime. Thus, petty criminals and first-time offenders require an urgent reconsideration of the rehabilitation programme, which may be an alternative to incarceration or the Probation of Offenders Act, among other things. Although recidivism is quite low, at around 3%, it makes an essential point to prison administration and other concerned stakeholders outside of the jail that reformatory and rehabilitative activities should not be neglected⁴¹⁰.

⁴⁰⁸ Bansal .V.K. Right to Life and Personal Liberty in India, Deep and Deep Publications, New Delhi, edition 10

⁴⁰⁹ Amerndra Mohanty, Narayan Hazary, Indian Prison System, 2021, Ashish Publications House, New Delhi

⁴¹⁰ Dhiman, Dr. Bharat, Condition of Women Prisoners in Model Jail, Chandigarh: A Communication Study (August 26, 2022). Available at SSRN: <https://ssrn.com/abstract=4205096> or <http://dx.doi.org/10.2139/ssrn.4205096>

Prison Inmate's Training:-

Agriculture (3660), carpentry 5762, canning 456, tailoring 4744, weaving 8473, manufacture of shop and store 1071, handlooms 1265, and others category (6674) were the key sectors chosen by the jail administration for training purposes in 2021, totaling 52105 convicts. After reviewing the facts, it is possible to conclude that these programmes are not capable of morally boosting the convicts. These programmes are neither significant nor long-term. Thus, vocational training and skill development should be based on market need, which would immediately inspire and drive convicts to work hard.⁴¹¹

The value of commodities generated per inmate in 2021 remained around Rs. 4811. However, the entire jail population of 419623 generated total commodities worth Rs. 20189.8 lakhs. Thus, the output of Rs. 4811 per convict is insufficient. Thus, the jail administration and other stakeholders should seek out more resources for improving wages and earnings in meaningful and lasting ways, so that actual reformation may be achieved⁴¹².

5.8 LEGAL PROVISIONS OPERATING IN THE PROCESS OF REHABILITATION:

One of the most significant moments in a person's life occurs when he or she becomes a prisoner, and it immediately follows his or her release from jail. Prison life frequently robs a person of self-respect and self-reliance. All doors in the society close, and despite his effort to reintegrate and adjust, his chances are threatened since neither the society nor the government enables him to leave the bad scar. It has been noted that on any application for work in government, he has to fill-up as to "if he has ever been arrested, detained, convicted". As a result, his or her life becomes an unexplainable and never-ending embarrassing narrative, and the status quo continues not just for the freed convict

⁴¹¹ M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, Journal of Criminal Justice Education, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022

⁴¹² *Ibid*

but also for his or her whole family. This necessitates focusing on his or her rehabilitation issue⁴¹³.

In 1982, Schwartz attempted to define rehabilitation as "the deliberate reduction or eradication of an offender's continuing criminal activity through a programme of planned intervention".⁴¹⁴

These key parts in the definition must be integrated in prison rules, which have not received prominence or inclusion but are occasionally found piecemeal or can be compared to a broken chain⁴¹⁵.

Rehabilitation of convicts is a delicate part of every civilised society's criminal justice system. To achieve a perfect rehabilitation system, countries and respective governments have always attempted to carve legislation, policy, advisories, and formulated Committees, among other things, in addition to laying directives based on decisions from the judiciary, particularly the Hon'ble Supreme Court of India or respective High Courts, as well as the NHRC⁴¹⁶. Prison is considered a subject matter of state under the 7th Schedule of the Indian Constitution⁴¹⁷, and the government is concerned in the re-integration of the prisoner into society.⁴¹⁸

It primarily consists of the 1950 Indian Constitution⁴¹⁹, the 1894 Jail Law, the National Prison Handbook, the 1973 Criminal Procedure Act⁴²⁰, and the legal framework of the City Law Operated in 1993, as well as the rule of law, society, prison, and other criminal justice agencies. The "Human Rights Protection Act" of this year.⁴²¹ The normative basis of prison function is extensive laws, but on a practical functional level, there are frequently allegations and controversies about this range. Statutory regulations must be

⁴¹³ Arvind Verma(2002), Taking Justice Outside the Courts: Judicial Activism in India, The Howard journal of crime and justice, Volume40, Issue2, <https://doi.org/10.1111/1468-2311.00198>, Visited on, 10.12.2022

⁴¹⁴ M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, Journal of Criminal Justice Education, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022

⁴¹⁵ Praveen Kumar, (2022), Prisoners Are Too 'Victims' of the Criminal Justice System. Can They Have an Idea of 'Fair Access to Justice'?, Journal of Victimology and Victim Justice, <https://doi.org/10.1177/25166069221134215> Visited on, 10.12.2022

⁴¹⁶ National Human Rights Commission,1993

⁴¹⁷ Indian constitution ,1950,1950

⁴¹⁸ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN"available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023).in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

⁴¹⁹ Indian constitution ,1950,1950

⁴²⁰ THE CODE OF CRIMINAL PROCEDURE, 1973,ACT NO. 2 OF 1974

⁴²¹ Human Rights Protection Act ,1993

interpreted. The court must make decisions on a regular basis. In the "precedent theory" tradition, the Court of Appeals ruling was persuasive enough to defer future decisions on this subject. According to Article 141⁴²² of the Constitution, the Supreme Court of India's decision has the greatest precedential importance.⁴²³

The Supreme Court's decision will be followed by all Indian courts. As a result, the Supreme Court's decision is binding legislation for all courts and other state bodies involved in court proceedings. Similarly, the applicable High Court's decision will be binding law for the concerned state.

Guidelines for Prosecution and Courts on Rehabilitation, Reformation, and Social Reintegration of Inmates: Hon'ble Supreme Court of India⁴²⁴.

It is true that reformation, rehabilitation, and social reintegration have not found a place in society as required, but our legislatures have very broadly stated in criminal jurisprudence that courts should give inmates a chance by obtaining substantial evidence from prosecution regarding social adjustment, and then punishment may or may not be given⁴²⁵.

Bachan Singh v. State of Punjab⁴²⁶,

The Hon'ble Supreme Court Constitution Bench has discussed the ongoing sentencing procedure in which courts are awarding punishments without considering the prosecution's report on the subject of reformation, rehabilitation, and social reintegration, even without knowing the inmate's capability in adjusting to society be based on solid substantial evidences. Special grounds should be required to be mentioned when considering acquittals and convictions.

⁴²² Indian constitution, 1950, 1950

⁴²³ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023). in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

⁴²⁴ Dhiman, Dr. Bharat, Condition of Women Prisoners in Model Jail, Chandigarh: A Communication Study (August 26, 2022). Available at SSRN: <https://ssrn.com/abstract=4205096> or <http://dx.doi.org/10.2139/ssrn.4205096>

⁴²⁵ Shaikh, Roshni. International Journal of Criminal Justice Sciences, suppl. Special Issue on Criminal Justice Social Work in I; Thirunelveli Vol. 14, Iss. 1, (Jan-Jun 2019): 9-21. DOI:110.5281/zenodo.3242022

⁴²⁶ AIR 1980, SC, 898 (Constitution Bench).

"Despite multiple rulings ordering such a review, the trial court, the High Court, and even this court did not evaluate the appellant's potential for reform and rehabilitation. It was proposed that there is a chance that the convict can be reformed and rehabilitated."

Rajendra Prahlad Wasnik v. state of Maharashtra⁴²⁷,

In a criminal petition no. 145-146/2011, the High Court noted in paragraph 31 a debate on the prospect of admitting the possibilities of prisoner reform and rehabilitation toward the possibility of recovery. This is an important factor to consider while choosing whether to apply the death penalty or a life sentence. The court also agreed that the state must demonstrate that inmates cannot be reformed or rehabilitated and should thus be condemned to death. This viewpoint has been widely adopted in all rulings.

Prakash Dhaval Khairnar Patil v. State of Maharashtra⁴²⁸

The Supreme Court of India has studied rehabilitation, which means that the possibility of the convict reform was addressed by this court. It was determined that the inmate had no criminal tendencies and was gainfully employed. As a result, it would be impossible to argue that "the rarest of rare situations. It could not be determined that the appellant would be a danger to society, and there was no reason to suppose that he could not be reformed and rehabilitated, thus the death penalty was reduced to 20 years in jail."

The Lehman v. in Haryana⁴²⁹

advocated that the death sentence should be used for a specific purpose, and that the court should be obliged to decide that reforming and restoring the criminal is impossible. The following are the contents of this report in para 14.

"The death sentence is excluded and it may only be imposed for the specific grounds provided in Article 354 (3)⁴³⁰, with a separate provision within the code that employs the crucial term, which is should also be a special cause. Section Cr.P.C. 361⁴³¹ requires the

⁴²⁷ Rajendra Prahlad Wasnik v. state of Maharashtra. A Criminal Appeal no. 145-146 / 2011, S C of India 12.12.2018.

⁴²⁸ Prakash Dhaval Khairnar Patil v. state of Maharashtra. SC, Criminal Appeal 238-239/2001.

⁴²⁹ The Lehman v. in Haryana 2002 SCC 76

⁴³⁰ Indian constitution ,1950

⁴³¹ Section 361 The Code Of Criminal Procedure, 1973

Special reasons to be recorded in certain cases. Where in any case the Court could have dealt with,-

(a) an accused person under section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or

court to record its particular cause for not implementing the requirement of Section Cr.P.C. 360⁴³². Section 361 discusses the court's obligation to apply the requirements of Section 360. The particular cause contemplated in Section 361 shall, according to section

(b) a youthful offender under the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so.

⁴³² Section 360 The Code Of Criminal Procedure, 1973

Order to release on probation of good conduct or after admonition.

(1) When any person not under twenty- one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty- one years of age or any woman is- convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties, to appear and receive sentence when called

upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour: Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub- section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub- section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860), punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law: Provided that the High Court or Court of Session shall not under this sub- section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub- section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

360, lead the court to view reform and recovery as unattainable. The offender after an assessment of the topic taking into consideration each personality and causing the offender as well as the conditions in which the crime was committed. "This is the total of the legislature's reform and rehabilitation of perpetrators, and it is currently the country's most essential purpose of criminal justice administration." Section 361 and 354 (3) of the Code of Criminal Procedure represent a new picture of the legislative body that recognises new criminological tendencies. It is thus not a mistake to believe that the nature of the criminal, other circumstances, and the offender's receptivity to reform must play the most essential part in determining the choice. These elements should be linked to the unique reason.

Sandesh v. State of Maharashtra⁴³³

The court reiterates the concept that it is the prosecution's responsibility to present evidence demonstrating that the condemned cannot be changed.

Birju .v. State of Madhya Pradesh⁴³⁴

In this instance, the High Court declared in the 20th paragraph that the defendant was not committing a violent crime and that the defendant is a continuous menace to society that cannot be reformed or rehabilitated must be proven beyond question by the prosecution. Previously, the court applied the reform principle to some minor acts, and if found guilty, it might release a person under Article 360, paragraphs 3 and 4 of the Criminal Procedure Code of 1973. Sections 13 and 14 of the Probation of Offenders Act of 1958 govern the appointment and execution of probation officials. The court also ordered the probation officer, P.O., to report when exercising jurisdiction under P.O. section 4. According to Article 235, Paragraph 2 of the Criminal Code, if the defendant is found guilty in the proper instance, the court may request that the probation officer produce the report. The court can learn more about the accused's addiction to illegal conduct or if the accused is likely to be reformed and corrected.

Anil v. State of Maharashtra⁴³⁵

The Court put the reform and rehabilitation doctrine into action. The job of the criminal courts is to determine whether the convict may be reformed and rehabilitated, and it is the

⁴³³ Sandesh v. State of Maharashtra 2013 SCC479

⁴³⁴ Birju .v. State of Madhya Pradesh 2014 SCC421

⁴³⁵ Anil v. State of Maharashtra 2014 SCC 69

State's role to provide materials for and against the possibility of reform and rehabilitation.

Tandoor murder case⁴³⁶

According to the Supreme Court, "different factors such as the offender's age, social status and backgrounds, whether he is a confirmed criminal or not, whether he has any precedents, whether there is any possibility of reform and rehabilitation or a situation where reform is impossible and likely to reward the accused such crimes in the future and becoming a threat to society are different factors that the criminal courts must examine independently in evaluative proceedings." The Hon'ble Court acknowledged the Jail's report that his behaviour remained excellent and that he was the president of the Youth Congress. The specific murder is linked to personal differences. He is reformable. As a result, the death penalty was commuted to life imprisonment. Based on the foregoing judgement, the accused was released by the Hon'ble High Court of Delhi on December 21, 2018, notwithstanding the remission Board's recommendation that he not be freed. "There is no cause to doubt that the order denying his appeal for premature release suffers from the vice of arbitrariness, whimsicality, and illegality of the State Remission Board Delhi," H C Delhi said. In this case, the accused was imprisoned for a period that exceeded the restrictions and could not be released by the SRB.

Thus, with regard to reformation and rehabilitation, the Court held that "it is the role of the Office of the Prosecutor to prove to the Court by evidence indicating that the condemned individual may not be reformed and rehabilitated. This may be accomplished by providing articles about his behaviour in jail, his behaviour outside of prison, while on bail for a period of time, medical evidence concerning his mental condition, communication with his family, and so on. Likewise, the guilty individual can present evidence to answer these issues."

Sangeet v. state of Haryana⁴³⁷

The Court determined that the method was just as essential as the offence and the criminal. As a result, we must not forget that a criminal, no matter how brutal, is a human person who, despite his crime, is entitled to a dignified existence. As a result, the prosecution and the court must assess if the offender may be reformed and rehabilitated

⁴³⁶ 2014 SCC 292

⁴³⁷ Sangeet v. state of Haryana 2013 SCC 452.

despite his offence. Obtaining and interpreting this information is not a simple undertaking, but it must be completed. Rehabilitation is a difficult procedure that requires reintegrating the sentenced individual into society. Of course, situations may emerge in which the condemned individual cannot be socially reintegrated, regardless of the facts presented and reviewed by an expert in connection to the gathering of evidence. Long-term incarceration is authorised in this situation. In other words, imprisonment for more than 14 years is unquestionably an option to the death sentence."

Rajendra Prahlad Wasnik v. State of Maharashtra⁴³⁸

The Hon'ble Court also addressed the offenders' past history and criminal antecedents. In paragraph 58 of the judgement, the Court declared that the convict's background, including recidivism, cannot be used to justify the sentence. Section 54 of the Indian Evidence Act of 1872 bans the use of past negative character evidence unless they can choose to lead evidence of their good character. The message is clear: the convict's previous bad behaviour should not be considered for deciding the amount of punishment, save in certain instances such as 376 (E) of the IPC and Section 16 (4) of the Prevention of Food Adulteration Act 1954, etc.

Rajendra Wasnik v. State of Maharashtra⁴³⁹

The ambit of Section 75 IPC was considered in Paragraph 63 of the December 2018 verdict, as well as the 42nd Report of the Law Commission of India 128 which is copied below: "this is an attempt to deal with the problem of habitual offenders and recidivism. Other correctional systems have also attempted to address this complicated issue, but have had little success, possibly due to the complexity of the causes of crime. Because the prior sentence failed both in terms of changing the criminal and deterring crime, the law, as a last option, focuses on protecting society from the offender by imprisoning him for a greater period of time than previously.

Mohammed Farooq Abdula Gafoor v. State of Maharashtra⁴⁴⁰

The presumption of innocence was recognised as a human right, and paragraph 178 of the report discovered that the court's conviction had been overturned by error since the offender had a criminal record, but three suspects had not been convicted of a lawless act.

⁴³⁸ Rajendra Prahlad Wasnik v. State of Maharashtra (1980) 2 SCC 684.

⁴³⁹ *Ibid*

⁴⁴⁰ Mohammed Farooq Abdula Gafoor v. state of Maharashtra 2010 SCC641

It had rejected the aforementioned argument on the grounds that a conviction may not be attainable in every criminal trial in which a person is proved guilty. He should be assumed innocent unless proven guilty. Furthermore, despite the fact that the criminal prosecutions ongoing against the accused had resulted in their conviction, nothing has been presented on behalf of the State. Unless and until the same is demonstrated by the papers, as needed by the beautiful zoom, presumption of innocence should be regarded a human right. The Trial Judge should also receive the resumes of all three accused defendants. The claimed criminal past of the accused had a significant impact on the imposition of the death sentence by the trial court and the three accused, thus it was determined that he erred in this regard.

Gurmukh Singh v. State of Haryana⁴⁴¹

It was determined that several criteria connected to rehabilitation, reformation, and social reintegration must be considered before imposing an appropriate punishment on the accused. These elements are simply illustrative in nature and are not exhaustive. The relevant elements are listed in the verdict. Each case must be viewed from its own unique viewpoint.

S.NO.	SUBJECT	CASE	DECISION
1	Right when inmate is a foreigner	Charles Sobhraj v. State ⁴⁴²	Article 19 cannot be claimed as a matter of right. Each instrumentality must function within its province.

⁴⁴¹ Gurmukh Singh v. State of Haryana 2009 SCC635.

⁴⁴² Charles Sobhraj v. State 1978 AIR, 1514

2	Bar fetters, hand cuffing etc. (reasonable Restrictions)	Sunil Batra Admin v. Delhi ⁴⁴³	Solitary confinement is a penalty that a court can inflict (73,74 IPC). The classification does not violate Prison Act 30. (2). Prisoner's Handbook for legal understanding, information on periodic rehabilitative programmes to relieve stress, adherence to UN Standard Minimum Rules for the Treatment of Prisoners, and visits by District Judge and District Collector, among other things.
3	Non furnishing of Bail – people are languishing in	Hussainara Khatoon v.	The court ordered that legal assistance

⁴⁴³ Sunil Batra Admin v. Delhi 1978 AIR 1675.

	jail in case of Under Trials.	State, ⁴⁴⁴	be offered to anyone in need. for quick assistance to impoverished people needy.
4	Hand Cuffing.	Prem Shankar Shukla v. State, ⁴⁴⁵	With permission of Court, handcuffing is permissible.
5	Case concerning women prisoners	Sheela Barse v. State of Mah. ⁴⁴⁶	Legal assistance should be provided to Under Trials and convicted in Jail.
6	Restricted interviews.	Sheela Barse v. State ⁴⁴⁷	The press is obligated to inform citizens on the functioning of the government. Journalists are permitted to obtain information from prisons in

⁴⁴⁴ Hussainara Khatoon v. State, AIR 1979 at p.1360.

⁴⁴⁵ Prem Shankar Shukla v. State, 1980 AIR 1535.

⁴⁴⁶ Sheela Barse v. State of Mah. 1983 AIR378

⁴⁴⁷ Sheela Barse v. State JT1988 (3) 15

			accordance with laws.
7	Compensation	Smt. Nilabati Behera v. State, ⁴⁴⁸	Petitioner is entitled in the Custodial Death Case if appropriate evidence has been shown.
8	Closure cases	Common Cause v. State ⁴⁴⁹	Various types of offences that are ongoing in court have been ordered to be closed and/or accused have been granted bail. As a result, incarcerations decreased.
9	Framing of New Rules.	Ram Murthy v. State ⁴⁵⁰	The Court recommended the creation of new

⁴⁴⁸ Smt. Nilabati Behera v. State AIR1993 at p. 1960

⁴⁴⁹ Common Cause v. State, AIR1996 at p.1619

⁴⁵⁰ Ram Murthy v. State, AIR 1997 SC 1739

			<p>norms and procedures after reviewing the Law Commission's 78th Report (Congestion of UT Prisoners in Jail), Mulla Committee.</p> <p>Introducing a new prison act, a new jail manual, adequate sanitary conditions, a complaint box, communication facilities, liberal prisoner visitation, and the introduction of open-air prisons, among other things.</p>
10	Application of Minimum Wages rule.	State of Gujrat v. Hon'ble H C ⁴⁵¹	<p>1- States should form a wage-fixation body and provide recommendations;</p> <p>2- Prisoners should be paid fair pay until the suggestion is implemented;</p>

⁴⁵¹ State of Gujrat v. Hon'ble H C, AIR 1998 SC 3164;1998(4)

			<p>3-A portion of earnings should be distributed to victims; and.</p> <p>4- States may exercise in 6 weeks.</p>
11	Press interview	<p>Supdt. of Jail, New Delhi</p> <p>v. Charulata Joshi⁴⁵²</p>	<p>Interviews with Under Trials are restricted according to Jail Manuals. It is unrestricted press freedom.</p>
12	Child birth and welfare	<p>R P Upadhyay v. State of AP⁴⁵³</p>	<p>In prison alongside her mother, the child may be classified as a UT/Convict. He has the right to food, housing, medical treatment, clothes, and educational and recreational facilities.</p>

⁴⁵² Supdt. of Jail, New Delhi v. Charulata Joshi, AIR 1999 SC 1379

⁴⁵³ R P Upadhyay v. State of AP , AIR 2006 S C 1946

13	Mentally ill people facing trials are being held in jail for extended lengths of time.	Hindustan Times v. UOI ⁴⁵⁴	SC has published thorough instructions in order to reduce the misery and detention of such accused.
14	Sitting of Judicial Magistrate in Jails	Bhim Singh v. UOI, Writ Petition ⁴⁵⁵	Effective application Article 436-A Cr.PC (half of the maximum imposed jail time, if it is over, should be freed).
15	Human rights.	D K Basu v. State of WB ⁴⁵⁶ AIR 1996 SC	States that have not yet formed a SHRC should do so promptly. CCTV cameras should be deployed in jails and police stations. According to its regulations/manuals, the state

⁴⁵⁴ Hindustan Times v. UOI (WP Crime No 18 of 2006).

⁴⁵⁵ Bhim Singh v. UOI, Writ Petition (Crl.) No. 310 of 2005

⁴⁵⁶ D K Basu v. State of WB , AIR 1996 SC

			government should consider appointing non-official visitors to police stations and prisons.
16	Role of District Legal Service Committee and Under Trial review committee.	“In-Re, Inhuman Conditions” ⁴⁵⁷	Committees should visit prisons to ensure that Cr.PC 436 and 436-A are being followed correctly.

5.9 ROLE OF EXECUTIVES IN PRISONERS REHABILITATION

5.9.1 Jail Committees:

- Prison Discipline Committee headed by Lord Macaulay, 1836.
- Committee (2nd), 1864.
- Lord Duffrin (appointed (1882-1892)) Committee.
- Walter C. Reckless Recommendations (U N Expert), 1951.
- Jail Committee, (1919-20).
- All India Jail Manual Committee, 1957.
- Working Group on Prisons, 1972.
- Prison Discipline Committee headed by Lord Macaulay, 1836.
- Committee (2nd), 1864.
- Lord Duffrin (appointed (1882-1892)) Committee.
- Walter C. Reckless Recommendations (U N Expert), 1951.
- Jail Committee, (1919-20).
- All India Jail Manual Committee, 1957.
- Working Group on Prisons, 1972⁴⁵⁸.

⁴⁵⁷ “In-Re, Inhuman Conditions in 1382 Prisons,” order dated 5-2-2016 in WP (Civil) 406/2013.

5.9.2 Ministry of Home Affairs, Govt. of India:

- 1) Ministry of Home, Government of India has issued important advisories and draft Policy Paper besides issues necessary guidelines from time to time for the reformation and management of prisons.
- 2) Advisories issued by MHA on Prison Management, Dt. 17-07- 2009.
- 3) National Policy on Prison Reforms and Correctional Administration, 2007
- 4) Access of Prisoners to Aadhar/National Population Register (NPR)
- 5) Guidelines on reckoning half-life of time spent in judicial custody
- 6) Advisory regarding guidelines for educational program for prison inmates
- 7) BPRD(MHA)
- 8) NCRB(MHA)⁴⁵⁹

5.9.3 Prisons and the Judicial Process:

I. Prisons as a System

- a) Political and Administrative Control
- b) Conditions of Prisonization
- c) Medical Treatment
- d) Classification of Prisoners
- e) Prison Labour
- f) Disciplinary and Security Measures
- g) Complaint Procedures
- h) Prison Visiting System
- i) Remissions and Parole
- j) Premature Release⁴⁶⁰

⁴⁵⁸ Varghese, J., & Raghavan, V. (2019). Restoration of Released Prisoners to Society: Issues, Challenges and Further Ways; Insights from Kerala, India. *International Annals of Criminology*, 57(1-2), 61-74. doi:10.1017/cri.2020.5

⁴⁵⁹ Shaikh, Roshni. *International Journal of Criminal Justice Sciences*, suppl. Special Issue on Criminal Justice Social Work in I; Thirunelveli Vol. 14, Iss. 1, (Jan-Jun 2019): 9-21. DOI:110.5281/zenodo.3242022

II. Special Categories of Prisoners

1. Female Prisoners
2. Juvenile Prisoners
3. Long-term Prisoners
4. Maximum Security Prisoners
5. Drug Addicts
6. Political and Administrative Control over Prisons⁴⁶¹

Appraisal

Thus, the prosecution should make a compelling case for rehabilitation, reformation, and social reintegration, as prescribed by Sections 360 and 361 Cr.P.C., by expanding on the numerous elements before imposing the punishment. It was well absorbed by the Constitution Bench in *Bachan Singh v. State of Punjab*, which underlined the numerous methods to be taken for rehabilitation, reformation, and societal reintegration. However, it has been observed that the prosecution/State typically prioritises convictions over presenting defence evidence, which may result in lesser sanctions. The pattern in the court is that neither the court nor the prosecution has pressed for such evidences: However, the Hon'ble Supreme Court has made strict implementation of mitigating factors since 1980, and the onus is on the prosecution to provide all evidences through various jail records, probation officer reports, conduct after bail, and so on, so that the court can be convinced that the person is an incorrigible element and a danger to society. However, the Supreme Court, through its constitutional bench and other decisions, has limited the theory of capital punishment and brought maximum cases under the purview of life imprisonment for the rest of one's life or quantified life imprisonment so that longer sentences can help inmates reform, rehabilitate, and socially integrate rather than end their lives.

⁴⁶⁰ Shaikh, Roshni. *International Journal of Criminal Justice Sciences*, suppl. Special Issue on Criminal Justice Social Work in I; Thirunelveli Vol. 14, Iss. 1, (Jan-Jun 2019): 9-21. DOI:110.5281/zenodo.3242022

⁴⁶¹ Tamara Makarenko, *Foundations and evolution of the crime–terror nexus*, Routledge Handbook of Transnational Organized Crime, 2021, 9781003044703, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003044703-18/foundations-evolution-crime-terror-nexus-tamara-makarenko>

Despite the fact that the Court issued the decision and made strong observations as well as guidelines about the factors that are responsible for the decision of reformation, rehabilitation, and social integration, the implementing agency, namely the State Government, has not yet established a systematic machinery that can collect data, take action, submit reports, and audit their actions, such as how many people have been reformed, rehabilitated, and socially integrated. As a result, there is a significant gap between judicial decisions and executive action, which requires immediate resolution by the executive if the state wants successful reformation, rehabilitation, and social integration of convicts.

CHAPTER VI

COMPARATIVE STUDY OF CANADIAN PRISONS

Prelude

Prisons are the last stop in the criminal justice system, where offenders are temporarily housed and kept away from society. Prisons are often effective in isolating offenders from society and punishing them for their crimes. The notion of jail has remained inextricably associated with theories of punishment, which are not universally embraced in practically all civilised nations across the world. No community can be crime-free, and criminals may be found in all age groups, both sexes, and all social classes. These criminals are brought to prison from disadvantaged societies and released after serving their terms. This particular jail sentence causes a slew of issues in the fields of correction, rehabilitation, and reform⁴⁶².

6.1 Evolution of Prison in India and Canada

Under the influence of Montesquieu and Beccaria, the concept of jail as a thorough technique for convict reformation was established in Canada. Post revolutionary penal policy was determined by the issue, "How might prisons be designed to limit the likelihood that convicts would repeat their illegal activity?" This method exhibited a clear attitude toward humans, implying that they may be changed for the better if given the right conditions.⁴⁶³ Prisons were first utilised as detention facilities for those awaiting trial. Persons convicted of a political offence or a war crime, or who failed to pay their debts or fines, were imprisoned in order to compel a confession or secure payment of bills or fines.⁴⁶⁴

Following that, as time passed and science and civilization advanced, jail conditions significantly improved. Prisons are no longer only detention facilities; they also strive to

⁴⁶² Tamara Makarenko, Foundations and evolution of the crime–terror nexus, Routledge Handbook of Transnational Organized Crime, 2021, 9781003044703, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003044703-18/foundations-evolution-crime-terror-nexus-tamara-makarenko>

⁴⁶³ Regina Branton, Kimi King, Justin Walsh (2022), Criminal justice in Indian country: Examining declination rates of tribal cases, Social science quarterly, Volume103, Issue1, January 2022, Pages 69-81, <https://doi.org/10.1111/ssqu.13100>

⁴⁶⁴ Oduntan, G. (2017), "Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria", Journal of Money Laundering Control, Vol. 20 No. 1, pp. 35-51. <https://doi.org/10.1108/JMLC-09-2015-0042>

change convicts for future lives. Modern punishment approaches place a larger focus on criminal reformation, correction, and rehabilitation.⁴⁶⁵

The present Indian jail system is mostly based on the British prison model, which was influenced by prison developments in America during the late eighteenth century. Assuming that incarceration is a necessary evil, the question now is how to properly administer the prison system so that it may be used to rectify wrongdoers and assist them return to regular life.⁴⁶⁶

A theoretical basis to the study of legal mechanisms and administrative policy will be clearer if one goes through the history and evolution of the prison system.⁴⁶⁷

Since the beginning of time, India has had a well-organized jail system. It is well documented that Brahaspati placed a high value on the confinement of inmates in closed jails. According to Kautilya's Arthashastra, monarchs in ancient India frequently used strongholds to house their prisoners. He believed that prisons should be built as close to the road as possible in order to lessen the monotony of jail life to a significant level. The goal of punishment throughout the Hindu and Mughal periods was to dissuade criminals from repeating the offence, and so the types of punishment were suitably draconic. The detainees were mistreated, tormented, and subjected to the most inhumane treatment imaginable.⁴⁶⁸

Prisons were places of dread and torture, and prison officials were supposed to be strong and strict.⁴⁶⁹

The commencement of criminal reforms in India is marked by British control. British jail officials worked hard to improve prison and prisoner conditions. The present jail system's

⁴⁶⁵ McClish, M. (2019). FROM LAW TO DHARMA: STATE LAW AND SACRED DUTY IN ANCIENT INDIA. *Journal of Law and Religion*, 34(3), 284-309. doi:10.1017/jlr.2019.36

⁴⁶⁶ Shaikh, Roshni. *International Journal of Criminal Justice Sciences*, suppl. Special Issue on Criminal Justice Social Work in I; Thirunelveli Vol. 14, Iss. 1, (Jan-Jun 2019): 9-21. DOI:110.5281/zenodo.3242022

⁴⁶⁷ Tamara Makarenko, *Foundations and evolution of the crime–terror nexus*, Routledge Handbook of Transnational Organized Crime, 2021, 9781003044703, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003044703-18/foundations-evolution-crime-terror-nexus-tamara-makarenko>

⁴⁶⁸ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023). in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

⁴⁶⁹ Dhiman, Dr. Bharat, *Condition of Women Prisoners in Model Jail, Chandigarh: A Communication Study* (August 26, 2022). Available at SSRN: <https://ssrn.com/abstract=4205096> or <http://dx.doi.org/10.2139/ssrn.4205096>

inception and adjustments are the product of many committees constituted from time to time. Lord Macaulay came in India in 1835 as a member of the Indian Law Commission, and he believed that "the best criminal code is of very little value to a community unless there be a proper apparatus for the inflicting of punishment."⁴⁷⁰

In 1836, a prison investigation committee (First jail committee) was created to report on the circumstances of incarceration in the country and to provide recommendations for future prison management.⁴⁷¹

The committee ruled out any reformatory measures in prison policy due to widespread cynicism about the feasibility of prisoner rehabilitation. The nice thing about this group was that jail problems were given significant consideration from then on.⁴⁷²

The second jail committee of 1864 advised various steps to enhance prison circumstances in order to assist convicts in reformation, such as minimum space for each prisoner, improved clothes, food, and medical checkups.⁴⁷³

The third jail committee in 1877 was ineffective in reforming either prisons or convicts. Following that, the jail committee created in 1889 and 1892 resulted in the passage of the Prisons Act of 1894, which comprised the first step toward reformatory prison management and which is still in use today⁴⁷⁴.

However, the true contemporary approach to prison management was revealed in the Indian jail committee report 1919, which was a marked divergence from previous policies on deterrent features and for the first time acknowledged the notion of prisoner reformation⁴⁷⁵.

⁴⁷⁰ Sidhu, Sahibnoor Singh and Mishra, Utkarsh (2022) Prison reform In India : An incomplete saga. Journal of Positive School Psychology, 6 (7). pp. 2234-2250. ISSN 2717-7564

⁴⁷¹ M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, Journal of Criminal Justice Education, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022

⁴⁷² Jain, Amit Kumar; Tripathi, Upendra Nabh. Educational Quest; New Delhi Vol. 9, Iss. 1, (Apr 2018): 39-46. DOI:10.30954/2230-7311.2018.04.06

⁴⁷³ Ayushi R. Saxena (2019), The candle burns: human rights violations of under trial prisoners in India with particular emphasis on Madhya Pradesh, The International Journal of Human Rights, Volume 24, 2020 - Issue 5, <https://doi.org/10.1080/13642987.2019.1663341>

⁴⁷⁴ Varghese, J., & Raghavan, V. (2019). Restoration of Released Prisoners to Society: Issues, Challenges and Further Ways; Insights from Kerala, India. International Annals of Criminology, 57(1-2), 61-74. doi:10.1017/cri.2020.5

⁴⁷⁵ Arvind Verma(2002), Taking Justice Outside the Courts: Judicial Activism in India, The Howard journal of crime and justice, Volume40, Issue2, <https://doi.org/10.1111/1468-2311.00198>, Visited on, 10.12.2022

It was highlighted that prison management has failed to treat prisoners as individuals, instead treating them as a simple unit in the jail machinery. The research also advised that prison labour be more productive, with the goal of reforming the criminal. It also advised education for convicts as well as aftercare programmes for freed inmates. The study is credited with laying the groundwork for India's contemporary jail system. Unfortunately, the advances made in the prison system by such committees were hampered by constitutional changes brought about by the Government of India Act, 1919, which moved jurisdiction of the jail department from the government of India to the provincial government.⁴⁷⁶

Following independence, India embarked on a series of initiatives aimed at reforming its prison system. In a significant step, the government engaged Dr. W.C. Reckless, a specialist from the United Nations, to provide recommendations for improvement. Building upon his proposals, a committee was formed in 1957 to develop a unified All India Jail Manual. This manual served as a key foundation for further reforms.

The government's commitment continued in 1961 with the establishment of the Central Bureau of Correctional Services. This central agency aimed to oversee and guide prison reform efforts across the country. Further efforts emerged in 1972 when the Ministry of Home Affairs established a Working Group on Prisons. Their report, submitted in 1973, undoubtedly contributed valuable insights for continued prison reform in India⁴⁷⁷.

Building on the groundwork laid by previous initiatives, a Working Group on Prisons emphasized the critical need for a national prison policy in its report. This recommendation resonated with the government, leading to the appointment of the All India Jail Reforms Committee in 1980 under the chairmanship of Justice A.M. Mulia. Their landmark 1983 report marked a watershed moment in India's prison reform movement.

The Committee's recommendations championed several key reforms:

⁴⁷⁶ Praveen Kumar, (2022), Prisoners Are Too 'Victims' of the Criminal Justice System. Can They Have an Idea of 'Fair Access to Justice'?, *Journal of Victimology and Victim Justice*, <https://doi.org/10.1177/25166069221134215> Visited on, 10.12.2022

⁴⁷⁷ Arvind Verma(2002), Taking Justice Outside the Courts: Judicial Activism in India, *The Howard journal of crime and justice*, Volume40, Issue2, <https://doi.org/10.1111/1468-2311.00198>, Visited on, 10.12.2022

- **National Prison Policy:** The establishment of a comprehensive national policy to guide prison reform efforts throughout the country.
- **Alternatives to Incarceration:** Expanding sentencing options beyond imprisonment to include alternatives such as community service, forfeiture of property, victim compensation, and public censure.
- **Professionalization of Prison Services:** Transforming prison services into a professional career path to attract qualified personnel.
- **Dignified Living Conditions:** Ensuring that prisons provide basic human dignity through improved living conditions for inmates⁴⁷⁸.

On November 16, 1995, the Government of India designated the Bureau of Police Research and Development (BPR&D) as a national nodal organisation in the field of Correctional Administration⁴⁷⁹.

In 1987, Justice Krishna Iyer created a national expert group on women inmates, which said unequivocally that prison conditions in general had not altered in any manner since 1983, and there was no evident trace of any follow-up action by the government.⁴⁸⁰

In further efforts to improve prison administration, the Ministry of Home Affairs formed the All India Group on Prison Administration-Security and Discipline in July 1986. This committee, led by Shri R.K. Kapoor, submitted its report in July 1987.⁴⁸¹

To achieve standardization in prison operations across India, the government established the All India Model Prison Manual Committee in November 2000. Chaired by the Director General of BPR&D, this committee was tasked with developing a Model Prison Manual for prison superintendence and management⁴⁸².

⁴⁷⁸ M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, *Journal of Criminal Justice Education*, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022

⁴⁷⁹ Praveen Kumar, (2022), Prisoners Are Too 'Victims' of the Criminal Justice System. Can They Have an Idea of 'Fair Access to Justice'?, *Journal of Victimology and Victim Justice*, <https://doi.org/10.1177/25166069221134215> Visited on, 10.12.2022

⁴⁸⁰ Arvind Verma(2002), Taking Justice Outside the Courts: Judicial Activism in India, *The Howard journal of crime and justice*, Volume40, Issue2, <https://doi.org/10.1111/1468-2311.00198>, Visited on, 10.12.2022

⁴⁸¹ Varghese, J., & Raghavan, V. (2019). Restoration of Released Prisoners to Society: Issues, Challenges and Further Ways; Insights from Kerala, India. *International Annals of Criminology*, 57(1-2), 61-74. doi:10.1017/cri.2020.5

⁴⁸² Ayushi R. Saxena (2019), The candle burns: human rights violations of under trial prisoners in India with particular emphasis on Madhya Pradesh, *The International Journal of Human Rights*, Volume 24, 2020 - Issue 5, <https://doi.org/10.1080/13642987.2019.1663341>

The government's commitment to prison reform continued with the establishment of the All India Model Prison Manual Committee in November 2000. This committee, led by the Director General of BPR&D, developed a standardized manual for prison operations across the country. Following approval by the government in January 2004, the Model Prison Manual was disseminated to all states and union territories for adoption.

Recognizing the need for ongoing reform, the government formed another high-powered committee in December 2005. This committee, again chaired by the Director General of BPR&D, was tasked with drafting a National Policy Paper on Prison Reforms and Correctional Administration. Their review aimed to assess the current legal landscape and propose necessary amendments to existing prison-related laws. The committee submitted its report in 2007, providing further recommendations for improving India's prison system⁴⁸³.

Status in Canada:

Imprisonment, in different forms, has played a vital part in moulding the Canada experience, contributing to shape its history and society. By the end of the twentieth century, Canada had almost two million individuals incarcerated in its prisons or jails, accounting for ten or twenty times the population of most other postindustrial countries. This history of prisons in Canada helps you comprehend the contradiction of a society that prides itself on being a bastion of individual liberty while imprisoning more of its inhabitants than any other country on the planet. Because of the widespread use of imprisonment, Canadian society has become economically, politically, and socially dependent on prisons⁴⁸⁴.

Almost every type of confinement has occurred throughout Canadian history, including prisons, locked constructions, slavery, forced servitude, and so on. Canadian history is the tale of immigration, and it is essentially the story of the immigration of convicts of various kinds. In Canadian, jails were among the earliest public institutions created. Jails were an essential feature of Canadian's bondage system, in addition to functioning as a

⁴⁸³ Jain, Amit Kumar; Tripathi, Upendra Nabh. *Educational Quest*; New Delhi Vol. 9, Iss. 1, (Apr 2018): 39-46. DOI:10.30954/2230-7311.2018.04.06

⁴⁸⁴ Tamara Makarenko, *Foundations and evolution of the crime–terror nexus*, Routledge Handbook of Transnational Organized Crime, 2021, 9781003044703, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003044703-18/foundations-evolution-crime-terror-nexus-tamara-makarenko>

required receptacle and staging area for hesitant immigrants. Almost every Canadian city and county was forced by law to build its own jail at public expense.⁴⁸⁵

These frameworks became increasingly prevalent, secure, and permanent throughout time. According to legend, Canada had more jails than public schools or hospitals⁴⁸⁶.

During the eighteenth century, Canadians were more critical of the prisoner trade and transportation. By the third quarter of the eighteenth century, dissatisfaction in the form of tumults, jail breakouts, and protest had become acute, culminating in the outbreak of the Revolution. The Declaration of Independence mentioned a number of evils relating to the prisoner trade, among other things⁴⁸⁷.

During the Revolution, the British imprisoned a considerable number of captured adversaries in existing jails⁴⁸⁸.

Throughout the war, many City was seized and transformed into a prison camp. Furthermore, Canadians imprisoned British soldiers⁴⁸⁹.

As a result of the war's disruption of the prisoner traffic to Canada, jails were dreadfully overcrowded, causing prison reformers to conduct a detailed examination of prisons throughout the nation. The State of Prisons in Canada, with Preliminary Observations and Account of Some Foreign Prisons which set a framework for future jail reform. The emerging Canada struggled to decide what to do with its penitentiary and slave systems. Many Canada jails were transformed and new criminal statutes were enacted. Some states, permitted for the gradual abolition of slavery and enacted new criminal laws that allowed for the use of life sentences⁴⁹⁰.

⁴⁸⁵ Regina Branton, Kimi King, Justin Walsh (2022), Criminal justice in Indian country: Examining declination rates of tribal cases, *Social science quarterly*, Volume103, Issue1, January 2022, Pages 69-81, <https://doi.org/10.1111/ssqu.13100>

⁴⁸⁶ Oduntan, G. (2017), "Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria", *Journal of Money Laundering Control*, Vol. 20 No. 1, pp. 35-51. <https://doi.org/10.1108/JMLC-09-2015-0042>

⁴⁸⁷ McClish, M. (2019). FROM LAW TO DHARMA: STATE LAW AND SACRED DUTY IN ANCIENT INDIA. *Journal of Law and Religion*, 34(3), 284-309. doi:10.1017/jlr.2019.36

⁴⁸⁸ Shaikh, Roshni. *International Journal of Criminal Justice Sciences*, suppl. Special Issue on Criminal Justice Social Work in I; Thirunelveli Vol. 14, Iss. 1, (Jan-Jun 2019): 9-21. DOI:110.5281/zenodo.3242022

⁴⁸⁹ McClish, M. (2019). FROM LAW TO DHARMA: STATE LAW AND SACRED DUTY IN ANCIENT INDIA. *Journal of Law and Religion*, 34(3), 284-309. doi:10.1017/jlr.2019.36

⁴⁹⁰ Tamara Makarenko, *Foundations and evolution of the crime–terror nexus*, Routledge Handbook of Transnational Organized Crime, 2021, 9781003044703, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003044703-18/foundations-evolution-crime-terror-nexus-tamara-makarenko>

Other states gradually adopted determinate sentencing legislation that imposed set jail sentences as punishment for violent or property offences. The death penalty was kept for the most egregious crimes. The new prisons were mostly fashioned after the English jail reformer John⁴⁹¹.

Howard's plan for a humane jail includes segregating male and female convicts, erecting walls to prevent escapes, and requiring inmates to work. Many of the major jail reformers were Quakers who had lately experienced political persecution and brutal incarceration⁴⁹².

The founding of Canada second state prison in 1816 resulted in a new prison concept and regime meant to keep criminals separated and unable to contact with one another⁴⁹³.

The new system's guiding values were industry, obedience, and silence. Elam Lynds, the warden of jails, was one of its most vocal supporters. This new system was a brilliant example of correct discipline and design, and it was considered as a model worthy of replication around the world⁴⁹⁴.

The prison was designed to keep the convicts apart even as they worked, preventing any earthly contamination or distraction that may delay their repentance, thus the name penitentiary⁴⁹⁵.

It was one of the most imposing and expensive architectural feats in Canada, and it included novelties like as running water and flush toilets in all of the cells⁴⁹⁶.

The history of prison is intertwined with the history of the prison system, which began in the first part of the nineteenth century. With the passage of time, many Canadians saw that prisons were badly overcrowded and degrading, that the administration was corrupt

⁴⁹¹ Regina Branton, Kimi King, Justin Walsh (2022), Criminal justice in Indian country: Examining declination rates of tribal cases, *Social science quarterly*, Volume103, Issue1, January 2022, Pages 69-81, <https://doi.org/10.1111/ssqu.13100>

⁴⁹² Oduntan, G. (2017), "Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria", *Journal of Money Laundering Control*, Vol. 20 No. 1, pp. 35-51. <https://doi.org/10.1108/JMLC-09-2015-0042>

⁴⁹³ McClish, M. (2019). FROM LAW TO DHARMA: STATE LAW AND SACRED DUTY IN ANCIENT INDIA. *Journal of Law and Religion*, 34(3), 284-309. doi:10.1017/jlr.2019.36

⁴⁹⁴ Shaikh, Roshni. *International Journal of Criminal Justice Sciences*, suppl. Special Issue on Criminal Justice Social Work in I; Thirunelveli Vol. 14, Iss. 1, (Jan-Jun 2019): 9-21. DOI:110.5281/zenodo.3242022

⁴⁹⁵ McClish, M. (2019). FROM LAW TO DHARMA: STATE LAW AND SACRED DUTY IN ANCIENT INDIA. *Journal of Law and Religion*, 34(3), 284-309. doi:10.1017/jlr.2019.36

⁴⁹⁶ Oduntan, G. (2017), "Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria", *Journal of Money Laundering Control*, Vol. 20 No. 1, pp. 35-51. <https://doi.org/10.1108/JMLC-09-2015-0042>

and cruel, and that fixed sentencing methods also deprived excessively. To address the sad condition of affairs, two famous reformers, Enoch Wines and Theodore Dwight, proposed that the primary goal of incarceration be the rehabilitation of the prisoner. In 1870, they organised the National Congress on Penitentiary and Reform Discipline, which adopted the Declaration of Principles, which called for sweeping prison reforms such as acceptance of reformation, greater participation of women in prison administration, rewards for good behaviour, education for prisoners, and the abolition of physical punishment in prison⁴⁹⁷.

Surprisingly, the reformers argued for long indeterminate sentences that might be changed based on the progress of the prisoner⁴⁹⁸.

It wasn't until the 1940s that prisoners' legal rights began to be steadily enhanced. A succession of federal court judgements began to offer convicts more access to the courts, reversing a longstanding "hands-off" stance reflecting the world's highest usage of incarceration. It should be emphasised that, despite widespread disbelief in jail efficacy, tougher mandatory prison sentences, increasing use of death penalty and life without parole, rollbacks of prison education programmes, and other rehabilitative attempts were all on the rise⁴⁹⁹.

The tremendous public expenditures of constructing and maintaining the multibillion-dollar jail complex outweighed public support. To lower this public expenditure, several states began to turn to private firms to establish and manage institutions in the 1980s and 1990s⁵⁰⁰.

6.2 MODERN PRISONS IN INDIA AND CANADA

All institutions for the incarceration of convicts in India are owned by the state governments. The Jail Department was a branch of the central government prior to the

⁴⁹⁷ Tamara Makarenko, *Foundations and evolution of the crime–terror nexus*, Routledge Handbook of Transnational Organized Crime, 2021, 9781003044703, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003044703-18/foundations-evolution-crime-terror-nexus-tamara-makarenko>

⁴⁹⁸ Regina Branton, Kimi King, Justin Walsh (2022), *Criminal justice in Indian country: Examining declination rates of tribal cases*, *Social science quarterly*, Volume103, Issue1, January 2022, Pages 69-81, <https://doi.org/10.1111/ssqu.13100>

⁴⁹⁹ *Ibid*

⁵⁰⁰ Oduntan, G. (2017), "Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria", *Journal of Money Laundering Control*, Vol. 20 No. 1, pp. 35-51. <https://doi.org/10.1108/JMLC-09-2015-0042>

Government of India Act, 1919. It was handed to provincial jurisdiction as a reserved topic under the aforementioned Act⁵⁰¹.

The Government of India Act of 1935 eliminated diarchy in the provinces and placed the department under the minister's jurisdiction. Secretaries from the Indian Administrative Service's senior cadre assist the minister. The Inspector-General of Prisons (IGP) is the executive head of the jail department and is charged with carrying out the minister's policies. During the course of a year, the IGP is supposed to physically visit all prisons and other facilities under the jurisdiction of the jail department. The IGP is responsible for arranging for the posting of top jail employees, allocating the funds authorised for jail structures, examining and passing the designs, and checking the amounts spent. The criminal establishments in the states are classified into two types based on their location: central prisons and district prisons. One Superintendent, one Deputy Superintendent, two or three jailers, five to seven Deputy Jailers, five to seven Assistant Jailers, Matron, Staffing in India's prison system varies depending on the facility's size and security level. Central prisons, housing a larger number of inmates and considered higher security, typically have a more extensive staff roster. This might include Reserve Warders responsible for maintaining order, Intramural Warders who oversee daily inmate activities within prison walls, Medical Officers to address inmate health concerns, and Compounders to assist with medical care.

In contrast, district prisons or smaller subsidiary jails have a leaner staff structure. These facilities might have a Superintendent as the overall head, a Jailer for management duties, one to two Deputy Jailers for support, and one to three Assistant Jailers for operational tasks. Additionally, they would likely have Intramural Warders for inmate supervision, an Assistant Medical Officer to provide basic medical care, and a Compounder to assist with medications.⁵⁰²

The Superintendent is the institution's head and, under the supervision of the Inspector General of Prisons, oversees the prison in all things pertaining to discipline, labour, spending, punishment, and oversight. A Deputy Superintendent at the central prison and a

⁵⁰¹ M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, *Journal of Criminal Justice Education*, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022

⁵⁰² Praveen Kumar, (2022), Prisoners Are Too 'Victims' of the Criminal Justice System. Can They Have an Idea of 'Fair Access to Justice'?, *Journal of Victimology and Victim Justice*, <https://doi.org/10.1177/25166069221134215> Visited on, 10.12.2022

jailer in the district prison assist the superintendent. The deputy superintendent is a jailor, and their tasks are identical save for their designation⁵⁰³.

The leadership structure within India's central prisons involves a clear hierarchy. The Deputy Superintendents are the prison's top executives, responsible for overseeing the entire facility and reporting directly to the Superintendent.

Within this leadership team, there are two Jailers with distinct roles. One Jailer functions similarly to a circle officer, managing various aspects of prison operations. The other, known as the "office-jailer," focuses on supervising and managing the prison's clerical staff. Both Jailer positions are filled by promotions from the ranks of Deputy Jailers, and they are typically required to live within the prison grounds unless granted written permission by the Superintendent.

Supporting the Jailers is the clerical department, staffed by Assistant Jailers. These Assistant Jailers handle various administrative tasks like managing stores, accounting, prison factories, and raw materials. While secretarial duties are a common responsibility, Assistant Jailers may also be assigned other functions depending on the prison's needs⁵⁰⁴.

With regard to the authorities involved in jail administration, the All India Jail Manual Committee's comment that "Correctional work is now acknowledged as a special activity" becomes significant. Correctional employees are primarily responsible for the social re-education of inmates⁵⁰⁵. Untrained and uneducated people are not only unproductive, but they frequently impede the proper execution of correctional regulations. As a result, training for correctional programmes is critical."⁵⁰⁶

Status in Canada

The prison system in the Canada is comprised of several municipal, county, state, and federal entities. The Federal Bureau of Prisons is in charge of incarcerating those who

⁵⁰³ Arvind Verma(2002), Taking Justice Outside the Courts: Judicial Activism in India, The Howard journal of crime and justice, Volume40, Issue2, <https://doi.org/10.1111/1468-2311.00198>, Visited on, 10.12.2022

⁵⁰⁴ Varghese, J., & Raghavan, V. (2019). Restoration of Released Prisoners to Society: Issues, Challenges and Further Ways; Insights from Kerala, India. *International Annals of Criminology*, 57(1-2), 61-74.
doi:10.1017/cri.2020.5

⁵⁰⁵ *Ibid*

⁵⁰⁶ Ayushi R. Saxena (2019), The candle burns: human rights violations of under trial prisoners in India with particular emphasis on Madhya Pradesh, *The International Journal of Human Rights*, Volume 24, 2020 - Issue 5, <https://doi.org/10.1080/13642987.2019.1663341>

have been accused and convicted under federal law. However, there is no national prison service in the Canada that is in charge of running all of the country's prisons. On the contrary, it has a federal prison system that is in charge of running the prisons that house convicts accused with or convicted of federal offences. Each state has its own system of corrections. The jails are run by local and county governments, and the majority of probation agencies are linked to the courts⁵⁰⁷.

They are the key social control agents in the jail since they are in charge of managing inmate conduct through direct supervision and rule and regulation enforcement. They are part of a paramilitary group that demands them to wear military-style uniforms and to carry rifles and other weapons. This organisational system is authoritarian in character, and they must adhere to a tight line of military-like directives. A high school diploma or graduate equivalency credential is required for work as a CO. As a result, the majority of Cos has a minimal formal education. Despite being the lowest subordinates in the line of command, they have the unusual position of being both manager and worker⁵⁰⁸.

They are the principal managers of convicts, hence they are the focus of the current study. Positions within the formal prison hierarchy include the warden, the caption of the guard, and the head of vocational training⁵⁰⁹.

In general, correctional workers are immune from personal responsibility actions as long as they operate fairly and within the scope of their employment. Those who act carelessly or outside the limits of their work may face personal liability for breaching inmates' statutory or constitutional rights⁵¹⁰.

6.3 LEGAL FRAMEWORK STATUS IN INDIA AND CANADA

Prison administration in India is primarily controlled by the provisions of the Prisons Act of 1894, the Prisoners Act of 1990, the Transfer of Prisoners Act of 1950, and the

⁵⁰⁷ Tamara Makarenko, Foundations and evolution of the crime–terror nexus, Routledge Handbook of Transnational Organized Crime, 2021, 9781003044703, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003044703-18/foundations-evolution-crime-terror-nexus-tamara-makarenko>

⁵⁰⁸ Regina Branton, Kimi King, Justin Walsh (2022), Criminal justice in Indian country: Examining declination rates of tribal cases, Social science quarterly, Volume103, Issue1, January 2022, Pages 69-81, <https://doi.org/10.1111/ssqu.13100>

⁵⁰⁹ Oduntan, G. (2017), "Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria", Journal of Money Laundering Control, Vol. 20 No. 1, pp. 35-51. <https://doi.org/10.1108/JMLC-09-2015-0042>

⁵¹⁰ McClish, M. (2019). FROM LAW TO DHARMA: STATE LAW AND SACRED DUTY IN ANCIENT INDIA. Journal of Law and Religion, 34(3), 284-309. doi:10.1017/jlr.2019.36

Prisoners (Attendance in Courts) Act of 1955. The Prisons Act of 1894 was India's first piece of law governing prisons⁵¹¹.

Prisons Act of 1894

A prison is any secure facility used by the government to hold people who have been arrested or convicted of crimes. This includes permanent or temporary jails and any buildings or land associated with them. However, it does not encompass:

- Police stations where suspects are held temporarily.
- Smaller facilities designated by the government as "subsidiary jails"⁵¹².

Prisoner Classes:

The Act identifies three sorts of inmates:

India's prison system houses a variety of individuals under different legal statuses. The most common categories include:

- **Criminal Prisoners:** These are individuals convicted of crimes and sentenced to serve time in prison.
- **Non-Criminal Prisoners (Judicial):** This category is further divided into those held under court orders related to criminal proceedings, such as someone awaiting trial, or those committed by a court martial.

There's also a separate classification for:

- **Civil Prisoners:** These are individuals imprisoned not for committing crimes, but due to civil court orders. They might be held for reasons like debt or contempt of court⁵¹³.

Temporary Prisons:

The Act provides for the refuge and safe care of convicts who cannot be housed in the jail in a convenient or secure manner. i.e., the number of inmates is more than what can be held efficiently or securely, and it is inconvenient to move the excess number to another

⁵¹¹ Shaikh, Roshni. International Journal of Criminal Justice Sciences, suppl. Special Issue on Criminal Justice Social Work in I; Thirunelveli Vol. 14, Iss. 1, (Jan-Jun 2019): 9-21. DOI:110.5281/zenodo.3242022

⁵¹² Prisons Act of 1894

⁵¹³ THE CODE OF CRIMINAL PROCEDURE, 1973, ACT NO. 2 OF 1974

jail, or there is an outbreak of epidemic disease within the prison. The inspector general is in charge of arranging for temporary jails for convicts⁵¹⁴.

Within India's prison system, meticulous record-keeping is essential. The Superintendent maintains several key registers:

- **Admissions & Releases:** A register tracks all prisoner admissions and their scheduled release dates.
- **Disciplinary Action:** A dedicated punishment book documents any disciplinary measures taken against prisoners for violating prison rules.
- **Visitor Observations:** A visitors' book allows authorized guests to record observations or concerns regarding prison administration.
- **Confiscated Property:** A record details any money or personal belongings taken from prisoners upon admission.

In addition to the Superintendent's records, the medical officer also plays a crucial role in maintaining detailed information about each prisoner's health. This includes:

- **Medical History:** A register tracks any illnesses experienced by prisoners during their incarceration.
- **Dietary Needs:** Records are kept of each prisoner's food requirements, ensuring proper nutrition.
- **Labor Assignments:** Documentation tracks the work tasks assigned to prisoners.
- **Death Records:** In the unfortunate event of a prisoner's death, a formal record is maintained.

This comprehensive record-keeping system serves multiple purposes, including tracking prisoner movement, ensuring disciplinary fairness, documenting visitor feedback,

⁵¹⁴ Divya Dubey, "Overview of Correctional Reform In India: A 'Different' Approach to Offender Rehabilitation by Divya Dubey :: SSRN" available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900496 (last visited June 16, 2023). in India: A "Different" Approach to Offender Rehabilitation, Available at SSRN: <https://ssrn.com/abstract=3900496>

safeguarding prisoner belongings, and monitoring the health and well-being of the prison population⁵¹⁵.

Examination of Prisoners on Admission and Removal:

When a prisoner is admitted, he or she must be searched. Following admittance, the prisoner is to be physically evaluated by a medical officer, who is to write a book noting the prisoner's condition of health and the appropriate class of labour, which is to be delivered to the jailer. Similarly, when a prisoner is transferred to another facility, he or she must be evaluated by a medical professional who will certify whether or not the prisoner is clear of disease and suitable to be transferred or discharged⁵¹⁶.

Prisoner Separation:

The Act requires the separation of female prisoners (who must be kept in separate buildings or parts of the same building), male prisoners under the age of twenty-one from other prisoners, un-convicted criminal prisoners from convicted criminal prisoners, and civil prisoners from criminal prisoners. Furthermore, the prisoner sentenced to death has to be housed separately from all other convicts and held under watch 24 hours a day, seven days a week⁵¹⁷.

Solitary Confinement: When a prisoner is confined in a cell, the chamber must be equipped with a method for the prisoner to contact with an officer of the jail, and if confined for more than twenty-four hours, the medical officer must visit the prisoner at least once a day⁵¹⁸.

Requirements for Prisoners:

However, they are not authorised to share it with other convicts, either by sale or hiring, or they will lose such privilege. Furthermore, the requirements of a civil prisoner

⁵¹⁵ Dhiman, Dr. Bharat, Condition of Women Prisoners in Model Jail, Chandigarh: A Communication Study (August 26, 2022). Available at SSRN: <https://ssrn.com/abstract=4205096> or <http://dx.doi.org/10.2139/ssrn.4205096>

⁵¹⁶ Sidhu, Sahibnoor Singh and Mishra, Utkarsh (2022) Prison reform In India : An incomplete saga. Journal of Positive School Psychology, 6 (7). pp. 2234-2250. ISSN 2717-7564

⁵¹⁷ M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, Journal of Criminal Justice Education, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022

⁵¹⁸ Jain, Amit Kumar; Tripathi, Upendra Nabh. Educational Quest; New Delhi Vol. 9, Iss. 1, (Apr 2018): 39-46. DOI:10.30954/2230-7311.2018.04.06

committed as a result of the execution of a decree in favour of a private person must be paid for by that person, failing which the prisoner may be freed⁵¹⁹.

Employment of Inmates:

Civil prisoners may pursue any trade or profession with the consent of the Superintendent. Criminal convicts condemned to simple imprisonment must be employed, but not for more than nine hours a day⁵²⁰.

Prisoner's Health:

The medical officer's instructions about the prisoner must be written on the prisoner's history-ticket on a daily basis. Furthermore, the Act requires that every jail have a hospital or an appropriate area for the reception of sick convicts⁵²¹.

Visiting the Inmates:

Persons who wish to meet with civil or unconvicted criminal prisoners may be allowed to see such prisoners after providing relevant information or being searched by the jailer⁵²².

Offenses and Punishments:

The Act defines some crimes done by prisoners as prison offences, such as deliberate disobedience to prison regulations, assault or use of criminal force, use of insulting words, feigning sickness, and so on. The Superintendent determines the punishment for such stipulated offences, which may include official warning, hard work, loss of privilege, cellular confinement, punitive diet, and so on. Aside from the stipulated sanctions, no further penalty may be imposed on any prisoner. Furthermore, every

⁵¹⁹ Ayushi R. Saxena (2019), The candle burns: human rights violations of under trial prisoners in India with particular emphasis on Madhya Pradesh, *The International Journal of Human Rights*, Volume 24, 2020 - Issue 5, <https://doi.org/10.1080/13642987.2019.1663341>

⁵²⁰ Varghese, J., & Raghavan, V. (2019). Restoration of Released Prisoners to Society: Issues, Challenges and Further Ways; Insights from Kerala, India. *International Annals of Criminology*, 57(1-2), 61-74.
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⁵²¹ Arvind Verma(2002), Taking Justice Outside the Courts: Judicial Activism in India, *The Howard journal of crime and justice*, Volume40, Issue2, <https://doi.org/10.1111/1468-2311.00198>, Visited on, 10.12.2022

⁵²² Praveen Kumar, (2022), Prisoners Are Too 'Victims' of the Criminal Justice System. Can They Have an Idea of 'Fair Access to Justice'?, *Journal of Victimology and Victim Justice*,
<https://doi.org/10.1177/25166069221134215> Visited on, 10.12.2022

punishment meted out to a prisoner, including the prisoner's name and the date of the offence, will be documented in the punishment-book⁵²³.

The Transfer of Prisoners Act, 1950

This legislation was primarily created to alleviate the difficulty of transferring convicts from one state's jail to another caused by the Prisoners Act of 1900's lack of such a provision. Thus, it authorises the state government to transfer a prisoner sentenced to death, imprisonment, transportation, or confinement for failure to pay a fine from its jail to any prison in another state, with the approval of that state's government⁵²⁴.

The Prisoners Act, 1900

The purpose of this legislation is to integrate the several laws dealing to convicts confined by court order, and therefore to replace a number of distinct enactments with a single Act that is more simply and easily understood. Though the Act is primarily concerned with the transfer of criminals from one jail to another, it also contains measures about prison management. The officer-in-charge of a jail is responsible for receiving and detaining people who have been committed to custody according to a writ, warrant, or order issued by any court, unless such person is dismissed or removed in accordance with the law. Furthermore, upon the execution of such writ, order, or warrant, or the discharge of the individual, the officer-in-charge of a jail should endorse and sign such writ, order, or warrant, along with a certificate detailing the execution details. If it seems that the person held is of unsound mind, the state government may, by warrant detailing the basis for such opinion, order the transportation of such prisoner to a lunatic institution or other place of secure care. Furthermore, such time spent in asylum will be counted as part of the detention or imprisonment sentenced by the court⁵²⁵.

Prisoners [Attendance in Courts] Act, 1955

The purpose of the Act is to require inmates to appear in court to offer evidence or to answer a criminal accusation. The statute gives any civil or criminal court the authority to order the officer-in-charge of a jail to summon the individual whose evidence is relevant in any issue currently before the court to appear in that court. However, the state

⁵²³ M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, *Journal of Criminal Justice Education*, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022

⁵²⁴ The Transfer of Prisoners Act, 1950

⁵²⁵ The Prisoners Act, 1900

government has the authority to mandate, by special or general order, that no individual or class of persons be released from jail, and the preceding rule will not apply as long as such order is in effect. Furthermore, the Act empowers the officer-in-charge of the prison to refrain from carrying out the order of a court, other than a criminal court, to make a prisoner appear for the purpose of evidence if the appearance is not possible due to the reasons mentioned in the Act, such as being unfit to be removed or under committal for trial. In such a circumstance, the court may issue a commission to examine a person in jail⁵²⁶.

In Canada

Canada's Criminal Code, Title 18 Part III (Chapters 301 to 319, Sections 4001 to 4351), establishes the legal framework for prisons and prisoners. A key principle is that no Canadian citizen can be imprisoned without legal justification as outlined by an Act of Congress.

The federal government, specifically the Attorney General, holds the authority and management over all federal correctional facilities, excluding those operated by the military or navy. This authority extends to contracting with state or local authorities for the housing, care, and employment of prisoners held under federal government mandates. The ultimate responsibility for ensuring suitable accommodations and well-being for these individuals rests with the federal government.

The Code further establishes the Bureau of Prisons as the primary agency overseeing federal correctional institutions. This agency is led by a Director appointed by and accountable to the Attorney General⁵²⁷.

Canada's federal prison system prioritizes the design and capacity of its facilities to support a comprehensive classification system. This system considers the nature of offenses committed, the character and mental health of prisoners, and other relevant

⁵²⁶ Prisoners [Attendance in Courts] Act, 1955

⁵²⁷ Tamara Makarenko, Foundations and evolution of the crime–terror nexus, Routledge Handbook of Transnational Organized Crime, 2021, 9781003044703, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003044703-18/foundations-evolution-crime-terror-nexus-tamara-makarenko>

factors. The ultimate goal is to create an individualized approach to discipline, care, and treatment for each incarcerated person⁵²⁸.

Minimum security:

Its purpose is to accommodate criminals who have no history of violent or sex offences and are serving short sentences. They have fewer employees and no perimeter protection, such as a fence⁵²⁹.

Medium security:

It is used to accommodate offenders serving a variety of terms. Those who have shown good adjustment at higher levels of control, more restricting levels of control, or misbehaved at low security institutions may be housed here. The perimeter is guarded by a security barrier and armed vehicles⁵³⁰.

High or close security:

To house criminals with a history of violence or who pose a threat to others. These jails often have double fencing and are commonly outfitted with armed towers. In most cases, prisoners are confined in cell blocks⁵³¹.

Maximum security:

It is a lockdown institution or a prison of last resort for the small number of offenders who display severely disruptive conduct. It is incredibly secure, with all inmate movement and activities strictly monitored. Inmates are usually locked in their single cell, given one hour each day for leisure and a shower⁵³².

⁵²⁸ Regina Branton, Kimi King, Justin Walsh (2022), Criminal justice in Indian country: Examining declination rates of tribal cases, *Social science quarterly*, Volume103, Issue1, January 2022, Pages 69-81, <https://doi.org/10.1111/ssqu.13100>

⁵²⁹ Oduntan, G. (2017), "Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria", *Journal of Money Laundering Control*, Vol. 20 No. 1, pp. 35-51. <https://doi.org/10.1108/JMLC-09-2015-0042>

⁵³⁰ McClish, M. (2019). FROM LAW TO DHARMA: STATE LAW AND SACRED DUTY IN ANCIENT INDIA. *Journal of Law and Religion*, 34(3), 284-309. doi:10.1017/jlr.2019.36

⁵³¹ Shaikh, Roshni. *International Journal of Criminal Justice Sciences*, suppl. Special Issue on Criminal Justice Social Work in I; Thirunelveli Vol. 14, Iss. 1, (Jan-Jun 2019): 9-21. DOI:110.5281/zenodo.3242022

⁵³² Tamara Makarenko, *Foundations and evolution of the crime–terror nexus*, Routledge Handbook of Transnational Organized Crime, 2021, 9781003044703, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003044703-18/foundations-evolution-crime-terror-nexus-tamara-makarenko>

Supermax security:

This is the term used to characterise 'control-unit' prisons, or prison units, which are the most secure levels of detention in the United States prison system⁵³³.

Solitary confinement units at the Federal Bureau of Prisons are designated as Special Housing Units. In SHU, convicts are usually only permitted out of their cells for one hour every day, and they are frequently maintained in solitary confinement. They receive their food through openings known as 'chuck holes' in their cell doors. When Supermax convicts are permitted to exercise, they may do so in a small, enclosed space where they will exercise alone. Prisoners are constantly monitored, generally using closed-circuit television cameras. Cell doors are often opaque, and cells may be windowless. Cell walls and occasionally pipes are sometimes soundproofed to prevent convicts from communicating with one another. The living arrangements at Supermax and Security Housing Unit prisons are controversial because they violate the United States Constitution, notably the 8th Amendment's prohibition on 'cruel and unusual' punishment, as well as international human rights conventions. A United Nations committee tasked with investigating torture labelled SHU conditions as "inhuman" in 1996⁵³⁴.

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⁵³⁴ Tamara Makarenko, Foundations and evolution of the crime–terror nexus, Routledge Handbook of Transnational Organized Crime, 2021, 9781003044703, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003044703-18/foundations-evolution-crime-terror-nexus-tamara-makarenko>

committee tasked with investigating torture labelled SHU conditions as "inhuman" in 1996⁵³⁵.

Furthermore, inside criminal establishments, there are three forms of segregation: disciplinary segregation, administrative segregation, and protective custody. While the terminology for these three levels of segregation varies by jurisdiction, this three-tiered difference is typical of most prison systems. When a prisoner is placed in the 'hole' as punishment for a specific rule infringement that he or she has acknowledged to committing or for which he or she has been convicted, this is referred to as disciplinary segregation. When officials want to disrupt or prevent an ongoing or prospective security threat, they use administrative segregation. Solitary confinement is a component of protective custody. If a person feels endangered because of his affiliation with a certain organisation, he or she may be transferred to another portion of the jail⁵³⁶.

When offenders are sentenced and join the prison, they spend many weeks at a receiving centre learning about the jail's official organization. During this period, they are separated from other offenders so that prison personnel may observe them and inform them about correctional rules and procedures. The classification of convicts, which includes risk assessment and needs evaluation, is the most essential aim of the welcome procedure. The former entails some assessment of the risk that convicts represent to others or themselves. The latter entails assessing particular difficulties of convicts that may impair institutional integration and treatment. Once inmates have been classified, their programme assignments are influenced by their needs assessment⁵³⁷.

Classification is used to allocate criminals to the appropriate level of imprisonment. High-risk convicts with several requirements must be actively monitored; low-risk

⁵³⁵ Oduntan, G. (2017), "Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria", *Journal of Money Laundering Control*, Vol. 20 No. 1, pp. 35-51. <https://doi.org/10.1108/JMLC-09-2015-0042>

⁵³⁶ Regina Branton, Kimi King, Justin Walsh (2022), Criminal justice in Indian country: Examining declination rates of tribal cases, *Social science quarterly*, Volume103, Issue1, January 2022, Pages 69-81, <https://doi.org/10.1111/ssqu.13100>

⁵³⁷ Tamara Makarenko, Foundations and evolution of the crime–terror nexus, *Routledge Handbook of Transnational Organized Crime*, 2021, 9781003044703, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003044703-18/foundations-evolution-crime-terror-nexus-tamara-makarenko>

offenders with few needs require minimal supervision. The security level of a prisoner is determined by such custody categorization assignment⁵³⁸.

Private enterprises got a footing in this 'sector' by claiming that they can create the necessary facilities with their own money and then charge the government a price, ostensibly lower than for state-run institutions, that would recoup both the capital investment and the operating costs⁵³⁹.

The demand for prisons and jails has increased as a result of harsher sentencing legislation and the drug war. The prison and jail population in the Canada is the greatest of any democratic, free country. Given the high expenses of this prison development strategy, the public began to oppose attempts for greater financing as the community debt for prisoners and jails grew. Faced with competing demands produced by these occurrences, many public officials welcomed the answer presented by profit-seeking private companies. Private enterprises got a footing in this 'sector' by claiming that they can create the necessary facilities with their own money and then charge the government a price, ostensibly lower than for state-run institutions, that would recoup both the capital investment and the operating costs⁵⁴⁰.

A 'build-and-manage' contract allows a state to sign up for new jail construction without going to the voters for approval of a bond measure. The private corporation builds the jail with its own money or through financial leverage⁵⁴¹.

Often, the contract includes a clause that allows the state to buy the jail at the conclusion of the contract for a fixed quantity of money. As a result, beginning in the mid-1980s, the privatisation of jails and prisons exploded in the Canada, and prisons have since become huge business⁵⁴².

⁵³⁸ Shaikh, Roshni. International Journal of Criminal Justice Sciences, suppl. Special Issue on Criminal Justice Social Work in I; Thirunelveli Vol. 14, Iss. 1, (Jan-Jun 2019): 9-21. DOI:110.5281/zenodo.3242022

⁵³⁹ Tamara Makarenko, Foundations and evolution of the crime–terror nexus, Routledge Handbook of Transnational Organized Crime, 2021, 9781003044703, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003044703-18/foundations-evolution-crime-terror-nexus-tamara-makarenko>

⁵⁴⁰ Regina Branton, Kimi King, Justin Walsh (2022), Criminal justice in Indian country: Examining declination rates of tribal cases, Social science quarterly, Volume103, Issue1, January 2022, Pages 69-81, <https://doi.org/10.1111/ssqu.13100>

⁵⁴¹ Oduntan, G. (2017), "Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria", Journal of Money Laundering Control, Vol. 20 No. 1, pp. 35-51. <https://doi.org/10.1108/JMLC-09-2015-0042>

⁵⁴² Tamara Makarenko, Foundations and evolution of the crime–terror nexus, Routledge Handbook of Transnational Organized Crime, 2021, 9781003044703,

Prisons in the Canada are also subject to the Prison Rape Elimination Act of 2003, which considers sexual abuse by staff and inmates to be abhorrent and promotes a zero-tolerance policy to all prison rape and sexual assault. It applies to all adult and juvenile detention facilities, whether public and private. It also applies to all federal immigration detention facilities as well as juvenile facilities. Staff sexual misconduct is defined as "any sexual behaviour or act directed at a prisoner by an employee, volunteer, official visitor, or agency representative" by the Bureau of Justice Statistics⁵⁴³.

Section 1983 of the Civil Rights Act of 1964, which imposes individual accountability for state officials who interfere with inmates' rights granted by the Constitution or federal statute, is another piece of legislation governing prisons in the United States. Furthermore, civil responsibility for correctional officials is outlined under the Canada Constitution's 8th Amendment. However, courts have ruled that only the needless and wanton inflicting of suffering qualifies as cruel and unusual punishment, as prohibited by the 8th Amendment. In effect, this implies that if a correctional officer injures someone in the 'good faith' of maintaining and restoring order, it is not a violation of the 8th Amendment⁵⁴⁴.

6.4 RIGHTS OF PRISONERS IN INDIA AND CANADA

Prisons are the most crucial area of rights in a civilised society due to the nature of the role. Prison conditions clearly violate detainees' fundamental rights. Prisoner rights are one of the fundamental components of correctional justice, founded on the cardinal idea of "hate the crime, not the offender." By virtue of being a part of the human family, every person possesses minimal rights against the state, regardless of any other reason. Such rights must not be denied to anybody confined behind the four walls of a jail. As a result, they cannot be forfeited or rejected because an individual committed an offence or violated the law⁵⁴⁵.

<https://www.taylorfrancis.com/chapters/edit/10.4324/9781003044703-18/foundations-evolution-crime-terror-nexus-tamara-makarenko>

⁵⁴³ Regina Branton, Kimi King, Justin Walsh (2022), Criminal justice in Indian country: Examining declination rates of tribal cases, *Social science quarterly*, Volume103, Issue1, January 2022, Pages 69-81, <https://doi.org/10.1111/ssqu.13100>

⁵⁴⁴ Oduntan, G. (2017), "Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria", *Journal of Money Laundering Control*, Vol. 20 No. 1, pp. 35-51. <https://doi.org/10.1108/JMLC-09-2015-0042>

⁵⁴⁵ M. Z. Khan & N. Prabha Unnithan (2008) Criminological and Criminal Justice Education in India: A Comparative Note, *Journal of Criminal Justice Education*, 19:1, 97-109, DOI: 10.1080/10511250801892987, Visited on, 10.12.2022

Article 21 of the Indian constitution states that no one shall be deprived of life or liberty unless in conformity with the legal procedure. The method must also comply with Article 14⁵⁴⁶, which provides equity and equal protection under the law to all people. Furthermore, Article 22⁵⁴⁷ states that no one imprisoned in custody will be refused the opportunity to see a legal practitioner. In this regard, Article 39 A⁵⁴⁸ is quite important. The Supreme Court has often stated that for a prisoner, all basic rights are enforceable realities, albeit limited by the condition of imprisonment.

Sunil Batra v. Delhi Administration⁵⁴⁹

Justice Krishna Iyer, responded in the positive to his own question, "Are the Prisoners Persons?" and added that to answer in the negative would be to accuse the nation and constitution of dehumanisation and repudiate the international legal system. In this decision, the court held that a person's conviction for a crime does not render him a non-person, liable to substantial punishment inflicted by jail officials without regard for procedural rights. Apart from that, the Supreme Court of India has played a significant role in preserving prisoners' rights and lifting them from the status of simple animals to that of humans. The following are some examples of significant case law.

S.NO.	CASE	HELD
1	B.M.Patnaik v. State of Andhra Pradesh ⁵⁵⁰	Prisoners are not derailed of all fundamental rights
2	Maneka Gandhi v. Union of India ⁵⁵¹	Right to life vis-à-vis Prisoners
3	Mohammad Giasuddin v. State of Andhra Pradesh ⁵⁵²	Fundamental rights of prisoners
4	Charles Shobraj v. Delhi Administration ⁵⁵³	Use of fetters and solitary confinement

⁵⁴⁶ Indian constitution, 1950

⁵⁴⁷ *Ibid*

⁵⁴⁸ *Ibid*

⁵⁴⁹ Sunil Batra v. Delhi Administration (1978) 4 SCC 409

⁵⁵⁰ B.M.Patnaik v. State of Andhra Pradesh, AIR1974 SC 2092.

⁵⁵¹ Maneka Gandhi v. Union of India, AIR 1978 SC 597,

⁵⁵² Mohd. Giasuddin Vs. The state of AP, [AIR 1977 SC 1926]

⁵⁵³ Charles Sobhraj Vs. State, 63 (1996) Delhi Law Times

5	P.S.Shukla v. Delhi Administration ⁵⁵⁴	Use of hand cuffs
6	State of Gujrat v. Honorable Court of Gujrat ⁵⁵⁵	Wages for Prisoners
7	D.K.Basu v. State of West Bengal ⁵⁵⁶	Installation of CCTV in Prisons

Status in Canada

The constitution protects inmates, even if they are expelled from society as a punishment for breaching the rights of others. Because of their confinement, they do not lose all of their rights. They have access to the courts through a legal weapon known as a writ of habeas corpus, which allows them to contest the legality of their incarceration⁵⁵⁷. The following are the most essential rights guaranteed to convicts under the Constitution:

The Bill of Rights applies to incarcerated individuals, but with certain limitations.

First Amendment (Free Speech): While prisoners retain some right to free expression, it can be restricted if it poses a genuine threat to prison security or order.

- **Fourth Amendment (Search & Seizure):** The limited expectation of privacy within prison cells weakens the Fourth Amendment's protection against unreasonable searches by prison officials. However, some limitations exist.
- **Fifth & Fourteenth Amendments (Due Process):** These amendments guarantee due process rights, preventing the state from arbitrarily depriving individuals of liberty. This applies to prisoners in situations like disciplinary hearings.
- **Eighth Amendment (Cruel & Unusual Punishment):** This amendment protects prisoners from harsh conditions of confinement. However, the Supreme Court has set

⁵⁵⁴ Prem Shankar Shukla v. Delhi Administration AIR 1980 SC 1535

⁵⁵⁵ State of Gujrat v. Honorable Court of Gujrat Criminal Appeal No. 308 of 1986

⁵⁵⁶ D.K. Basu v. State of West Bengal (AIR 1997 SC 610)

⁵⁵⁷ Shaikh, Roshni. International Journal of Criminal Justice Sciences, suppl. Special Issue on Criminal Justice Social Work in I; Thirunelveli Vol. 14, Iss. 1, (Jan-Jun 2019): 9-21. DOI:110.5281/zenodo.3242022

a high bar, requiring that conditions pose an excessive risk of harm and that prison officials deliberately disregard these harmful conditions⁵⁵⁸.

In addition, prisoners may bring legal complaints in federal court alleging infringement of their constitutional rights under the Civil Rights Act of 1871 and the United States Criminal Code (Title 42, Section 1983). *Ex Parte Hull*, issued in 1941, acknowledged for the first time that convicts had a fundamental right to access the courts. This resulted in a deluge of prisoner lawsuits, which clogged the system. Soon after, the uproar to limit such lawsuits rose to the point that, by the 1980s, the Civil Rights of Institutionalized Persons Act was enacted to standardise the system and allow authorities to deal with inmate issues in a more structured and ostensibly more successful manner⁵⁵⁹.

As a result, a prisoner grievance system is an organised, institutional procedure that allows offenders to seek redress for grievances or complaints related to their confinement that they were unable to settle informally. The purpose of this method is to formalise the process of inmate complaints in order to settle or lessen tensions inside the facility. In general, this established approach minimises the amount of cases filed⁵⁶⁰.

The Religious Freedom Restoration Act (RFRA) of 1993 significantly strengthened prisoners' religious rights. This act prohibits the government from placing undue restrictions on an inmate's religious practices unless those restrictions are absolutely necessary for a critical government interest and represent the least restrictive means of achieving that interest⁵⁶¹.

The right of access to courts is arguably the most crucial right for incarcerated individuals. It serves as the foundation for all other prisoner rights. Without the ability to access the legal

⁵⁵⁸ Tamara Makarenko, *Foundations and evolution of the crime–terror nexus*, Routledge Handbook of Transnational Organized Crime, 2021, 9781003044703, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003044703-18/foundations-evolution-crime-terror-nexus-tamara-makarenko>

⁵⁵⁹ Shaikh, Roshni. *International Journal of Criminal Justice Sciences*, suppl. Special Issue on Criminal Justice Social Work in I; Thirunelveli Vol. 14, Iss. 1, (Jan-Jun 2019): 9-21. DOI:110.5281/zenodo.3242022

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⁵⁶¹ Regina Branton, Kimi King, Justin Walsh (2022), *Criminal justice in Indian country: Examining declination rates of tribal cases*, *Social science quarterly*, Volume103, Issue1, January 2022, Pages 69-81, <https://doi.org/10.1111/ssqu.13100>

system, prisoners would be unable to challenge their convictions, appeal for better conditions, or vindicate any other rights they may possess.

Prior to the 1960s, American courts often dismissed prisoner claims under the "hands-off doctrine." This approach reflected the historical view of prisoners as "slaves of the state" with no enforceable rights. However, landmark Supreme Court decisions like *Monroe v. Pape* and *Cooper v. Pate* paved the way for a change. These rulings recognized that state prisoners could bypass state courts and sue correctional authorities directly under the Civil Rights Act of 1871.

This shift in legal interpretation was further solidified in *Ex Parte Hull*. In this case, the Supreme Court overturned a Michigan prison rule requiring inmates to submit legal petitions for approval by prison officials. The officials could refuse to mail petitions deemed "unsuitable." The Court declared this practice a violation of the right to access courts, a right essential for upholding all other prisoner rights⁵⁶².

Aside from the aforementioned legal framework, prison management takes prisoners' rights seriously. Institutional programmes are also an essential aspect of jail formal structure. These programmes are intended to enhance convicts' personal and social conditions as well as their talents⁵⁶³.

In prison cells that confine convicts with high need assessment scores, a larger quantity and diversity of prison programmes are found, with the goal of reducing the recidivism rate of these offenders following release⁵⁶⁴.

Thus, people are not devoid of their rights when they are imprisoned; rather, they retain many of their rights while in jail and are restricted from exercising other rights only to the degree that doing so would interfere with the orderly administration of the prison. The most significant rights for convicts are guaranteed by the first, fourth, fifth, eighth, and fourteenth amendments to the United States Constitution. Other federal statutes, such as

⁵⁶² Oduntan, G. (2017), "Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria", *Journal of Money Laundering Control*, Vol. 20 No. 1, pp. 35-51. <https://doi.org/10.1108/JMLC-09-2015-0042>

⁵⁶³ McClish, M. (2019). FROM LAW TO DHARMA: STATE LAW AND SACRED DUTY IN ANCIENT INDIA. *Journal of Law and Religion*, 34(3), 284-309. doi:10.1017/jlr.2019.36

⁵⁶⁴ Shaikh, Roshni. *International Journal of Criminal Justice Sciences*, suppl. Special Issue on Criminal Justice Social Work in I; Thirunelveli Vol. 14, Iss. 1, (Jan-Jun 2019): 9-21. DOI:110.5281/zenodo.3242022

the Civil Rights Act of 1964 (particularly, 1983), provide individual accountability for state officials who interfere with prisoners' constitutionally granted rights⁵⁶⁵.

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6.5 PRISONERS' UNMET NEEDS

The seventh schedule of the Indian constitution includes jails and police. The union government bears no obligation for reforming or updating jail management. Even the five-year plans prioritise the criminal justice system in general and jail administration in particular. Apart from being seen as a minor concern by administrators, prison management in India faces the following issues and unfulfilled needs⁵⁶⁸:

- Inadequate findings keep jails stagnant and unable to upgrade in terms of technology. The jail budgets do not show a proportional growth in figures proportionate to the prison population⁵⁶⁹.
- The government creates several committees and commissions, but their reports are just debated and filed away (to be read by academicians)⁵⁷⁰.

⁵⁶⁵ Tamara Makarenko, Foundations and evolution of the crime–terror nexus, Routledge Handbook of Transnational Organized Crime, 2021, 9781003044703, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003044703-18/foundations-evolution-crime-terror-nexus-tamara-makarenko>

⁵⁶⁶ Regina Branton, Kimi King, Justin Walsh (2022), Criminal justice in Indian country: Examining declination rates of tribal cases, *Social science quarterly*, Volume103, Issue1, January 2022, Pages 69-81, <https://doi.org/10.1111/ssqu.13100>

⁵⁶⁷ Oduntan, G. (2017), "Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria", *Journal of Money Laundering Control*, Vol. 20 No. 1, pp. 35-51. <https://doi.org/10.1108/JMLC-09-2015-0042>

⁵⁶⁸ McClish, M. (2019). FROM LAW TO DHARMA: STATE LAW AND SACRED DUTY IN ANCIENT INDIA. *Journal of Law and Religion*, 34(3), 284-309. doi:10.1017/jlr.2019.36

⁵⁶⁹ Shaikh, Roshni. *International Journal of Criminal Justice Sciences*, suppl. Special Issue on Criminal Justice Social Work in I; Thirunelveli Vol. 14, Iss. 1, (Jan-Jun 2019): 9-21. DOI:110.5281/zenodo.3242022

- Because of social scorn for inmates and official apathy, anomalies and malpractices in prison management receive little attention⁵⁷¹.
- As a state matter, India's jail system is not seen from a national standpoint. State governments function haphazardly rather than in a systematic and cohesive manner⁵⁷².
- The jail structure and legal system are out of date and no longer serve their function. For example, lack of prison for national and international offenders (in which case, governments are frequently seen battling one other) and prison congestion⁵⁷³.
- The degree of professionalisation and specialisation is quite low, and the frequency of corruption among officials is very high⁵⁷⁴.
- Inadequate rehabilitation and vocational training programmes⁵⁷⁵.
- Arbitrary use of prison facilities by convicts, as well as violations of prison laws related to parole, probation, aftercare benefits, family connections, and so on⁵⁷⁶.

Overall, the low emphasis given by the administrators themselves, along with a deteriorating prison subculture, is undermining the government's lofty claims of being a human rights-friendly society and worsening the fate of inmates. Criminals' experiences before, within, and after jail are similar, and often relapse into recidivism. Instead of rehabilitating, incarceration increases a person's crime. It would not be an exaggeration to argue that, despite all of the historical, philosophical, and developmental events that have

⁵⁷⁰ Tamara Makarenko, Foundations and evolution of the crime–terror nexus, Routledge Handbook of Transnational Organized Crime, 2021, 9781003044703, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003044703-18/foundations-evolution-crime-terror-nexus-tamara-makarenko>

⁵⁷¹ McClish, M. (2019). FROM LAW TO DHARMA: STATE LAW AND SACRED DUTY IN ANCIENT INDIA. *Journal of Law and Religion*, 34(3), 284-309. doi:10.1017/jlr.2019.36

⁵⁷² *Ibid*

⁵⁷³ Regina Branton, Kimi King, Justin Walsh (2022), Criminal justice in Indian country: Examining declination rates of tribal cases, *Social science quarterly*, Volume103, Issue1, January 2022, Pages 69-81, <https://doi.org/10.1111/ssqu.13100>

⁵⁷⁴ Oduntan, G. (2017), "Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria", *Journal of Money Laundering Control*, Vol. 20 No. 1, pp. 35-51. <https://doi.org/10.1108/JMLC-09-2015-0042>

⁵⁷⁵ Regina Branton, Kimi King, Justin Walsh (2022), Criminal justice in Indian country: Examining declination rates of tribal cases, *Social science quarterly*, Volume103, Issue1, January 2022, Pages 69-81, <https://doi.org/10.1111/ssqu.13100>

⁵⁷⁶ McClish, M. (2019). FROM LAW TO DHARMA: STATE LAW AND SACRED DUTY IN ANCIENT INDIA. *Journal of Law and Religion*, 34(3), 284-309. doi:10.1017/jlr.2019.36

occurred, India's jail system remains an antiquated institution, caring for a prison population that is constantly growing⁵⁷⁷.

6.6 WOMEN PRISONERS IN CANADA AND INDIA

Indigenous populations around the world are disproportionately represented in prisons. In Canada, Indigenous adults make up a staggering 28% of admissions to both provincial and federal prisons, despite only constituting 5% of the adult population. This trend continues in other countries: Indigenous Maori comprise a small percentage of New Zealand's population but a much larger majority (52%) of its prison inmates. Similarly, Native Americans in the United States are incarcerated in local jails at twice the rate of both white and Hispanic Americans. Australia reflects a similar pattern, with Indigenous people making up a small fraction of the overall population but a much higher proportion of those incarcerated. These statistics highlight a troubling disparity in the criminal justice systems of these countries⁵⁷⁸.

This disparity is even more concerning for Indigenous women. In Canada, they represent a staggering 43% of female admissions to provincial prisons nationally, and a shocking half of all federally sentenced women, despite being only 5% of the adult female population.⁵⁷⁹ In the federal system, Indigenous women account for 31 percent of admissions to sentenced custody⁵⁸⁰. One study found that Native American women were admitted to US prisons at a rate 6.7 times higher than white women⁵⁸¹. In 2016, Indigenous women in Australia were 21.2 times more likely to be imprisoned than non-Indigenous women⁵⁸². Indigenous peoples in Canada face a stark reality: they are incarcerated at alarmingly high rates compared to the general population. This disproportionality, particularly concerning for Indigenous women, is a clear sign of systemic inequities within the justice system.

In response to this injustice, Indigenous communities and activists have embarked on a crucial mission – the "decolonization" of Canada's criminal justice system. This movement, also referred to as "Indigenization," seeks to dismantle colonial structures and incorporate Indigenous cultural practices and perspectives into the system. By increasing Indigenous

⁵⁷⁷ Oduntan, G. (2017), "Prescriptive strategies to combat corruption within the administration of justice sector in Nigeria", *Journal of Money Laundering Control*, Vol. 20 No. 1, pp. 35-51. <https://doi.org/10.1108/JMLC-09-2015-0042>

⁵⁷⁸ Martel, Brassard, and Jaccoud 2011, p. 237

⁵⁷⁹ Jacobs 2022

⁵⁸⁰ 23 percent for Indigenous men; Reitano 2017, p. 5

⁵⁸¹ Hartney and Vuong 2009, p. 16

⁵⁸² ALRC 2017, p. 41

cultural influence, the hope is to foster a more just and equitable approach to justice for Indigenous peoples in Canada⁵⁸³.

Indigenous communities advocate for "Indigenization" across various societal systems, aiming to increase Indigenous self-determination, sovereignty, and overall well-being. This approach seeks to dismantle colonial structures and integrate Indigenous cultural practices into institutions.

In the context of the criminal justice system, Canada has been a leader in Indigenization efforts since the 1970s. These initiatives include incorporating Indigenous teachings into prison programs, facilitating spiritual practices, involving Elders and communities in rehabilitation, and even establishing specialized "healing lodges." Similar programs have been implemented in other settler colonial countries like New Zealand and Australia.

However, the effectiveness of Indigenization within prisons remains a point of contention. Scholars raise critical questions, particularly in light of Canada's history of violence and cultural suppression towards Indigenous peoples. The fact that incarceration rates for Indigenous Canadians have risen over 43% in the last decade further fuels skepticism. Some criminologists argue that Indigenized prison programs, while appearing culturally sensitive, may simply reinforce the existing system rather than dismantling it⁵⁸⁴

In recent years, there has been a notable shift towards a more assertive stance regarding the Indigenization of prisons, eclipsing the once prevalent skepticism. While ethnographic studies indicate a genuine appreciation among Indigenous communities for cultural programming within correctional facilities, there exists a faction of critics who dismiss such initiatives as a form of colonial imposition. These critics, often associated with the field of "critical prison studies," argue that Indigenous programming amounts to forced assimilation, characterize Canadian prisons as genocidal, and advocate for only complete abolition as a truly decolonial solution. However, these assertions oversimplify a complex issue.

Through our research team at the University of Alberta Prison Project, we conducted nearly 600 interviews with incarcerated individuals across both provincial and federal

⁵⁸³ Gaudry and Lorenz 2018

⁵⁸⁴ Zinger 2020

prisons in western Canada. Our findings challenge the narrative put forth by "critical prison studies" critics, demonstrating that their perspectives may inadvertently neglect the genuine interests, needs, and preferences of incarcerated Indigenous people. A significant number of our interviewees (almost 40 percent) identified themselves as Indigenous. Indigenous women constituted 73 percent of the population of the women's prison we studied and 53 percent of our sample of women. Our findings complicate the idea that Indigenizing prisons is mostly a colonial project. Participants instead almost universally celebrated these initiatives for teaching many incarcerated Indigenous people their history and culture for the first time, helping them feel empowered and proud of their culture and heritage, helping them cope with traumas (including from residential school and foster care system experiences), creating a support network between Elders and fellow prisoners (rather than being a coercive and top-down imposition), and facilitating basic religious accommodation in prison.

Social Context

Canada's history of colonialism has left a deep mark on Indigenous communities, contributing to poverty, mental health struggles, and systemic discrimination. These factors disproportionately lead to Indigenous incarceration. In response to calls from incarcerated people, activists, and communities, the Canadian government has embraced "Indigenization" efforts within prisons, aiming to acknowledge and integrate Indigenous cultural needs.

Appraisal

There are generally four main ways an inmate might be released from prison: parole, completing their full sentence, emergency release due to special circumstances, or transitioning through a halfway house program.

Canada, like some other countries, has also seen a rise in private prisons. This growth can be attributed to several factors. Firstly, stricter sentencing laws and the "war on drugs" have led to a higher demand for prison space. Secondly, Canada's prison population is one of the largest among democratic nations. The financial burden of this large prison system has caused public resistance to further government funding. Finally, with pressure to manage competing social needs, some public officials viewed private prison companies as a potential solution.

CHAPTER VII

CONCLUSION AND SUGGESTIONS

Prisons are widely recognized as some of the most coercive institutions in society. This reality is compounded by a trend towards harsher criminal justice policies: increased criminalization, mandatory prison sentences, longer terms, and stricter release conditions. While some argue for the necessity of these measures, the ethical implications are increasingly under scrutiny.

Given the high degree of control exerted by prison authorities over every aspect of an inmate's life, combined with often inflexible and sometimes arbitrary rules, a call for a more effective and dynamic approach to prison justice is emerging. Here are some potential suggestions for reform:

- **Review sentencing policies:** Re-evaluate mandatory minimum sentences and explore alternatives to incarceration for non-violent offenses.
- **Focus on rehabilitation:** Prioritize programs that promote positive behavior change and reintegration into society.
- **Increase discretion for authorities:** Allow prison officials more flexibility when making decisions regarding prisoner treatment and release, based on individual circumstances.
- **Reduce recidivism:** Implement programs that address the root causes of crime and reduce the likelihood of repeat offenses.

By prioritizing rehabilitation over punishment and fostering a more dynamic justice system within prisons, the goal is to create a more effective system that promotes positive societal outcomes.

(1) Strict adherence to rules and immediate compliance with orders are fundamental expectations for prisoners within the highly controlled environment of a prison. Deviations from these rules typically result in swift disciplinary action, ranging from revoking privileges like special housing or educational programs to imposing harsher confinement.

While maintaining order is undeniably crucial in prisons, ensuring fairness and preventing arbitrary punishments is equally important. The broad discretionary power wielded by prison officials necessitates safeguards against unjust actions.

(2) The fight for prisoners' rights extends beyond basic living conditions. Courts can play a crucial role in securing opportunities for a dignified existence. This includes creating work programs that provide inmates with meaningful employment and a sense of purpose. Additionally, prioritizing healthcare within prisons is essential to prevent avoidable health issues and controversies. Ultimately, a core objective of incarceration should be rehabilitation and successful reintegration of offenders back into society. By focusing on these areas, prisons can move beyond punishment and become tools for positive transformation.

(3) Calls for reform in our prison systems are not mere empty pronouncements. With genuine commitment and determination, they can become a reality. The ever-growing prison population, with its diverse backgrounds and complexities, necessitates a robust and effective system.

Modernization is key. We must embrace innovative management techniques and equip prison staff with comprehensive training. This training should not only focus on practical skills but also emphasize upholding prisoners' constitutional rights and fostering a rehabilitative environment.

By prioritizing treatment and education programs within prisons, we move beyond simply warehousing inmates. This approach can equip individuals with the tools and support they need to reintegrate positively into society upon release.

(4) Despite some improvements, India's prison system requires further modernization. Centralizing prison administration under the Union government could lead to several positive outcomes. A key benefit would be the creation of a unified All India Jail Manual, ensuring consistent enforcement of standards across all states. Furthermore, a central statutory body could be established to monitor prisons and optimize resource allocation throughout the country. This centralized approach would promote uniformity, improve oversight, and ensure efficient utilization of resources for a more effective prison system.

(5) Healthcare professionals play a critical role within prison systems. Unfortunately, there have been disturbing reports of doctors being involved in unethical practices, such as devising techniques for disguised torture or manipulating medical reports to conceal abuse. These actions not only violate the Hippocratic Oath, the core ethical code for doctors, but also enable perpetrators to act with impunity.

It's imperative for doctors working in prisons to remain acutely aware of their ethical obligations. They must prioritize the well-being of patients, regardless of their incarceration status. This means refusing to participate in any act that violates a prisoner's human rights, even under pressure. Accurate and objective medical reporting is essential to ensure proper care and prevent cover-ups.

By upholding their ethical principles and remaining true to the nobility of their profession, doctors can help safeguard the health and dignity of prisoners, fostering a more humane environment within correctional facilities.

(6) Courts should immediately provide a free transcript of the judgment to anyone sentenced to prison. This ensures transparency and informs the prisoner of the exact terms of their sentence. In cases where an appellate court or another judicial body sends a copy of the judgment to the jail for delivery to the prisoner, prison officials are obligated to promptly deliver it and obtain written confirmation of receipt.

Furthermore, jail administrations must provide all necessary facilities and support to prisoners who wish to file an appeal or seek a revision of their sentence. This includes ensuring access to legal resources and materials to assist them in exercising their right to challenge their conviction or sentence.

By following these procedures, the justice system fosters transparency, upholds due process, and empowers prisoners to pursue legal avenues if they believe their rights have been violated.

(7) The success of any correctional facility hinges on the professionalism, dedication, and philosophy of its staff. Prison officers hold a pivotal role, shouldering a complex and demanding task. Building positive professional relationships between staff and prisoners is

crucial for maintaining a safe and secure environment – a concept known as "dynamic security."

Here are the key responsibilities of effective prison staff:

- **Humane Treatment:** Treat all prisoners with dignity, fairness, and respect for their fundamental human rights.
- **Safety and Security:** Ensure the safety of inmates, staff, and visitors within the prison.
- **Preventing Escape:** Mitigate escape risks through vigilance and appropriate security measures.
- **Maintaining Order:** Uphold order and control within the prison environment to prevent disturbances.
- **Rehabilitation Focus:** Facilitate positive opportunities for prisoners to utilize their time productively, preparing them for successful reintegration into society upon release.

In recent years, prison systems around the world have faced mounting criticism and scrutiny regarding their effectiveness in social defense. India's prison system is no exception. Several critical issues hinder its ability to fulfill its dual purpose of public safety and offender rehabilitation.

Resource constraints pose a significant challenge. Limited funding makes it difficult to implement necessary systemic reforms, including improvements in infrastructure, scientific classification of inmates, and specialized prisons to better address the needs of different offender categories. Furthermore, a lack of qualified and well-trained prison personnel hinders the effective delivery of correctional services.

Bridging the gap between societal expectations and the operational realities of prisons requires establishing strong linkages between institutional programs and community-based support systems. This ensures a smoother transition for released inmates and promotes successful reintegration.

A crucial step towards a more effective prison system lies in formulating a national policy on corrections. This policy should establish a baseline level of uniformity in prison laws across India.

In advocating for prison reform, we must remember the words of Mahatma Gandhi, who envisioned prisons as "hospitals" for rehabilitation. He emphasized the importance of prison staff acting as "doctors" who treat offenders with compassion and guide them towards positive change. By embracing this philosophy and implementing necessary reforms, India's prison system can move beyond punishment and become a tool for positive transformation.

While simply locking people away is the traditional function of prisons, Canada, along with many other countries, is exploring the potential of prison programs to reduce recidivism rates. This shift towards rehabilitation raises important questions. Programs that focus on education, job training, and therapy address the root causes of crime, empowering released prisoners to reintegrate into society with a better chance of success. Norway's success in rehabilitation with factors like smaller prisons, extensive programs, and restorative justice offers a benchmark for Canada's approach. Rehabilitation isn't just about creating safer communities, but also offers economic benefits through reduced incarceration costs and increased employability of released prisoners. However, limited funding, overcrowding, and lack of individualization hinder the effectiveness of Canadian programs. Public perception also needs to shift to view ex-offenders as deserving a second chance. Additionally, tailoring programs to specific needs of demographics like Indigenous people and women is crucial. The financial benefits of rehabilitation are undeniable, with studies showing cost savings in the long run. Supporting released prisoners with housing, employment assistance, and mental health services is essential to prevent recidivism. Legislative reform and utilizing technology can further improve prison programs. Effective prison programs don't excuse crime, but offer a path to address underlying issues and equip offenders to make positive changes, ultimately creating safer and more just communities.

A successful rehabilitation strategy requires collaboration across sectors – governments, social services, community groups, and businesses – to provide a seamless support network for ex-offenders. Public education campaigns can shift public perception from punishment to rehabilitation, fostering empathy and understanding. However, we must

also address the root causes of crime. Mass incarceration disproportionately impacts marginalized communities, and tackling issues like poverty, mental health disparities, and lack of opportunities for youth can significantly reduce crime rates. Investing in evidence-based programs, fostering collaboration, and addressing these systemic issues are all crucial for a holistic approach that creates a more just, equitable, and safe society for all Canadians.

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