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## PRISON SYSTEM: AN OVERVIEW OF THE OVERCROWDING

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### ABSTRACT

Mukesh, 22, was the sole bread winner for his family of six members. He used to do the work of a retail shopkeeper dealing in daily goods. One day while he was carrying on with his daily business activities, he had a quarrel over an issue with an individual from his village. The quarrel, despite of wholesome efforts from the side of Mukesh, took a violent turn and it led to a fight between the two wherein both Mukesh both sustained injuries. Police was called to the site and both of them were arrested. In the station compromise was offered to the parties, but Mukesh who had been always an individual with ideals of truth and honesty did not agree to bow down and took the case to the court. Both of them were put to jail. But as the court proceedings showed their real picture to Mukesh, he started regretting his own decision. He had to stay in jail for a long time. His family sole bread winner was behind bars leading them into a severe plight. And although he got justice through the court it took 4 long years for him to achieve it. The undertrial Mukesh and his family's life was ruined economically and socially with this decision.

This does not make up a single case in our justice system. There are thousands of undertrials in our prisons who are awaiting to get justice for their cases through the courts of our country. The present article paper is a detailed study of this issue, starting with a history of our prison system and looking at its current position. Then it moves on to analyze what are the issues being faced by our prison system. The paper lastly concludes with a look at the reforms that are needed to make our jails

modern and adapted to the today's scenario overcoming all the obstacles.

**KEYWORDS:** undertrials; prison system; ancient, mediaeval and modern India prisons; Amitava Roy committee; reforms in prison; 436A of CrPC

### INTRODUCTION

"Delhi's central jails overcrowded, 94% more inmates than the capacity to handle."<sup>1</sup>

The story of burden over the prison systems in the country has neither been new nor been limited to a single place. The condition of prisons of Delhi being highlighted here finds a place in majority of the prisons in the districts of India. The lack of space for the inmates, poor basic infrastructure facilities and the poor management adds to the misery of the system.

Many minds would now question that what is the need of providing facilities to individuals who have been facing their punishments in the prison. The worst the conditions get, more fruitful the punishment becomes, that may be the argument. But what counters this ideology is that a vast majority of these individuals have not even been subjected to any punishment yet, i.e., they are just **undertrials**. What adds more weight to the counter issue is that our tradition and cultural ideologies have always been of the view that the punishment to any wrong deed that has been done over by an individual is centric to improve and mend the ways of the person, and not to torture him/her. The major outcome has to be an improved human being

<sup>1</sup> PAURUSH OMAR, DELHI'S CENTRAL JAILS OVERCROWDED, 94% MORE INMATES AGAINST CAPACITY, LIVEMINT (accessed on 15/04/2023) <https://www.livemint.com/news/india/delhis-central-jails-at-tihar-rohini-and-mandoli-overcrowded-94-more-inmates-against-capacity-difficult-to-monitor-11661596371459.html>

who in return comes to the use of the society, not an individual who has lost majority of his/her life behind the bars and of being no use to the society. Of course, it does not apply to each and every person, nor does it attack the prison system as a whole, but what needs to be our basic ideology behind punishment is to improve the mindset, thinking and ideas of the person being punished.

Therefore, carrying over the same idea this article paper tries to dig deep into the prison system of our country and the problems it has been facing over regarding the issue of overcrowding due to a large number of undertrials being subjected to detentions by the system. As the need of hour demands, it has also been touched upon that how a reform can be brought up in the prison system of our country to have a better infrastructure to handle its overburdening.

### **PRISON SYSTEM IN INDIA**

As every nation has, India too has a legally identified and authorized prison system at various levels in the country. The system of prisons has its roots in the age-old times from the ancient India period of the history, but the fully evolved and the present system of prisons in the country has been a result of the colonial rule of Britishers in our country. So, before learning about the present system of prisons in our country we would look at the ancient era and the evolution of the system over the periods of history.

### **HISTORY<sup>2</sup>**

1. **ANCIENT INDIA**: During this time, the societal structure was based on the principles that were incorporated in texts like, Manu. The prison as has been evident via various means was just a place used for the detention of the

wrongdoers until their trial was going on or till time of their execution. The idea of providing facilities to the individuals being held behind those bars was still not present. Some texts from the ancient era reveal that prisoners were generally released by the rules at the time of war to support the ruler's army.

2. **MEDIAEVAL INDIA**: The system has generally been classified to be somewhat similar to that of the ancient period. Again, the prisons were used for the detention of wrongdoers for a specific period. The only notable feature that grabs notice about the detention systems of that time is that the prisons were released on special occasions by the authorities, for e.g., release of prisoners at the time Saha Jahan when his daughter was cured of an illness.
3. **MODERN INDIA**: The present system of prisons that can be seen in the country has been a gift of the colonial rule here. During this period, the British authorities tried to portray the system as not only a means of detention but to bring a sense of terror among the wrongdoers, mostly the inferior Indians. As soon as, the English East India company got the control of government in the country, they started developing the prison systems of our country. Initially they tried to make it as economical as possible to get the maximum profits for the government, but in 1835, **Lord Macaulay** drew attention of the councilors towards the miserable conditions of the prisons in India. The suggestion was paid heed to and a **Prison Discipline Committee** was formed under **H Shakespeare** as its president. The committee in its report brought out some issues that were being faced by the jails at that time, such as corruption carelessness of discipline, etc., but also deliberately refused some suggested reforms about moral and religious teachings in the jails. **This**

<sup>2</sup> SAKSHI GUPTA, SYSTEM OF PRISON (ITS HISTORY AND TYPES IN INDIA), LEGALSERVICEINDIA (accessed on 15/04/2023), <https://www.legalserviceindia.com/legal/article-4501-system-of-prison-its-history-and-types-in-india.html#:~:text=Types%20of%20Prison%20in%20India,jails%20and%20central%20jails%20respectively.>

**committee made the prisons as a place of dread through brutal force and monotonous hard work and the prisons were directed to be built with the same purpose. Thus, the first central prison was developed in AGRA in 1846.** Over time as the system evolved, the authorities brought **The Prison Act** in 1870. In 1919, a joint committee was also formed to investigate the management of jails. The report of this committee was resultant in bringing a stop in transportation of individuals to Andaman for solitary confinement and also incorporating adult education programs in the jails. This transferred the control of prisons from central to the provincial government.

#### PRESENT SYSTEM

Prison system in India comes under state list<sup>3</sup> and the administration is a matter of interest for the provincial governments. The central government has a role in providing the assistance and resources to the states for the efficient management of the jails. The jail system in our country has been divided into 3 categories, the taluka level or sub jails, the district level or district jails and the central level or central jails. The facilities as has been seen with the general experience improve as one moves from sub jails to central jails. In India, Delhi has the highest (16) number of central jails. Moving on to district jails there is not much difference in these jails and in our country, there is a total of 379 district jails. Sub jails form the lowest level in these strata and as these are developed at a smaller level, they have a better organized structure formation.

Other than the above classified types, the country has a number of jails that include women jails, open jails, special jails, borstal school, etc.

We have a well-developed and a properly evolved prison system, a legal method which

looks over its working and an effective division of power and responsibility for the prison system between the centre and state governments, yet as various reports do suggest, the country is facing a severe crisis in the working of prison system. The subsequent sections of this article paper move on to decipher the causes that lead to such crisis in the working of an important pillar of our legal system.

#### CHALLENGES TO THE PRISON SYSTEM

##### 1. THE PROBLEM OF OVERCROWDING:

According to a study, there are "Over 6 lakh inmates in the spaces that are meant for 4 lakhs in our prisons all over the country"<sup>4</sup>.

Imagine eight people living in an apartment that can house four? Imagine ten people eating on a table that can seat five? Imagine twelve people travelling in a train compartment that can only carry six?<sup>5</sup>

This situation of overcrowding leads to the competition for resources and makes the lives of individuals who have already been punished even more traumatic. The situation becomes worse in certain areas where proper facilities of basic livelihood infrastructure in not even given. Overcrowding itself has been a very grave issue that has been further connected to challenges that are mentioned next in this section.

##### 2. THE PROBLEM OF UNDERTRIALS: This issue connects itself to the issue of overcrowding and has been a major reason that has led to it. According to a study, "3 out of 4 individuals in the prisons of our country are inmates called undertrials".

<sup>4</sup> OVER 6 LAKHS IN SPACES MEANT FOR 4 LAKHS: INDIAN PRISONS ARE SEEING UNPRECEDENTED OVERCROWDING, THEWIRE (accessed on 15/04/2023) <https://thewire.in/rights/indian-prisons-congested-overcrowded>

<sup>5</sup> MEKHALA SARAN, OVERCROWDED JAILS, 1 DOCTOR PER 842 INMATES: WHAT INDIA JUSTICE REPORT REVEALS, THEQUINT (accessed on 15/04/2023) <https://www.thequint.com/news/law/overcrowded-jails-prison-occupancy-rate-what-india-justice-report-2022-reveals>

<sup>3</sup> INDIA CONST. schedule VII



"The number of unsentenced prisoners is increasing every day. The time they spend in prison awaiting trial has also increased over the past five years. The increasing prison population necessitates immediate measures towards decongestion," Madhurima Dhanuka, the head of CHRI's Prison Reforms Program, told DW.<sup>6</sup> The issue is grave because most of these undertrials are the individuals that belong to the adult phase of their lives and waiting for their trials behind the bars takes away their capacity of getting of use to the society. The severity of the issue can be determined from the fact that it has been mentioned by the supreme court of the country several times in its judgements that "bail is the rule, whereas jail is an exception".

3. THE PROBLEM OF INFRASTRUCTURE AND FACILITIES: The issue is well rooted in the history of the colonial period, where the jails were initially being developed economically not harming the government. While the authorities now have been vigilant about building better infrastructure and providing more facilities, the issue is still present in the form of understaffing and periodic violent clashes between the groups in jails damages the already weak infrastructure facilities available.
4. MENTAL HEALTH ISSUES: Being confined at a place for years can surely be mentally traumatic to the prisoners, more of when you are just an undertrial, and have not yet been punished by the competent authorities for your wrongdoing. The mental health of the prisoners gets worse when they have to stay away from their families. This has, in recent years, led to a number of unnatural deaths and suicides in the jails. of our country.

5. RISE IN THE NUMBER OF PREVENTIVE DETENTIONS: The police has been bringing into effect a number of preventive detentions<sup>7</sup> in the country, i.e., detentions purely based on suspicion. This has not only led to overcrowding of the prisons over their capacity but also has been responsible in violation of the fundamental rights of the individuals.

Overcrowding, a large number of undertrials, and the competition for resources in the jails has been an issue that has caught many eyes. These have not been out of notice for the authorities, especially the Supreme Court, and in 2021 during the lockdown due to corona virus pandemic an order was passed for releasing prisoners who have been eligible for this interim release<sup>8</sup>. The release was although not implemented properly by the legal authorities but it was an important step to move towards solving the issues. The next section would be looking towards the reforms that can be undertaken and implemented for making a better and well adopted system in the present scenario.

#### REFORMS NEEDED IN THE PRISON SYSTEM OF INDIA

- The Supreme Court of India has various times in judgements mentioned about the overcrowding of the jails in the country and the role played by the undertrials in such overcrowding. **Some important cases** in this regard are as follows:
  1. Mathew Areeparmtil and others vs. State of Bihar<sup>9</sup>: In this case the court had observed that there are many such individuals in the prisons whose case have still been pending. The court ordered the release of such individuals whose trial was going on for minor offences.

<sup>6</sup> WHY ARE INDIAN JAILS SO OVERCROWDED? DW (accessed on 16/04/2023) <https://www.dw.com/en/why-are-indias-jails-so-overcrowded/a-61063696>

<sup>7</sup> INDIA CONST. art. 22

<sup>8</sup> OVERCROWDING OF PRISONS, DRISHTIIS (accessed on 16/04/2023) <https://www.drishtias.com/daily-updates/daily-news-analysis/overcrowding-of-prison>

<sup>9</sup> 1984 AIR 1854, 1985 SCR (1) 776

2. Raj Deo Sharma vs. State of Bihar<sup>10</sup>: The court in this case issued an order that if the trial is in such a case where imprisonment exceeds 7 years, the court should close the prosecution evidence within two years from the date of the record of plea. This was done to speed up the trials in court cases.
3. Arnesh Kumar vs. State of Bihar<sup>11</sup>: In this case the court had asked the police to not effect unnecessary arrests, especially in cases that involve jail terms less than seven years.

Therefore, it is evident from various judgements of the court that the issue of undertrials, one of the major reasons of overcrowding in prisons, can be tackled by speeding up the judiciary system and making regulations for the police so that they do not make unnecessary arrests in minor cases.

- Apart from the issue of overcrowding one major problem that has been faced by the inmates in jails are the issue of mental health, for which many jails do not employ health professionals even. Being away from their family for such a long time can be disturbing for these inmates and the solitary confinement away from the society can put them in a mental trauma. There have been certain cases with the court in which **right against solitary confinement and torture** has been discussed as a part of article 21 of our constitution.
1. Prem Shankar Shukla vs. Delhi Administration<sup>12</sup>: In this case as the complainant was an undertrial who had to be taken periodically from prison to the court regarding his cases, it was ordered by the court that it should be done without using handcuffs and they should be used just as the last alternative, as they can mentally torture the individual making him/her confined.

2. D.K. Basu vs. State of West Bengal<sup>13</sup>: In this case it was held that torture to an individual during custody is against human dignity and degrades the personality of an individual. Therefore, it was ordered that no one can be detained without giving him/her knowledge about reason of detention and they should not be denied a legal practitioner.

Therefore, the court has issued several orders that protect the rights and liberty of a prisoner while he/she is undergoing trials and what is the need of the hour is that the orders need to be properly implemented at all the levels in our system.

- The police and legal authorities should bring into effect **section 436A of CrPC** that says about the release of prisoners, who have completed half of their jail term, over personal bonds.
- To avoid overcrowding their can also be many **alternative punishments to the imprisonment** of individuals who have committed minor offences. These can be one of following:
  1. Putting them under house arrests
  2. Getting them to do some social service
  3. Making them legally work for a specific period of time, etc.
- Lastly, the suggestions from the committee that was formed under this regard by the Supreme Court of India, under retired justice Amitava Roy (**Amitava Roy Committee**<sup>14</sup>): The committee had provided for a lot many reforms for the prison system of our country that included reforms for both, the working of jails and the condition of prisoners there. These included:
  1. Speedy trials
  2. Lawyer to prisoner ration to be around 1:30 for better representation

<sup>10</sup> (1998) SCC 507

<sup>11</sup> Arnesh Kumar V State of Bihar (2014) 8 SCC 273

<sup>12</sup> AIR 1980 SC 1535

<sup>13</sup> (1997) 1 SCC 416; 1997 SCC (Cii) 92

<sup>14</sup> supra note 8

3. Special courts for making the trials fast
4. Filling vacancies in jail staffs
5. Allowing the prisoners to talk to their family when they are new to avoid loneliness
6. Providing good legal aid to such individuals
7. Use of video conferencing for the trials of inmates

Therefore, there is ample to do in this situation of crisis. What is required now is a speedy and regulated implementation of such reforms for solving the crisis that our prisons have been facing for years and to provide rights to the inmates that have been violated due to this crisis.

### **CONCLUSION**

This article paper brings into fore the legacy the colonial period has over the jails of our country and how they have now been facing a crisis due to various reasons. The supreme court of our country has been vigilant regarding these issues and has also mentioned various reforms and orders to solve the same. What now is important is that the reforms are implemented in a proper manner and the jails of the country become not only a place of detention and confinement, but also the places of reform and improvement of human personality. It is rightly said that, "The Dickensian idea of building more prisons is not a sustainable solution. The judiciary, lawmakers, and government must act quickly to address this crisis."<sup>15</sup>

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