

A CRITIQUE ON PRISONS IN INDIA IN THE LIGHT OF RE - INHUMAN CONDITIONS IN 1382 PRISONS

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Abstract

The advent of Human Rights activism and a growing need for an integrated criminal justice system has added fuel to the already burning issue of prisons reforms in the backdrop of which the apex court has issued several directives. In Re-Inhuman Conditions in 1382 Prisons. In the Past, there have been many attempts to improve the condition of Prisons in India but unfortunately nothing appears to have changed on the ground. The paper has a two-pronged approach; firstly the paper will critically examine the present case in the light of reformatory schemes and issues prevailing in India's prison management system and then progress to conduct a reality check with respect to the implementations of these directives and other recent steps undertaken in this direction. Finally, the paper concludes with the suggestions and conclusion of the author drawn from the analysis made in the article along with the recommendations of various governmental and non- governmental organizations.

I	Introduction.....
II	Historical Background of Prisons in India.....
III	Case Comment Re- Inhuman Conditions in 1382 Prisons.....
IV	Present Status of Prisons in India.....
V	Recent Trends in Prison Reforms.....
VI	Issues in the Present Prison System.....

I INTRODUCTION

“If people get sick, we take them to the hospital and give them the right medicine to get better. If people's behaviour is sick, we bring them to the prison, but we forget the medicines.” – Sri Sri Ravi Shankar¹

Prison reforms have been a subject of intense debate and discussion for several decades in India but even today little appears to have changed on the grass-roots level. The Indian Judiciary has played a proactive role for the improvement of prisons but still the issues relating to prisons in the country and their reform continue to pose a big hurdle in criminal justice system.

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¹ Renowned spiritual leader and founder of the art of living foundation.

II HISTORICAL BACKGROUND OF PRISONS IN INDIA

Prisons have existed in India for time immemorial, however, with the due passage of time, the conditions of prisons and their administration have undergone a significant change, notable a shift from deterrence theory of punishment to reformatory theory.

Prisons during the ancient times were governed mainly by Manu, Yagnavalkya and Kautilya. The punishments awarded at that time were quite different from those today *viz.*, by shaving off head, ride on donkeys, garland of shoes on neck etc. These were mostly focused on humiliation of accused and also as such there were no proper record or maintenance of prisons. The current prison system in India owes its legacy to British rule, Lord Macaulay being the pioneer of this change; he was the member of the Prison Discipline Committee which acted as a catalyst in suggesting several prison reforms some of them even existing today. This committee was followed by constitution of various others such as Mysore Jails Committee (1941), Kerala Jails Committee (1953), All India Jail Manual Committee (1957), Justice Krishna Iyer Committee (1987) etc. all these somehow contributing towards better prison management.

After India's independence, various central and state legislations were enacted and consequently several rules were framed under them, with Indian Judiciary playing the front role, some these legislations are –

- Transfer of Prisoners Act, 1950² - The Act deals with transfer of prisoner from state to another state.
- Delhi Prisons Act, 2000³ - Extends only to National Capital of Delhi, prescribes the composition, power and duties of Jail authorities and establishes Tihar Jail.
- The Prisons Act, 1894⁴ - One of the most important legislation, contains various provisions relating to health, employment, duties of jail officers, medical examination of prisoners, prison offences etc.
- Prisoners [Attendance in Courts] Act, 1955⁵ - Empowers Court to summon prisoners to appear in Court for giving evidence or answering criminal charge.

III CASE COMMENT ON RE-INHUMAN CONDITIONS IN 1382 PRISONS

The Supreme Court of India recently on March 14, 2016 delivered a landmark judgement which regard to the legal and constitutional rights of prisoners in India especially the under trial prisoners. The present paper is an attempt to critically analyse the aforesaid case and for that purpose divides the article into several parts where each part will focus precisely on the issue in

² Act No. 29 of 1950.

³ Act No. 2 of 2002.

⁴ Act No. 9 of 1894.

⁵ Act No. 32 of 1955.

hand. The present petition, *In Re-Inhuman Conditions in 1382 Prisons*⁶ is filed before the Supreme Court of India under article 32 of the Constitution by the counsel for the petitioner to address the status of prison⁷ reforms in India and to issue directions, if necessary for prison reforms.

R.C. Lahoti J, former Chief Justice of India, wrote a letter dated June 13, 2013 to the Chief Justice of India relating to the disturbing conditions of 1382 prisons⁸ in India relying on story which had appeared in *Dainik Bhaskar* (National Edition) on March 24, 2013. R.C Lahoti J pointed out in his letter the inadequacy of reformatory schemes for offenders and other prominent issues which were covered by the newspaper in its story *viz.*, overcrowding⁹ of prisons; unnatural death of prisoners; inadequacy of prison staff and present staff not being adequately or properly trained. He argued in his letter that the state cannot disown its liability towards the prisoners and have to ensure their safety and life.¹⁰

On July 5, 2013, the registrar registered the letter as Public Interest Litigation (PIL) and subsequently issued notice to appropriate authorities. The reply by these authorities supported the proposition made by R.C Lahoti J. Thus, the social justice bench on March 13, 2015 passed an order¹¹ requiring the Union of India to furnish details regarding over-crowding¹² in prisons and steps taken for improving the living conditions of prisoners.

⁶AIR 2016 SC 993, 2016 (2) SCALE 185; *available at*:

<http://judis.nic.in/supremecourt/imgs1.aspx?filename=43347>, (last visited on May 15, 2017).

⁷Delhi Prisons Act, s. 2 (r) 2000, Act no. 2 of 2002, defines Prison as "means any jail or place used permanently or temporarily under the general or special orders of the government for the detention of prisoners, and includes all lands, buildings and appurtenances thereto, but does not include; (i) any place for the confinement of prisoners who are exclusively in the custody of police; (ii) any place specially appointed by government under s. 417 of the Code of Criminal Procedure, 1973 (2 of 1974); (iii) any place which has been declared by the government by general or special order to be a special prison."

⁸According to Prison Statistics India, 2014 (PSI, 2014) (Published by National Crime Records Bureau (NCRB), Ministry of Home Affairs, Government Of India) there are 1,387 Jails in India (Central jails : 131 , District Jails: 364, Sub Jails: 758, Women Jails: 19, Open Jails: 54, Borstal Schools: 20, Special Jails: 37, Other Jails: 4. It is pertinent to note that the NCRB has released Prison Statistics India, 2015 in November, 2016, however for the purpose of this paper statistics of 2014 has been referred, as case was decided prior to the publication of PSI, 2015. The PSI, 2015 can be *available at*: <http://ncrb.nic.in/StatPublications/PSI/Prison2015/PrisonStat2015.htm> , last visited on May 28, 2017.

⁹*Ibid.*, defines Overcrowding as "The Occupancy rate of more than 100 percent results in overcrowding in the jail"

¹⁰*Supra* note 6 at 6 and See also, *Sunil Batra (II) v. Delhi Administration*, (1980) 3 SCC 488, where the Supreme Court held that "A convict is entitled to precious right guaranteed by Article 21." and *T.K. Gopal v. State of Karnataka* (2000) 6 SCC 168, where the court held that the "Prisoner is required to be treated as a human being and is entitled to all the basic human rights, human dignity and human sympathy."

¹¹The order primarily related to furnishing of information regarding to utilization of funds and implementation of various Acts.

¹²PSI, 2014, *supra* note 5 states the definition of overcrowding as, 'The occupancy rate of more than 100 percent results in overcrowding in Jail'

Subsequently following the order of the Court the Ministry of Home Affairs (hereinafter, 'MHA') filed an affidavit¹³ requesting all the states and union territories to follow the court's order and provide the information as requested, however some states and union territories did not furnish the information.¹⁴ It was stated that it was due to the improper management information systems that the information could not be aggregated.

Issues and directions

Addressing the various issues raised by the court by order dated March 13, 2015 additional solicitor general submitted the following reply by way of affidavit:

Issue I– The utilization of Rs. 609 Crores grant allotted under the 13th Finance Commission for the improvement of conditions in prisons.

In response to the first issue, it was stated that even though 13th Finance Commission had provided for allotment of funds but in reality these funds were not allotted and even if they were allotted they were not fully utilized by the states, except for the state of Tripura.

Issue II -The grant allotted to states for prisons under the 14th Finance Commission.

It was stated that states have sufficient funds for the maintaining prisons and thus no additional funds were required by them, thus the 14th Finance commission did not allocate any fund to the central or state government. As regard to union territories, none of them made individual projection of funds as provided by the commission except for Delhi and Pondicherry.

Issue III -Steps taken by the Central and State Government for the effective implementation of section 436A¹⁵ of the Code of Criminal Procedure, 1973(hereinafter, 'Code')

The Ministry of Home Affairs (MHA) stated in its affidavit that it had issued an advisory to all the states and union territories on January 17, 2013 to implement aforesaid mentioned section to

¹³Black Law Dictionary, 8th edn. , defines affidavit at 84 as a, 'A voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths, such as notary public'

¹⁴State of Uttarakhand and Union Territories of Daman and Diu, Dadra and Nagar Haveli and Lakshadweep.

¹⁵Code of Criminal Procedure, 1973, s. 436A: Maximum period for which an under trial can be detained- "Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties: Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties: Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation – In computing the period of detention under this section for granting bail the period of detention passed due to delay in proceeding caused by the accused shall be excluded." (Inserted by Criminal Procedure Code (Amendment) Act, 2005).

reduce overcrowding in the prisons. It has also suggested several measures for its implementation such as constitution of review committee which would be constituted of district judge, district magistrate and the superintendent of police. The committee would meet regularly at interval of every three months and review the cases of undertrial prisoners¹⁶ along with this the Jail Superintendent would also conduct survey of prisoners and send the report to the District Legal Services Committee (hereinafter, 'DLSC') constituted under The Legal Services Authorities Act, 1987¹⁷ and the review committee.

MHA further suggested the following key points in its reply *viz.*,

- DLSC should provide free legal aid to undertrial prisoners;
- Use of Management Information System to ascertain progress made jail wise;
- Plea bargaining;
- Establishment of fast track court;
- Frequent Lok Adalat;
- Production of accused through video conferencing.

Issue IV -Steps taken by the central and the state government for the effective implementation of section 436¹⁸ of the Code and the number of people still in custody due to their inability to pay for adequate surety for their release on bail. The Ministry had issued advisory on 9th May 2011 has stating that inhabitable conditions of prisons are unacceptable especially due to overcrowding as India is a signatory to United Nations Standard Minimum Rules for Treatment of Offenders.

Thus, it was several measures were suggested to counter this problem such as release of under trial prisoner under Probation of Offenders Act, 1958¹⁹ and called for wider participations of

¹⁶ *Supra* note 8 defines Under trial prisoner as 'A person kept in prison (judicial custody) while the charges against him are being tried'

¹⁷ Act no.39 of 1987.

¹⁸ *Supra* note 15, s. 436 reads: "In what cases bail to be taken.

(1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided: Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) of section 116 or section 446A.

(2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446 "

¹⁹ Act no. 20 of 1958.

District Legal Committee and NGOs to implement the guidelines issued by the High Court of Bombay in *Rajendra Bidkar v. State of Maharashtra*.²⁰

Issue V- The number of persons in custody who have committed compoundable offences²¹ and are languishing in custody. A chart was annexed to the affidavit stating statistics of people languishing in Jail under compoundable offences, numbers were alarming in most of the states viz., Andhra Pradesh, Assam, Chhattisgarh, Haryana, Kerala, Mizoram, Nagaland, Odisha, Punjab, Rajasthan, Telangana, Tripura and Uttar Pradesh, mainly due to their inability to pay for their bail bond.

Issue VI-Steps taken for the implementation of the Repatriation of Prisoners Act, 2003.²²

In reply it was stated that India has signed bilateral agreement for transfer of prisoners with 25 countries out of which 18 countries have already ratified the agreement. Based on the affidavits and replies by the counsel, the court passed the following directions on April 24, 2015:

- MHA is directed to study Prisoners Management System installed in Tihar Jail and suggest suitable modification/suggestion to the system and so that the software can also be used in other Jails in India.
- National Legal Services Authority²³ (hereinafter, 'NALSA') is directed to appoint a senior officer as Nodal officer who would help in the Court in dealing with the present matter.
- Member Secretary of NALSA in coordination of with MHA and State Legal Service Authority (Hereinafter, 'SLSA') are directed to establish an under trial review committee in all the district of the Country for seeking an effective of section 436A of the Code.
- Till the next scheduled meeting that is around June 30, 2015, the committee should have released those under trial prisoners who are entitled to benefit under Section 436A of the Code and also those under trial prisoners who have undergone their period of incarceration should be released even if half of their sentence is not completed.

²⁰In *Rajendra Bidkar v. State of Maharashtra* CWO No.386 of 2004, (Supreme Court of India) (Unreported), the Supreme Court has laid down guidelines for production of under trial prisoners through video conferencing facility in courts.

²¹The West Bengal Correctional Services Act, 1992, Act no.32 of 1992, 2(i) : defines Offence as 'means an act punishable under any law for the time being in force with imprisonment, whether substantive or in default of a fine or in default of furnishing security'

²²The Repatriation of Prisoners Act, 2003, no. 49 of 2003.

²³NALSA is constituted under section 3 Legal Service Authority Act,1987 to provide legal aid service and organize LokAdalats

- Bureau of Police Research and Development (hereinafter, 'BPR & D'), Attached office of MHA, is hereby directed that it should undertake review Model Prison Manual within three months as the present Model Prison Manual, 2003 has become out-dated in the light of technology advancement and circumstances.
- Member Secretary of NALSA is to coordinate with SLISA to provide legal aid to under trial prisoners and seek release of those who have either committed compoundable offences or unable to furnish bail bond.²⁴

Pursuant to the aforesaid order and directions, Rajesh Kumar Goel, Director and Nodal officer, NALSA submitted a compliance report dated 4th August, 2015 to the Court regarding the work done by it for seeking the release of under trial prisoners. The report further stated the progress made on Prisoners Management System which would be evaluated consequently by Director General (Prisons)/Inspector General (Prisons) on their meeting scheduled to be held on August 20, 2015.

On the analysis of this report, the court came to following conclusion –

- The Under Trial Review Committee shall include secretary of the DLSC as one of its members,²⁵
- MHA is suggested to draft a comprehensive Model Prison Manual, which would also have the provision of crèche for the children of prisoners. The Ministry may prepare this manual with the help of Civil Society, NGOs concerned with under trial prisoners and other with experts on other disciplines including academia.
- Lastly, the court emphasized on the establishment of under trial review committees in all the districts of the country along with the evaluation of existing application software²⁶ regarding prison management.

The Additional Solicitor General, N. K. Kaul, informed the bench that the Ministry has written to all Director Generals (DGs) of states and union territories to include Secretary of District Legal Service Authority (DLSA) as a member of under trial committee, Further, they also have been asked to select a Prison Management system which would be acceptable to them.

²⁴*Supra* 6 at 32, states as “With regard to the cases of undertrial prisoners who were unable to furnish bail bonds it was stated that as many as 3470 such persons were in custody due to their inability to furnish bail bonds and a maximum number of such undertrial prisoners were in the State of Maharashtra, that is, 797 undertrial prisoners. It was stated that as many as 3278 undertrial prisoners were those who were involved in compoundable offences and efforts were being made to expedite the disposal of their cases.”

²⁵ *Supra* note 6 at 33.

²⁶ At present there are main four major prison software application which are as:

- National Informatics Centre;
- Goa Electronic Ltd.;
- Gujarat Government through TCS and;
- Phoenix for Prison Management System in Haryana.

As to the Model Prison Manual of 2003, the Additional Solicitor General informs the Court that the New Model Prison Manual would be made available before December, 2015 which would be having a provision for crèche facility for children of women prisoners and the same is being made with the help of NGOs and people of belonging to other disciplines.

Rajesh Kumar Goel, Director, NALSA drew the attention of the court towards the appointment of legal aid lawyers for the under trial prisoners especially those in the State of Maharashtra and Uttar Pradesh.²⁷

Pursuant to the aforesaid orders, NALSA filed another compliance report dated October 14, 2015 stating that under trial review committee has been set up successfully in all the districts of India and secretary of DLSC has also been appointed as a member of the under trial review committee.

However, the court expressed distress as no information was made available regarding the establishment under trial committee for the State of Jammu and Kashmir nor the Secretary of DLSC was a member of the committee in all the states,²⁸ the counsel assured the bench that this matter would be brought to the notice of the state government and status report on the same would be filed before the court in January, 2016.

Following the court's order dated October 16, 2015, the MHA filed an affidavit on January 22, 2016 stating that fund for Crime and Criminal Tracking Network and System²⁹ (CCTNS) and e - Prisons Project has been approved.

As to the implementation of sections 436A of the Code, it was stated that many under trial prisoners have been successfully released in many states³⁰ and union territories.³¹

The court lastly pointed out that the under trial prisoners being tried for compoundable offences should be released to avoid overcrowding in Jails and also a provision for payment of bail should also be made by the SLSA/DLSC, as India being signatory to International Covenant on Civil and Political Rights, 1966³² (ICCPR) and the Universal Declaration of Human Rights, 1948 (UDHR)³³ must also respect the rights of prisoners.

²⁷*Supra* note 6 at 40 states that States of Uttar Pradesh and Maharashtra are expected to have maximum number of cases pertaining to compoundable offences and also PSI, 2014 at page XII which estimates under trial prisoners in State of Maharashtra to be 19,895 and State of Uttar Pradesh to be 62,515 (As on Dec. 31, 2014).

²⁸Such as the State of Gujarat and Uttar Pradesh and the Union Territory of Andaman and Nicobar Islands

²⁹National Crime Records Bureau (NCRB) is the primary organization responsible for the implementation of CCTNS, CCTNS is an e- integrated system which aims at e- governance and e- policing it seeks to make most of the work of Police personnels like registration of FIRs, tracking and registration stolen vehicles etc online, On Sep. 19, 2009, the Cabinet Committee on Economic Affairs (CCEA) approved the project with a budget of Rs 2000 crores.

³⁰Read with States of Assam, Bihar, Chhattisgarh, Goa, Karnataka, Meghalaya, West Bengal,

³¹Read with Union Territories of Dadra and Nagar Haveli and Lakshadweep

³² Art.10 states that: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

³³Art.5 provides that: "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment."

Judgement

The sum and substance of the aforesaid discussions is that the prisoners are no less human than others and therefore must be treated with dignity. In view of this, court passed the following the directions;

The under trial review committee should work along with the Secretary of the DLSC to take appropriate steps to seek release of eligible under trial prisoners and the meeting of the committee should take place every quarter starting March 31, 2016.

- Under Trial Review Committee should ensure effective implementation of Probation of Offenders Act, 1958³⁴ and Code of Criminal Procedure, 1973 especially section 436 and section 436A. First time offenders should be released so that they have a chance of rehabilitation in the society. Secretary of the DLSC will also look into the release of under trial prisoners alleged to have committed compoundable offences.
- The Member Secretary of SLSA should work in coordination in Secretary of DLSC of the district to ensure that an adequate number of competent lawyers are empanelled to assist under trial prisoners and convicts, particularly the poor and indigent, and for that purpose assure that the legal aid for the poor does not become poor legal aid.³⁵
- The Director General of Police/Inspector General of Police in-charge of Prisons will ensure proper utilization of funds so that conditions of the prisoners is in commensurate with human dignity which includes health, hygiene, food, clothing, rehabilitation etc.
- The MHA will ensure that Management Information System is implemented in all central, district and women jails for better management of prison and prisoners. Further the Ministry will also review the Model Prison Manual 2016 annually so that it does not become another dead document.
- The undertrial committee will look into the issues raised in the Model Prison Manual 2016³⁶ and for that purpose will visit jails regularly.
- MHA is also directed to prepare a similar manual for Juveniles in custody in Observation Homes or Special Homes or Places of Safety established under Juvenile Justice (Care and

³⁴*Id.* at 20.

³⁵*Supra* note 6 at 25.

³⁶*Supra* note 6 at 57, "It is a detailed document consisting of as many as 32 chapters that deal with a variety of issues including custodial management, medical care, education of prisoners, vocational training and skill development programmes, legal aid, welfare of prisoners, after care and rehabilitation, Board of Visitors, prison computerization and so on and so forth"

Protection of Children) Act, 2015³⁷. Accordingly, Secretary, Ministry of Women and Child Development (hereinafter, 'MWCD') is issued a notice to help the MHA to prepare the Model.

Subsequently in *Re: Re-Inhuman Conditions in 1382 Prisons*,³⁸ counsel appearing for the MWCD informed the Court that a Committee has been set up on February 24, 2016 for drafting a manual similar to the prison manual for juveniles who are either in custody or observation homes or special homes or place of safety in terms of the Juvenile Justice (Care and Protection of Children) Act, 2015.³⁹

Shama Parveen Khan, informed the Court that the manual is expected to be prepared by 31st May, 2016 and for this purpose Jyoti Dogra Sood,⁴⁰ has co-opted. The committee should take assistance of the *amicus curiae* and representative of Commonwealth Human Rights Initiative (CHRI) for the purpose of data collection on prisons. With respect to directions given by the court dated February 5, 2016, the *amicus curiae* and additional solicitor general replied that the progress has been made in the implementation of aforesaid directions and seek time for the compilation of the needed information.

Practical applicability of the judgement

In view of the court's direction, the MHA prepared a New Model Prison Manual, 2016 which is available now; the manual has been prepared by the help of various experts which include senior police officers, member from NALSA, NHRC *etc.*

The New Model Prison Manual, 2016 is divided into XXXII Chapters⁴¹ which deal with the various right and duties for prisoners. Further, as directed by the court, the Manual has a separate chapter dedicated especially to under trial prisoners, women prisoners and prison computerization respectively.

It is also to be noted that in compliance of the court's directions dated August 7, 2015, the Model Prison Manual, 2016 provides for establishment of under trial review committee consisting of secretary, district service legal authority along with the district judge, as chairperson, the district

³⁷ Act no. 2 of 2016.

³⁸ 2016 (3) SCALE 389

³⁹ *Id.* at 38.

⁴⁰ Associate Professor, ILI Indian Law Institute Deemed University, New Delhi

⁴¹ Chapter I – Definitions; Chapter II- Institutional Framework; Chapter III – Headquarters Organization; Chapter IV – Institutional Personnel; Chapter V – Custodial Management; Chapter VI – Maintenance of Prisoners; Chapter VII – Medical Care; Chapter VIII – Contact with Outside World; Chapter IX – Transfer of Prisoners; Chapter X – Repatriation of Prisoners; Chapter XI – Execution of Sentences; Chapter XII – prisoners sentenced to Death; Chapter XIII – Emergencies; Chapter XIV – Education of Prisoners; Chapter XV – Vocational training and Skill development; Chapter XVI – Legal aid; Chapter XVII – Welfare of Prisoners; Chapter XVIII – Remissions; Chapter XIX – Parole and Furlough; Chapter XX – Premature Release; Chapter XXI – Prison Discipline; Chapter XXII – After- Care and Rehabilitation; Chapter XXIII – Open Institution; Chapter XXIV – under trial Prisoners; Chapter XXV – High Risk Offenders and Detenuess; Chapter XXVI – Women Prisoners; Chapter XXVII – Young Offender; Chapter XXVIII – Inspection of Prisons; Chapter XXIX – Board of Visitors; Chapter XXX - Staff Development; Chapter XXXI – Prison Computerisation; Chapter XXXII - Miscellaneous

magistrate and the district superintendent of police.⁴² However, since the Model Prison Manual has been recently prepared, it is difficult to comment on the implementation aspect.

However, the effect of the aforesaid directions in the present case can be studied with respect to the Prison Statistics, 2015 which was released in November, 2016 by MHA, the following are key changes observed in the report –

- Occupancy rate⁴³ has fallen from 117.4% in 2014 to 114.4 % in 2015.
- There has been marginal decrease in undertrail prisoners of 0.3% in 2015 (2, 82,076) over 2014 (2, 82,879).
- Undertrail prisoners charged for the offence of murder amounts to 26.5% of the total numbers of crime under IPC, 1860, this number has also come down by 3.2 % from Prison Statistic India, 2014.
- The Detention period of undertrail prisoners staying in jail for 3 months or below has also increased to 35.2% from 34.8%.

From these figures, it is evident that the number of undertrail prisoners in jail has come down compared to year 2014, the change may not be significant but it is definitely depicts a trend.

IV PRESENT STATUS OF PRISONS IN INDIA

For the purpose of convenience, the section is divided into various parts;

Reformative schemes

Fortunately, India as a nation as has come a long way and the present reformative schemes are to some extent quite adequate and do help in the reshaping the character and curing the diseased mind of the prisoner. Crime is outcome of diseased mind which can be cured, this being based on reformative theory. As there are several different reformative schemes,⁴⁴ the present paper will focus mainly on reformative schemes adopted by Tihar Jail, Delhi and the Prison Department of the State of Andhra Pradesh.

⁴² Model Prison Manual, 2016 ,Ministry of Home Affairs, Government of India at 176.

⁴³ *Supra* note 8 (PSI, 2014) defines; Occupancy rate as ‘The Number of inmates accommodated in Jail against the authorised capacity of 100 inmates’

⁴⁴The Yerwada Central Jail in Pune has also a history of introducing innovative rehabilitation programmes recently introduced another scheme whereby a prisoner is released early if they earn top marks in yoga exams.

Tihar Jail, Delhi

Tihar Jail⁴⁵ has the reputation of being a correctional institution with a pragmatic approach and has to its credit several innovative reformatory schemes. The jail has several reformatory schemes; some of them are as follows:⁴⁶

- Prisoner's participation in various sports⁴⁷ and cultural activities
- Education both formal and adult with Library facility
- Vocational classes in English/Hindi typing and Commercial Arts
- Yoga and Meditation⁴⁸
- Legal aid
- Special Courts/LokAdalats
- Societal Participation in Reformation
- Ventilation of grievances⁴⁹

Prison department of Andhra Pradesh

The official website of the Andhra Pradesh Prison Department⁵⁰ states that many facilities like Television, Radio, Newspapers and indoor games are provided in all the prisons of the State. Further, Septic toilets and bathroom are provided in the ratio of 1:06 and 1:10 respectively in all prisons. Apart from these facilities, degrees and certificate courses are provided through correspondence from universities at government cost. Also, there are no restriction on writing and receiving letters by prisoners.

V RECENT TRENDS IN PRISON REFORMS

In the past few months many significant steps have been undertaken, some of them are as follows –

- The High Court of Delhi has directed the prison authorities of Tihar Jail to offer meditational therapy, counselling, sports facilities to convicts.⁵¹

⁴⁵ It is Central prison located in Tihar Village, New Delhi and is one of the largest complexes of prisons in South Asia with over nine central prisons.

⁴⁶Tihar Jail, Available at : http://www.delhi.gov.in/wps/wcm/connect/lib_centraljail/Central+Jail/Home/Reformation, last visited on Feb. 23, 2017.

⁴⁷ Such as Cricket, Volley Ball, Power Lifting

⁴⁸ It has permanent 'Vipassanacenter' and Meditation groups like Brahma KumariIshwariyaVishvavidyalaya, Divya Jyoti Jagriti Sansthan, Sahaj Yoga Kendra etc.

⁴⁹Frequent meetings with senior prison officers and Petition box where prisoners can submit their grievances.

⁵⁰ Andhra Pradesh Prison Department, available at <http://apprisons.gov.in/>, last visited on May 23, 2017.

⁵¹See Sanjay V. State, CRL.A.600 of 2000, (Delhi H.C.) (Unreported)

- The High Court Calcutta rules that even prisoners are entitled to the right to trade, occupation and profession guaranteed under article 19(1)(g) of the Indian Constitution.⁵²
- Tamil Nadu government in its budget allocated Rs 282 crore for Prisons; these funds will be mainly used for digitalization and improving Court infrastructure.
- Kerala State Legal Services Authority has recently launched a new scheme titled ‘Legal Aid for Socio Economically Challenged Dependents of Convicts Scheme, 2017’ wherein the dependents of the convicts will be provided with legal aid.
- The Andhra Pradesh Police in a unconventional way and first-of-its-kind initiative in India to tackle crime rate has decided to DNA – tag convicts, the DNA sample of convicts will be stored in the database and later these samples will be matched with sample found at the crime scene, this will make tracking of criminals easier, it is proposed that for this purpose the Rapid HIT DNA system software will be used. The Andhra Pradesh government plans to bring and enact a new legislation to give a statutory backing to this initiative.⁵³
- The MHA has advised the Secretaries of all States and Union Territories to implement the following suggestions for better prison administration viz. –
 - a) Video Conferencing facility in all prisons
 - b) All vacancies in the prison department to be filled up expeditiously
 - c) Prisons to have Welfare wing, correctional and probation services
 - d) Adopting the provisions of Prison Manual, 2016⁵⁴
- The High Court of Bombay in Ganesh Shankar Pawar and Ors. V. State of Maharashtra and Yervada Central Prison⁵⁵ has issued landmark directives on prion reforms, prominent ones being:
 - a) Guidelines for communication between advocates and their client in Yervada Prison
 - b) Construction of separate bathrooms for women prisoners
 - c) Construction of new prisons within the free area with the vicinity of existing jails and on government land lying vacant in cities of Mumbai and Pune
 - d) State Government to constitute committee for every district of the state who shall inspect the cleanliness, quantity and quality of food being served to prisoners.

⁵² See *Soma Saha Sen v. State of West Bengal*, W.P. 5455 (W) of 2017, (Calcutta HC) (Unreported)

⁵³ See Sreenivas Janyala, First DNA index system to tackle crime introduced by Andhra Pradesh Police, *Indian Express* (Hyderabad) Aug. 31 2017.

⁵⁴ These suggestions are an outcome of the 5th National Conference of Prisons of States/Union Territories on Prison Reforms held at New Delhi on September 29-30, 2016.

⁵⁵ Criminal PIL ST. No. 46 of 2015, (Bombay H.C.) (Unreported)

- e) Crèches and schools to be opened near the precincts of Jail for children of prisoners serving sentence.

VI ISSUES IN THE PRESENT PRISON SYSTEM

Unfortunately the ground reality of prisons and under trial prisoners is far from being satisfactory. Recently, in a reply to Congress legislator Naresh Kumar Gupta's query reads that there are 2,364 prisoners lodged in 14 government jails in Jammu and Kashmir, Out of these 2,364 prisoners, 1929 are undertrials in various jails of the state—including 347 convicts and 118 detainees.⁵⁶

Some other major problem include overcrowding in prisons (Occupancy rate is 118.4%) and shortage of jails officials which is estimated to be 65.8% of actual to sanctioned strength which often results in low attention per inmate (8 inmates :1 prison Staff)⁵⁷.

Some of the other prominent issues are as follows –

Differential treatment between prisoners belonging to the same category;⁵⁸ Custodial deaths;⁵⁹ Fake Police encounter; Lack of innovative reformatory schemes;⁶⁰ Inhuman and barbaric treatment by Police;⁶¹ Political pressure; Lack of knowledge of legal rights⁶² and education;⁶³ Insufficient legal aid programmes;⁶⁴ Inability to pay bail bond due to poverty; Delay in Judicial pronouncement;⁶⁵ Lack of coordination between the prison department, police and judiciary.⁶⁶

⁵⁶Mukeet Akmal, "1900 under-trials in JK jails", Greater Kashmir, June 18, 2016.

⁵⁷ *Supra* note 8 at 139 and 141. (All statistics are inclusive of all states and union territories of India (All-India))

⁵⁸The Constitution of India, 1950, art.14 lays down the principle of equality, it emphasis on the rule that 'like should be treated alike' and concept of reasonable classification.

⁵⁹ See generally *Nilabati Behera alias Lalita Behera v. State of Orissa*; AIR 1993 SC 1960; 1st Case of Custodial Death ; the Supreme Court awarded compensation by way of exemplary damages.

⁶⁰It took Supreme Court almost 60 years after independence to introduce community service in India; See *State Tr. P.S. Lodhi Colony New Delhi v. Sanjeev Nanda*; AIR 2012 SC 3104.

⁶¹See *Khatri v. State of Bihar* (Popularly known as Bhagalpur Blinding case); [1981] 2 SCR 408.

⁶² See Constitution of India, 1950, art 14, 21, 20, 22, 32.

⁶³ See *e.g.*, *Rudul Shah v. State of Bihar*, AIR 1983 SC 1086; Case of illegal detention for 15 years though acquittal order passed by court; See also Prison Statistics India, 2014 (NCRB) which estimates that almost 68 percent inmates are under trials and over 70 per cent of convicts being illiterate.

⁶⁴ Right to free Legal aid is a Fundamental Right under Article 21 of the Indian Constitution; See *Khatri and Ors. Vs. State of Bihar and Ors*; [1981]2 SCR 408; See also *Madhav Hayawadan Rao Hosket v. State of Maharashtra*; AIR 1978 SC 1548 and *Mohd. Ajmal Amir Kasab V. State of Maharashtra*; (2012) 9 SCC 1

⁶⁵Right to Speedy Trial is a fundamental right under Article 21 of the Indian Constitution; See *e.g.*, *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna*; (1980) 1 SCC 91; also See *Kadra Pehadiya v. State of Bihar*; Writ Petition No.5943 of 1980

⁶⁶ For *e.g.* Police is responsible for transportation of Prisoners from Jail to Court and Vice versa, but if the prisoners are not taken in time to the court for hearing, the case is adjourned for another day which results in delay in disposal of case.

VII SUGGESTIONS/ RECOMMENDATIONS

The Law Commission of India⁶⁷ headed by H.R. Khanna J,⁶⁸ has recommended several possible remedies to the problem of overcrowding in Jails such as guiding principles to be followed for release on bail in case of non-bailable offences and a need to liberalise provisions for release on bond, strengthening of machinery and equipment, suggested amendments to Code of Criminal Procedure, 1973 and Indian Penal Code, 1860, separate places for detention of under trial prisoners *etc.*

On similar lines, The Law Commission in its 239th Report⁶⁹ has suggested further more steps such as that there should be standardized design of the Criminal Court complex as prescribed which shall inter alia have separate rooms for witnesses, under trial prisoners, police personnel, advocates and prosecutors. Further, all communication of bail orders should be sent to the Jail through e-mail and sufficient number of washrooms and filtered drinking water facilities should be constructed in these complexes.

The Human Rights Law Network⁷⁰ has suggested several prisons reforms *viz.*, providing educational facilities to prisoners, introduction of Non-discriminatory provisions for minority groups in jail, computerization of prisons, social audit *etc.* The All India Committee Jail Reforms⁷¹ suggested that better transport arrangement should be made for taking undertrial to courts, proper record of release of prisoners on leave and special leave should be properly maintained, district level review committee to appraise under trial cases and recommend their release on bail, facilities of food, clothing, medicare, *etc.* to undertrials at par with convicts.

BPR and D has suggested several reforms⁷² *viz.*,-

- That the principles of management of prisons and treatment of offenders may be incorporated in the directive principle of the state policy embodied in part IV of the Constitution of India;

⁶⁷Law Commission of India, *Congestion of Under-Trial Prisoners In Jail*, Report No.78 (February, 1979)

⁶⁸Retired Judge, Supreme Court of India

⁶⁹Law Commission of India, *Expedition Investigation and Trial of Criminal Cases Against Influential Public Personalities*, Report No. 239th (March 2012)

⁷⁰ Report on the National Consultation on Prison Reforms, Human Rights Law Network, 3th-4th April 2010, New Delhi, available at http://www.hrln.org/hrln/images/stories/pdf/prision%20reform_report.pdf , (last visited on Aug. 25, 2017).

⁷¹All India Committee Jail Reforms (1980-83) headed by Justice A. N. Mulla ('Mulla Committee') ,*Available at:* <http://mha1.nic.in/PrisonReforms/pdf/Mulla%20Committee%20implementation%20of%20recommendations%20-Vol%20I.pdf> (last visited on July 20, 2017).

⁷² National Policy on Prison Reforms and Correctional administration, 2007, Organized by BPR&D , available at <http://www.bprd.nic.in/WriteReadData/userfiles/file/5261991522-Part%20I.pdf> (ast visited on June 28, 2017).

- The State shall evolve a mechanism to ensure that no under trial prisoner is detained unnecessarily which can be achieved by regular periodic review of their cases on timely bases and simplification of bail procedure, also the under trial shall be confined in separate institution if possible;
- State government may establish Research & Development Wing in the Directorate of Prisons and Correctional Services of all the States and Union Territories which shall analysis and research on improving the functioning and performance of prisons in India.

VIII PERSONAL OPINION

I agree with the court's decision that is of utmost importance and urgency that the Under trial Review Committee should be established in all the districts of the country and also that a new Model Manual Prison should be prepared both for juveniles and adult prisoners. However, being little sceptical with respect to the functioning of these committees and effective implementation of the prison manual. It is evident from the past that these manuals have ended up becoming only a dead document and are not seriously implemented by the prison authorities.

As a citizen of India, and being very much concerned for the under trial prisoners and other inmates as to in which conditions they are living in prisons and whether proper sanitation and medical facilities are available to them. The figures by NCRB are very alarming with over 70 per cent of prison inmates being Undertrials who are either unaware of their legal rights or are poor to pay bail bond. It is such a pity that though their offence has not been proved in the court of law, subject to the right of appeal, they are undergoing their sentence; it seems that only the rich and powerful can get a bail in India.

There is thus without any doubt an urgent need to revamp the prison system in India which would a more humanistic approach as Mahatma Gandhi rightly said "Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care"

The author proposes the following recommendations for prison reforms:⁷³

- Prisons (Entry 4, State List II) are a state subject under the Constitution which is one of the reasons why it is neglected by the States and are starved of funds. Thus, Prisons and allied institutions should be deleted from state list and inserted in the Concurrent List of the Seventh Schedule of the Constitution.
- For modernization of Prisons, Government of India must start Prison Modernization Scheme II which is overdue for a decade now. Phase I of the scheme has successfully

⁷³The author is in debt to officers at BPR&D and NCRB for their valuable inputs in suggesting these recommendations.

reduced overcrowding in jails barracks, jail official quarters and resulted in better security of the jails from high hazard such as –drug addicts, terrorists, naxals& dangerous criminals and high risk offenders.

- General view by Courts should be to grant ‘Bail as a right and Jail as an exception’ in bail applications.
- Women jails must be set up in every state. Further, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) should be implemented to maintain dignity of Undertrials and Convicts particularly women.
- BPR&D may sponsor official training programmes in security, reformation, rehabilitation and attitudinal change for prison authorities.
- Training institutes are required to be opened in every state which would train prison officials especially on how to deal with high risk offenders. Currently there are only three dedicated prison training institutes which are in Chandigarh, Kolkata and Vellore respectively.
- Vigilance committees should be constituted which would include well-behaved convicts as members to check the quality of food served to the inmates. Many riots in jails are reported especially in eastern India due to the poor quality of food being served in jail.
- The concept of Private Prisons may be tried in India wherein the State does not play a major role. Under trial prisoners who have committed petty offences may be sent to these jails under the overall supervision of district superintendent of jail.
- The number of open prisons⁷⁴ should be increased, presently there are 63⁷⁵ open prisons in India, these prisons unlike all other prisons allows a prisoners more freedom and dignity by allowing them to roam in and around the jail vicinity, taking up employment outside jail and also have less security personnel. The concept of open prison owes its origin to United Nations Congress on Prevention of Crime and Treatment of Offenders, held in Geneva in 1955.

XI CONCLUSION

There are several legislations⁷⁶ and judicial pronouncements which seek to protect the rights of prisoners in India, but still a lot more is required to be done in this direction. Implementation of these rights continues to be one of major hurdle in prison reforms in India. The judiciary has

⁷⁴Rajasthan government has framed the Rajasthan Prisoner Release on Parole Rules, 1958 wherein a prisoner who has served one-third of his/her sentence and has a good conduct is eligible for permanent parole.

⁷⁵Prison Statistics of India, 2015, National Crime Records Bureau (NCRB), Government of India. Available at: http://ncrb.nic.in/StatPublications/PSI/Prison2015/Snapshots-2015_18.11.2016.pdf, last visited on July 4, 2017.

⁷⁶There are various other legislations such as Delhi Prisons Act, 2000 (No.2 of 2002), The Probation of Offenders Act, 1948 (No.20 of 1958), The West Bengal Correctional Services Act, 1992 (West Bengal Act XXXII of 1992) etc.

played a vital role for the improvement of the prison system in the past⁷⁷ and hopefully the decision given by the apex court in the present case would further help in reducing further some of the existing problems in the current prison system. Thus, it can be concluded that it is just the beginning of a long journey, a small step towards better prison system management and administration.

⁷⁷See for e.g., *Rama Murthy V. State of Karnataka*; AIR 1997 SC 1739; *Prem Shankar Shukla v. Delhi Administration*; AIR 1980 SC 1535; *Sunil Batra v. Delhi Administration.*; AIR 1980 SC 1579