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The Transforming Landscape of Prisons of India: A Radical Approach

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ABSTRACT

“The purpose of the criminal justice system is both to rehabilitate and to punish. If we can rehabilitate somebody, that’s a huge, huge win.” -Blake Farenthold

The right to life and personal liberty enshrined in Article 21 is the sanctum sanctorum of the Indian Constitution. With the development of human rights jurisprudence, the outlook of punishment has changed and the modern democratic nations consider prisons as reformative and correctional institutions. Human dignity is the quintessence of Right to Life for all and even the prisoners have certain inherent rights vested in them by virtue of being a human. The Supreme Court has given utmost importance to the human rights of the prisoners and transformed from being the sentinel on qui vive to being an institution that frames guidelines for improvement of conditions of prisoners and also monitors their compliance. The contemporary approach aims at reforming the prisoners, in contrast with the traditional utilitarian theory of punishment which rests on the quintessence of deterring criminal behavior. The ‘once a criminal, always a criminal’ outlook towards prisoners is changing with the combined efforts of the three organs of government. The fundamental aim of article is to throw light on the Indian prison system and its transition from being ‘the jail to a correctional institution.’ It also briefly discusses prisoner’s rights, alternatives to sentencing policies and initiatives undertaken by the prison authorities for welfare of prisoners.

Keywords: *Correctional measures, Criminal Justice System, Prison, Prisoners’ Rights, Sentencing Alternatives, Prison Reforms*

I. PRISON SYSTEM IN INDIA

The administration and management of prisons in India falls under the State List in Schedule VII of the Constitution of India, and is governed by the Prisons Act, 1894 and the Prison Manuals of the concerned state governments. For instance, in Delhi the administration of prisoners is governed by Delhi Prison Act, 2000 and Delhi Prison Rules, 2018, and in the

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same way, different states and union territories have their own legislations in line with the Prisons Act, 1894. The Prisons Act, 1894 is the first comprehensive legislation dealing with the regulation of prisons in India. *Inter-alia*, it also deals with provisions such as basic minimum treatment to be given to undertrials, convicts, and their temporary release by way of parole, furlough etc. which has helped in reformation of prisoners over the years. Thus, the state governments with the assistance of Central Government work for the development of prisons of every state. India doesn't have any codified law for rights of prisoners but the Hon'ble Judges of Indian Courts duly recognized the rights of prisoners and paved the way for prison reforms. Hon'ble Justice Mr. Krishna Iyer has been a crusader of prison rights. Justice Iyer in the celebrated case of **Sunil Batra v. Delhi Administration**³ beautifully expressed, "*Are prisoner's persons? Yes, of course. To answer in the negative is to convict the nation and the Constitution of dehumanization and to repudiate the world legal order, which now recognises rights of prisoners in the International Covenant on Prisoners' Rights to which our country has signed assent.*" The verdict in this case had far reaching impact on the prisoners' rights and reforms.

Till date various committees under the chairmanship of Retd. Judges of Hon'ble Supreme Court have been formed to look into the sphere of reforms in prison administration. Post-independence, the first ever committee in this regard was the Pakwasa Committee which was constituted in year 1949. For the first time, the concept of the wage system for prisoners for in lieu of the work done in prison was introduced and the liberal provisions whereby the prisoners could be released by way of remission on good behavior was conceptualized. Later, The Model Prison Manual was drafted and executed in all the states and UTs in the year 1960. The Mulla Committee Report (1980) and Krishna Iyer Committee Report (1987) threw light on the poor conditions of women and juvenile prisoners, which were addressed by enacting The Model Prison Manual, 2016. Some of the key features of the manual were to introduce e-prisoner information system, regular inspection by external authorities, introduction of physical education such as yoga, meditation, spiritual education, installation of cameras in the prominent areas of prisons for better supervision and avoidance of inhuman treatment. However, the Supreme Court in a recent petition⁴ observed that majority of states have not implemented the rules laid down in the manual and directed the prison authorities to implement them for overall development of prison system in India.

To look into the issues cornering women prisoners and overcrowding in prisons, the Supreme

³ Sunil Batra v. Delhi Administration, (1978) 4 SCC 494.

⁴ Raju Jagdish Paswan v. State of Maharashtra, 2019 SCC OnLine SC 8.

Court recently constituted Justice Amitava Roy Panel which submitted its report in February 2020. The report states that prisons in India are overcrowded with a 114 per cent occupancy rate with Delhi being the most populated with 180 per cent occupancy rate⁵. The report further states that the major cause for overcrowding in prisons is delay in investigation and trial which can be improved up filling up vacancies on urgent basis in police, judiciary and prison authorities.

II. RIGHTS OF PRISONERS

It is a well settled law that the prisoners are also humans and the basic human rights that are inherent in every human being by the virtue of being a human being, are also available to them. The fundamental rights of prisoners are although not at par with those of non-prisoners but they also possess certain rights subject to some legal restrictions. In *State of Maharashtra v. Prabhakar Pandurang*⁶ it was held that the personal liberty of a detenu, as protected by fundamental rights enshrined in the Constitution, cannot be infringed except as laid down by rule of law.

(A) Right to Live With Dignity

The Supreme Court in the case of *Maneka Gandhi v. Union of India*⁷ held, “*Right to Life doesn't mean a mere animal existence and includes the right to live with dignity*”. Proper facilities of sanitization, hygiene along with adequate clothing are the basic necessities of a human life and the inmates are entitled to all these necessities.

All the State prison manuals have provisions to ensure that the prisoners have sufficient cubic space, ventilation, bedding and depending upon the climatic conditions, availability of fans or blankets. The Supreme Court has time and again held that every prisoner has the right to live with dignity and enjoy personal liberty to the extent permitted by law. The prisoner shall not be subjected to cruelty, torture, violence or unreasonable restraint by virtue of him being a prisoner. In DK Basu's case⁸ it was expressly laid down, “Article 21 of the constitution could not be denied to convicts, undertrial, detenues and any form of torture or cruel, inhuman or degrading treatment falls within ambit of Article 21, whether it occurs during investigation or otherwise.” High Courts on various occasions have declared such rules violative of Article 21 and the cardinal principle of criminal jurisprudence that provides the accused is assumed to be innocent until proven guilty. Inmates should be provided with

⁵<https://theprint.in/judiciary/supreme-court-says-overcrowding-in-jails-related-to-courts-performance-to-pass-orders/360393>.

⁶ *State of Maharashtra v. Prabhakar Pandurang*, AIR 1966 SC 424.

⁷ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁸ *D K Basu v. State of West Bengal*, (1997) 1 SCC 416.

education, recreational facilities, vocational training as such inculcating skills help inmates in living a dignified life even after release.

(B) Right of Expression

Prisoners are entitled to receive adequate facilities for expressing themselves in diverse form of arts, words, letters etc. for circulation inside the prison or outside. It is pertinent to mention that the iconic books by Mahatma Gandhi, titled “My Experiments with Truth” and Pandit Nehru, titled “The Discovery of India” were penned down while in prison. In *Francis Coralie v. Delhi Administration*⁹, the Supreme Court gave a wide interpretation to Article 21, by holding that “life” includes the right as well as facilities for reading, writing, expressing oneself in diverse forms. There have been numerous instances where the Courts have taken cognizance on the letters sent by prisoners complaining about prison officials. In *Prem Shankar Shukla v. Delhi Administration*¹⁰, handcuffing was declared as an exception by Supreme Court and the police officers were directed to record the reasons if they use handcuffs, chains or ropes. This case was instituted on the basis of telegram sent to one of the Judges which was later on treated as a writ petition. This exercise of right of expression by prisoners has in turn contributed towards recognition of the human rights of prisoners.

(C) Right to Speedy Trial

The Supreme Court, in a catena of cases has held that right to speedy trial is a part of right to life under Article 21 of the Constitution. Such a right to speedy justice is available to the accused at all stages starting from investigation till trial and even during appeals as well as revision. Delay defeats the justice; therefore, the recent amendments in criminal law have reduced the period of investigation and trial, thus, ensuring time-bound investigation. Unlike American Constitution, the right to speedy trial is not expressly mentioned in Constitution of India but it is an implicit guarantee of life and liberty, as envisaged under Article 21. In 1981, the release of 18000 under trial prisoners in Bihar who were awaiting their trial from the past ten years, was an eye opener for the criminal justice system and depicted the plight of prisoners in India.¹¹

(D) Right to Reasonable Wage in Prison-

Remuneration for work done by any person shouldn't be below the minimum-level set by the respective State Government for that particular work, irrespective whether the worker is a prisoner or non-prisoner otherwise it would be forced labor as envisaged in Article 23 of the

⁹ Francis Coralie v. Delhi Administration, (1981) 1 SCC 608.

¹⁰ Prem Shankar Shukla v. Delhi Administration, AIR 1980 SC 1535.

¹¹ Husainara Khatoun and others v. Home Secretary, State of Bihar, AIR 1979 SC 1377.

Constitution. The prisoners must be paid wages at reasonable rates. The Apex Court in *People's Union for Democratic Rights v. Union of India*¹², observed, "Where a person provides labor or service to another or remuneration which is less than the minimum wage, the labor or service provided by him clearly falls within the scope and ambit of the words "forced labor" under Article 23."

(E) Right to Free Legal Aid-

The conjoint reading of Articles 21, 39A read with 142 and Section 304 of the Code of Criminal Procedure provides that the State is under obligation to provide free legal aid to the accused in case he doesn't have sufficient means to arrange an advocate. The Legal Services Authorities Act, 1987 has been enacted to provide competent as well as free legal aid services to the weaker section of the society and to achieve the goal of equal justice for all. Besides, it is essential that the prisoners are informed of their right to know about the grounds of arrest, right to get legal assistance, right to bail, and right to communicate with a person nominated by him. The accused's right to counsel applies at all stages of custodial interrogation though not throughout the interrogation. United Nations Basic Principles on the Role of Lawyers provide that governments must ensure all persons arrested or detained, with or without criminal charge, must have prompt access to an advocate, and in any case not later than forty-eight hours from the time of arrest or detention.¹³

(F) Right to Healthcare-

The right to basic healthcare is a fundamental human right and also part of Article 21 of the Constitution. Prisoners are entitled to all basic healthcare facilities inside the prison also due the special reason that they don't have free access to medical healthcare like ordinary citizens and they are more prone to contract diseases. Women inmates should be given access to proper sanitization and menstrual hygiene facilities, pre-natal as well as post-natal facilities for pregnant women. Various High Courts have also issued directions to the prison authorities to set up well equipped hospitals within the premises and the prisoners are also entitled to get treatment from a government hospital after due permissions. The prisoners have a right to be provided with food of adequate nutritional value. The Prison Officials and duty medical staff are duty bound to ensure regular supply of drinking water and requisite diet to the inmates.

(G) Right to Compensation in case of illegal detention/violence-

The Supreme Court has held that no person can be illegally detained in prison without any

¹² *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235.

¹³ United Nations Basic Principles on the Role of Lawyers, Principle 7.

justified ground and in case he is detained without cause, he shall be entitled for compensation. In such a case, the State shall be vicariously liable for the acts of the police officials and liable to pay compensation to the person so detained. This concept of constitutional tort was recognized for the first time in *Rudul Shah v. the State of Bihar*¹⁴, compensation was awarded to the prisoner who had undergone 14 years of sentence, and later on acquitted. In another case, NHRC ordered the State of U.P to pay compensation to the dependents of the prisoner who died while discharging the prison work. In case of custodial violence, the prisoner or his dependents are also entitled to adequate compensation by the State¹⁵.

(H) Conjugal Rights-

The concept of Conjugal Rights is based on the principle that the spouses shall live together in consortium and have access to each other's company along with marital intercourse. Few countries have recognized the conjugal rights of the prisoners, for instance, Denmark allows the conjugal prison visits for inmates in general and for the inmates who have been in prison for a considerably long time are occasionally allowed to spend time with their spouse in the apartments provided by the authorities. On the other hand, Canada allows private conjugal visits in most cases for upto 72 hours every two months. In India, few Courts have held that the right to procreate, though not an absolute one, falls under the ambit of Article 21 of the Constitution and State shall endeavor to regulate a standard procedure for the same. In *Jasvir Singh and Another v. State of Punjab*,¹⁶ Punjab and Haryana High Court in a notable judgment allowed conjugal visits and artificial insemination for inmates. It further observed, "*Conjugal visits help prisoners maintain relationship with families, reduce recidivism and motivate and are an incentive to good prisoners. Reforming the prisoners is part of the correctional mechanism provided in the criminal justice.*" In another case, Madras High Court granted a two-week conjugal visit to an inmate serving life-term for the purpose of procreation and held, "*conjugal visits are a right and not a privilege.*" Till the time there are no guidelines on conjugal visits, the provisions of parole and furlough should be used liberally by the prison authorities so as to ensure that the inmates spend reasonable time with their spouse and reintegrate with the society after release.

III. REFORM ACTIVITIES IN PRISONS-

Tihar Prison Authorities have time and again come up with innovative steps to reform the

¹⁴ Rudul Shah v. the State of Bihar, (1983) 4 SCC 141.

¹⁵ Murti Devi v. Delhi Administration, (1998) 9 SCC 604.

¹⁶ Jasvir Singh and Another v. State of Punjab, 2014 SCC OnLine P&H 22479.

inmates. Tihar Jail Factory exclusively run by the inmates recently launched their website, www.tihartj.nic.in which aims to sell Brand TJ's products globally. They also run a small restaurant open for public and inmates are paid as per the rates decided by the State Government and one-fourth part goes towards the **Victim Welfare Fund utilized to compensate the victims.**¹⁷ In 2019, in collaboration with Pearl Academy, Tihar has opened a Fashion Lab which imparts basic stitching and designing training to women inmates. It also houses a grand beauty parlor named "Grace Beauty Parlour" run by women inmates with hi-tech machines, providing all necessary beauty services at reasonable rates to inmates. For the recreation of the prisoners, Tihar Authorities have organized three seasons of 'Tihar Idols' on the lines of reality show- Indian Idol, the episodes featuring inmates' dancing and singing performances are also broadcasted on Doordarshan. They also have in-house prison band, 'The Flying Souls' and FM Radio Station- 'TJ FM' run by them. In partnership with IGNOU, authorities have introduced more than 30 diploma and degree courses in varied fields and these courses run parallel with the 'Padho ya Padhao' project under the aegis of National Literacy Mission. Under this project, every morning sub-jails are converted into classrooms and basic literacy skills are imparted to inmates to make them neo-literate and employable post-release. One of the ancient meditation techniques, Vipassana, for the first time was introduced in Central Jail of Jaipur which yielded great results. It soon gathered popularity in others states in 1990s as a part of prison reform measures. The States Gujarat, New Delhi, Maharashtra, Karnataka, Haryana, Bihar, Andhra Pradesh also introduced the course for transforming the mental attitudes of the inmates. Tihar Jail has established a Vipassana centre called 'Dhamma Tihar', where Vipassana courses are conducted for inmates and also the prison officials.¹⁸ Taloja Jail in New Mumbai, under the 'Gala-Bhet' initiative has allowed the inmates to meet their families specially children, without any wall or glass ceiling. This initiative is applauded by various authorities and has shown positive impact on the psychological health of inmates.¹⁹ The Prison Authorities of Madhya Pradesh strongly believe that the prisons can have an identity beyond the crime and to further this, The Central Jail of Madhya Pradesh opened a handicraft emporium, named "Kanha Emporium" in 2016 which sells all the artistic items like paintings, wooden crafts, carpets, furniture etc. made by the inmates. It also incorporates a restaurant named "Apni Rasoi" run by inmates which sells sweets and snack items. The Central Jail of Kerala has tied up with various online food

¹⁷ http://tihartj.nic.in/tihar_jail.asp

¹⁸ <https://www.vridhamma.org/Vipassana-in-Government-An-Effective-Instrument-for-Change-and-Reform>

¹⁹ <https://www.thehindu.com/news/cities/mumbai/a-meeting-without-barriers-for-prison-inmates/article21292681.ece>

delivery partners for delivery of the food items prepared by 'Freedom Food Factory', the food prepared by inmates has turned out to be a hit because of economical cost and good quality. Meditational and Yoga camps have proved to change the life of many inmates. 'Prison SMART Programme' launched in Bihar and Project 'Prerna Path' in Pune has shown to improve the mental health of the inmates with reduced levels of depression and anxiety. Bengaluru's Parappana Agrahara Central Jail has taken the first ever 'Made-in-prison' initiative in collaboration with the leading e-commerce websites- Amazon, Flipkart etc. to sell the products made by inmates, under the brand- 'Parivartana'²⁰. Similar initiatives were brought forward in United States, United Kingdom and other countries which proved to be successful in reforming inmates. Himachal Pradesh has been at fore-front in taking unique initiatives, in 2014 project 'Jailvaarta', started videoconferencing facility to enable the inmates to talk to their family members. The initiative has received great results as it saves time and cost and is well monitored by the prison authorities. This project bagged various national and international awards for best-e-governance. Similar initiative of webcam-visit was initiated in Birsa Munda Central Jail in Ranchi. In the Warangal Central Prison of Telangana, an ayurvedic wellness center named, 'My Nation Ayurvedic Village' is operated by the trained inmates and this center has also applied to get the hospital status from Health Ministry.²¹ It offers various Ayurvedic treatments to inmates as well as to the general public. The Prison Authorities have also opened up 'Mulakat-Point', a high-tech visitor lounge with glass ceilings for smooth facilitation of the family meetings of the inmates. To boost the reformation aspect of inmates, another unique step taken by the Government of Punjab, Tamil Nadu and Kerala is opening up of fuel stations in the periphery of the prisons in their respective States, in partnership with Indian Oil Corporation. Inmates based on conduct in prison are selected and subsequently trained for operating the fuel station. The Central Prison of Tamil Nadu has named its petrol pump 'Freedom Filling Station' and planning to expand the operations in other district jails.

IV. RECOMMENDATIONS

(A) Sentencing Alternatives

The sentencing Courts should make use of alternatives to imprisonment, depending upon the nature of offence committed by the offender and the offender's antecedents. There are various offences which are punishable with either fine or imprisonment, in minor offences,

²⁰ <https://tech.economictimes.indiatimes.com/news/internet/flipkart-amazon-tie-up-with-karnataka-prison-department-to-sell-made-in-prison-products/50376584>

²¹ <https://telanganatoday.com/prisons-dg-opens-ayurvedic-village-in-warangal>

the offender may be asked to pay the fine or Restitution to the victim by the way of compensating for the loss suffered. It may include the medical expenses borne by the victim, loss of pay, property repairing or restoration expenses etc. Further, Section-360 of the Criminal Procedure Code authorizes the Court to release the convict after admonition, if the case falls within the conditions mentioned therein. The offender may be ordered to complete a fixed number of community service hours per day. Community Services activities may involve janitorial work, plantation, or utilizing the skills possessed by the offender like engineering, accounting, etc. Correctional work, an extensively used form of sentence in Asian and European countries is where a convict continues his regular job and is ordered to pay a particular percentage of earnings to the State. Status penalties, on the other hand devoid the convict to hold any position of trust and denies the specified community rights. For instance, a medical practitioner guilty of medical negligence may be barred from practicing medicine.

(B) Overcoming overcrowding in prisons

Since time immemorial, overcrowding in prisons is a major challenge across all the prisons of the world. The Inter-agency reports of undertrials shall be shared periodically and prisoner file management systems along with case management system shall be put to use for tracking the progress of cases. To make case management system more viable, 'JustIS' Mobile App was launched exclusively for the Judges with salient features like details of pending cases, disposed cases and it allows the Judge to prioritize the disposal of long pending cases. CHRI conducted a programme in various states for improving the coordination of the criminal justice agencies, i.e. State, Police, Courts, Prisons, NGOs etc. which resulted in continuous declination of the population of under-trial prisoners during 2001-03.²² The Supreme Court recently²³ directed all states and UTs to constitute an Under Trial Review Committee in every district which shall be presided by the District Judge with District Magistrate and District Superintendent of Police as the members for the purpose of implementation of Section 436A of the Code of Criminal Procedure, 1973.

The panel lawyers of the State/District Legal Services Authorities should make an attempt for compounding of the offence or plea bargaining as they advance the speedy trial and also help in reducing the burden of Courts. Section-320 of the Code of Criminal Procedure, 1973 permits compounding of offences which are mentioned therein. The Supreme Court in a

²² https://www.unodc.org/documents/justice-and-prison-reform/Overcrowding_in_prisons_Ebook.pdf.

²³ In Re - Inhuman Conditions In 1382 Prisons, (2016) 14 SCC 815.

recent case²⁴ held that the High Court can compound a non-compoundable offence while exercising its inherent power under Section 482 of the CrPC, if the offence is primarily civil or commercial in nature and a settlement is arrived between the parties. Plea-bargaining, also known as sentence bargaining shall be suggested as an effective tool to reduce the caseloads in Courts. Section-265A of The Criminal Procedure Code, lays down the provisions related to Plea Bargaining. The effect of Plea Bargaining is that on the basis of mutually satisfactory disposition of the parties, case is concluded without conducting trial and quantum of punishment is reduced. The panel lawyers should look into aspects pertaining to effective implementation of the right to bail under Section-167(2), Sections 436, Section- 436A of the CrPC or under any other special laws so that undertrials are released at the earliest. The Legal Services Authority shall ensure that those who cannot furnish bail bonds due to indigence are not subjected to incarceration only for that reason. Every person irrespective of their financial, social, economic condition shall get equal justice. The State under Article-39A is duty bound to provide legal aid to the poor, free of cost which is a crucial right granted by the Constitution of India.

Another way to reduce the burden of Court is to resort to the Alternative Dispute Resolution (ADR). ADR which is an out-of-Court settlement has gained momentum in India. ADR should be promoted in cases of civil, personal, and commercial in nature. ADR mechanisms may include arbitration, mediation, negotiation, Lok-Adalat, Judicial Settlement or a combination of any two or all three. The Nicaragua's prison population decreased by using ADR techniques as they allow settlement of minor criminal cases through mediation.²⁵ Another counterpart of ADR that is emerging is Online Dispute Resolution (ODR) which means resolving disputes through Information and communication technology. Using ODR eliminate geographical barriers, and also ensures a quick, economical and effective solution to disputes. The Apex Court in the case of *Meters and Instruments Private Limited v. Kanchan Mehta*²⁶, stated, "There appears to be need to consider categories of cases which can be partly or entirely concluded "online" without physical presence of the parties by simplifying procedures where seriously disputed questions are not required to be adjudicated." A technology driven dispute resolution will help reducing the overburdening of Courts, overcrowding of prisons and in turn, improve the efficiency of legal system. As opposed to keeping undertrials in prisons, Police may resort to electronic home monitoring of

²⁴ State of Madhya Pradesh v. Lakshmi Narayan, Criminal Appeal No. 349 of 2019.

²⁵ILANUD, Crime Criminal Justice and Prison in Latin America, The Rural Judicial Facilitators Program in Nicaragua – an Exemplary Model of Restorative Justice (2007).

²⁶ *Meters and Instruments (P) Ltd. v. Kanchan Mehta*, (2018) 1 SCC 560.

the offenders by using GPS or Radio Frequency technology. Other alternatives to physical confinement are to surrender passports, pledge financial papers, or take property as security to assure attendance of offender at the time of trial. During the COVID-19 lockdown, Delhi Courts have ordered release of various prisoners and the local police stations have been ordered to track them through video calls, sharing locations through Whatsapp and Google Maps. This is a revolutionary step which would help in reducing the overcrowding of prisons and has also paved the way for technology-driven monitoring of offenders which should be used more often after lockdown. One of the issues relating to under-trial prisoners is their transportation to Court for the trials which often delays the trials and also poses the risk of prisoner escaping the custody. The use of virtual Courts and mobile Courts can solve this problem. In Kenya, the system of mobile Courts wherein the Judges visit the prisons falling under their jurisdiction, has proven to be time and resource saving.²⁷ The Video Conferencing guidelines issued by the Delhi High Court has allowed recording of evidence in some cases, hearing of bail, remand matters through video conferencing and directed appropriate arrangements to be made in the prisons and Courts.²⁸ This is a welcoming step towards keeping pace with technology and will have undoubtedly far reaching consequences.

(C) Special care for special class of prisoners

It shall be the duty of the police officer making the arrest that no minor is lodged in the jail. Regular age-determination tests should be conducted on inmates whose age is between 18 and 21 years, in order to ensure no minor is lodged in prison. This should be followed by regular inspections from independent agencies, for instance, as per the directions of Hon'ble High Court of Delhi, National Commission for Protections of Child Rights makes monthly visits to various jails in Delhi in order to find out if there are persons lodged in such jails who should have been the beneficiaries of the Juvenile Justice Act and submits the reports to the Delhi Legal Services Authority for appropriate action.²⁹ Another, class of prisoners that need special attention is the mentally disabled prisoners. As per the provisions of The Mental Health Care Act of 2017, no prisoner with mental illness shall be lodged in jail.

As far as possible, Prison Authorities shall keep Transgenders in separate cells so that they are not subjected to any torture, violence and harassment. There must be provisions for special healthcare facilities as well as separate washrooms for them, to uphold their right to privacy and dignity. Kerala is the first and only state in India which has announced reserving

²⁷ <https://www.penalreform.org/blog/ten-african-solutions-problem-prison-overcrowding-africa>.

²⁸ http://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice_CQ84SWB5.PDF.

²⁹ Court on Its Own Motion v. Dept. of Women and Child Development, 2012 SCC OnLine Del 2774.

a separate block for such inmates.

(D) Prison and Community Participation

Every prisoner comes from a community and he returns to the community after serving sentence hence, his re-integration with the community is of vital importance. State shall undertake activities with NGOs, civil society members that increase the participation and involvement of prisoners. Inmates shall be given Parole and furlough liberally so that they do not disassociate from the society and keep up their ties with the family members. Prisons shall have adequate technological infrastructure that allows the inmates to communicate with the family/friends by phone calls or video conferencing. Instead of segregating the convicts from the society, State shall promote building Open Prisons. It helps in connecting the jail with the society. The idea underlying open prisons is to allow the prisoner to rehabilitate and re-integrate with the outside world so as to adapt to the change in circumstances when the term is over. Rajasthan has the highest number of open jails in India and the results are very promising. Despite the minimum security, no event of escape has been reported till date. In a progressive step, Tihar Jail Complex has inaugurated the first semi-open jail exclusively for female prisoners housing presently 10-15 inmates.

(E) Training to personnel

The Government should encourage the initiatives taken in the field of prison reforms by the Superintendents of Prisons, by recognizing and rewarding them. Further, professional skills and basic training of criminology, human behavior should be given to the prison staff as they play an important role in tackling the problems faced by inmates. They should be trained to see the identity of prisoners beyond their crime and make prison the Correctional Centers instead of detention centers. The Odisha Government has set up Mahatma Gandhi Academy of Prisons and Correctional Services for imparting training to the prison personnel. This is one progressive step towards prison reforms where they are equipped with the progressive skills to uphold the dignity of the inmates. Various reports have revealed that most of the prisons have shortage of prison staff and hence, the existing vacancies shall be filled. More women staff should be recruited for the welfare of women prisoners. There shall be mandatory periodic inspections by independent agencies like District Legal Services Authorities, State Human Rights Commissions, State Women Commissions and State Child Rights Commissions in every prison. The National Model Prison Manual, 2016 mandates appointment of 'Board of Visitors' in every prison who would regularly inspect the prisons to

ensure that the Prison Manual Rules are strictly followed.³⁰ The Supreme Court in a PIL³¹ has termed appointing of board of visitors as an absolute necessity and issued notice to all States/UTs to adhere to the National Model Prison Manual. It also provides for the setting up of a Grievance Redressal System by way of complaint box or complaint register in every prison which shall be only accessible by the independent agencies and not by the prison officials. Despite various guidelines issued by the Courts, a very few states/UTs have installed such complaint boxes. There shall be a separate provision for submitting complaints of serious nature for example- sexual abuse, torture etc especially in women cells.³² Further, cameras must be installed at the prominent places of the prison which serves the twin-purpose, one helps in surveillance and second, helps in overseeing that no torture is done. The periodic reports of cases of unnatural deaths occurred in the prison shall be sent to the National Human Rights Commission and shall be investigated by an independent investigative agency.

As a part of NALSA Scheme, various State Legal Services Authorities train Para-legal volunteers (law students, social workers etc.) who bridge the gap between the prisoners and the law enforcement agencies. These Para-legal volunteers, should be utilized to provide real time legal assistance either by 'on-call' or 'online mode' via phones or computer systems installed in the Legal Aid Room of prisons. Basic case follow-up, legal advice, counseling, legal awareness programmes, matters like remand, bail, appeal, etc. can be handled well by the trained PLVs under the guidance of Panel Lawyers. Law Colleges shall be encouraged to set up legal aid, legal awareness and legal literacy camps in prisons for raising awareness about the legal rights of prisoners. There shall be regular medical health checkups of the prisoners by the Prison Authorities. There should be a mandatory medical examination by registered medical practitioner before and after a person is remanded to custody, to ensure there are no cases of custodial violence during interrogation. Other than assistance from public healthcare institutes, the private health care institutes and medical colleges should be encouraged to set up regular health camps in prisons as a part of their CSR activities to raise the awareness on health and hygiene. There shall also be psychological assessment of all prisoners to identify those with mental illness and to give proper treatment.

V. CONCLUSION

A crime in India is treated as a crime against the State as the State is duty-bound to protect

³⁰ <https://wcd.nic.in/sites/default/files/Prison%20Report%20Compiled.pdf>

³¹ Inhuman Conditions in 1382 Prisons, In Re, 2018 SCC OnLine SC 821.

³² <https://wcd.nic.in/sites/default/files/Prison%20Report%20Compiled.pdf>.

society against crime. The objective underlying the punishment differs from nation to nation; it may be deterrent, punitive, retributive, reformative or an amalgamation of these philosophies. The State shall adopt a balanced approach as in the name of human rights of the prisoners, the sufferings of the victim cannot be dispensed with. Human Rights should be available to all, by the virtue of being a human. Prisoners do not shed their dignity and constitutional rights at the prison gate. Harsh punishments in some cases are crucial and in a few cases, it helps to deter the potential criminals but cannot be used as a strait jacket formula for all. The State shall endeavor to punish the criminals 'and also take the responsibility of reforming them. For instance if a person is a habitual burglar, he should be sentenced to the imprisonment as provided by the governing law but it is equally important to eradicate this habit, by providing him adequate counseling, imparting him necessary skills while he is in prison, so that he is able to earn for his livelihood after he is released. He should be given enough opportunities for rehabilitation so that he is not abandoned by the society. The State shall also undertake measures to spread community awareness about the prisons and prisoners to change the view of society about prisoners. Prisons shall be seen as social institutions in modern democracy. *"To improve prison conditions does not mean that prison life should be made soft; it means that it should be made human and sensible."*³³

³³ Jawahar Lal Nehru: India and the World- Prison Land, pp. 108-129.