
Health and Safety of Prisoners in India

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Abstract: 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. This paper majorly deals with the causes of the health hazards faced by the prisoners despite there being special rights provided to them. Further it deals with the measures to improve the present conditions of the Indian prisons.

Keywords: prison reforms, Indian prisoners, Indian prisons, health, safety

If people get sick, we take them to the hospital and give them the right medicine to get better. If people's behavior is sick, we bring them to the prison, but we forget the medicines.

– Sri Sri Ravi Shankar

INTRODUCTION

People believe that prisoners are sent to prison as punishment, and not for punishment. The implication of that is that the loss of an individual's right to liberty is enforced by containment in a closed environment. Thus, keeping the individual in the custody of the state, should not, however, have a deleterious effect on him. But in reality, this is, unfortunately, the case to some degree or another in many of the world's prisons.

Unalienable rights have been conferred upon the prisoners by international treaties and covenants, right to health care and most certainly the right not to become prone to communicable and other diseases in prison have been given to them. Even after all this recognition there is a loss of rights within custodial institutions, which continue to occur. All the public policies are meant to ensure the best possible living conditions for all members of the society, so that everyone can be healthy. But the sad part is that prisoners are always forgotten in this equation. They are in constant contact with all the kinds of people who come in and out of the prison every day. This constant movement in and out of prison makes it all the more important to control any contagious disease within the person so that it does not spread into the outside community.

The problem of health hazards in Indian prisons has been felt acutely right from the beginning of the present system in the middle of the last century. To begin with, the mortality rate among prison inmates was so high that the Jails Committee of 1864 found the number of persons who died in jails to be 46,309 in one decade. They attributed the main causes to the following factors:¹ 1) overcrowding, 2) bad ventilation, 3) bad conservancy, 4) bad drainage, 5) insufficiency of clothing, 6) sleeping on the ground, 7) deficiency of personal cleanliness, 8) bad water, 9) extraction of labor from unfit persons and 10) insufficient medical inspection.

The other component of the problem is the food given to the prisoners. The issue here is that the quality and quantity of food supplied must relate to the objective of the imprisonment. The present policy is that prisoners should be provided standard diet sufficient enough to preserve health and

¹ Indian Jails Committee Report (1864) 10.

strength. But how much of the prescribed food and of what quality eventually reaches the prisoner is a matter of speculation for it is common knowledge that corruption is rampant in jail administration.² In India, overcrowding and severe staff crunch has aggravated the main problem of hygiene. Prisoners in India are also not even tested for specific infectious diseases, although all prisoners undergo a medical examination when they begin serving their sentences.

The NHRC has also taken note of the inadequate medical facilities in various prisons of the country. Though prison rules made it mandatory to have a medical examination of the prisoner at the time of admission, but in most of the cases it has remained a mere formality. The commission directed all the States to test all the prisoners who were in custody for tuberculosis.³

CURRENT STATE OF INDIAN PRISONS

Overcrowded Prisons

In the late 1950s, an Indian government commission, the All India Jail Manual Committee, observed⁴: Almost all over India overcrowding in prisons has become a common problem. In some prisons the cells and barracks which were originally meant for accommodating inmates have been converted into store-rooms, godowns, work-shops, etc. The original authorized accommodation is thus shrinking whereas the daily average population and the total admission indicate a steady increase. As a consequence, overcrowding has assumed the proportions of a major problem for the Correctional Administration.⁵

Since then the problem of overcrowding increased gradually.

- **According to the INBA viewpoint:**⁶
 - An increase or spurt in the number of prisoners lodged in detention centers and jails in India is shown.
 - Further in the report, about 4.12 lakh prisoners, which included pre-trial detainees have been lodged in different jails in India. However, most of these prisoners come from the under-privileged sections of the society- marginalized or socially backward groups and don't have much knowledge about health and ultimately unhealthy lifestyles are being practiced by them.
 - It has been observed that a decent number of almost one-third of them remain lodged in detention facilities for an average time period of almost about three months. There is a comparatively healthy interaction that exists between prisoners of different detention facilities, between prisoners and the outside world and between prisoners and health care centers.
 - There was an excessive occurrence of illnesses like Sexually Transmitted Infections (STIs), HIV-AIDS, Hepatitis B and Hepatitis C etc. amongst the prisoners.
 - In a study conducted between 2007-2010, round 10 % of the detainees in Indian prisons suffered from HIV.
 - It was also discovered that HIV was higher amongst women detainees than male detainees- as 1.7 % male prisoners were found to be suffering from HIV as compared to 9.5 % women prisoners. Further it was observed that there has not been any major observation undertaken

² S.M. Afzal Qadri, *Criminology Penology and Victimology*, 330-332 (7th ed. Abhinandan Malik, 2017).

³ 1997-1998, NHRC Report.

⁴ *Prison Conditions in India*, Human Rights Watch, 1991, 36-38.

⁵ Report of all India Jail Manual Committee, 1957-9, para 38.

⁶ ("State of Hygiene in Indian Prisons | INBA Viewpoint", 2019).

with the aid of Indian prison officers to understand and get rid of this foremost hassle that persist amongst the prison inmates.

- In a study on “Prevention of Unfold of HIV Amongst Vulnerable Groups in South Asia” from United International Locations Office on Drug and Crimes – “63% of prisoners in India had a history of drug abuse”. This prevalence of substance abuse changed into anywhere between 8 to 63% of the prison population. Further there are high instances of unprotected sexual intercourse and rampant substance abuse amongst the prisoners in India, in the post release period. This has been termed as “high risk behavior”.
- Lack of conjugal life in prisons is the reason for prisoners to indulge in such acts of high risk. According to a study there might be almost 70 per cent detainees who are sexually partnered with many, even about 81% had indulged in unprotected sex.
- Suicidal rates in Indian prisons were abnormally high. It could be approximately attributed between 5-11 per cent of the total number of prison deaths. The major cause was the brutality by police.

There is an urgent need to undertake steps to create a robust and impactful prison health system in order to tackle a great deal of these health associated problems that persist in Indian prisons.

- **According to the Prison Statistics India 2015 Report:**⁷
 - Indian prisons are overcrowded with 14% more than the capacity. More than two-thirds of the inmates are undertrials. Chhattisgarh and Delhi are amongst the top three in the list with prisoners more than double the capacity.
 - The prisons are overcrowded by 77.9% in Meghalaya, by 68.8% in Uttar Pradesh and by 39.8% in Madhya Pradesh. UP had the highest number of undertrials (62,669), followed by Bihar (23,424) and Maharashtra (21,667).
 - In Bihar, 82% of prisoners were undertrials, being the highest among states.
 - The share of the prison population awaiting trial or sentencing in India is extremely high by international standards; for instance, it is 11% in the UK, 20% in the US and 29% in France.
 - More than 25% of undertrial prisoners in 16 out of 36 states and union territories have been detained for more than one year in 2014; Jammu and Kashmir with 54% is on the top in this list, followed by Goa (50%) and Gujarat (42%). Jails across the country will remain overcrowded in the absence of any effective systemic intervention as there are a huge number of cases pending.
 - Nearly 43% of the undertrial population accounting to roughly 1.22 lakh undertrials remains detained for more than six months to more than five years by the end of 2014. In reality many of the undertrials have spent more years in prison than the actual term they would have served had they been convicted.

⁷ Why We Need to Talk About the Condition of India's Prisons, The Wire, <https://thewire.in/uncategorised/india-prison-conditions>.

- **According to NCRB Records:**⁸
 - Out of these 2.82 lakh undertrial inmates, over 55% are Muslims, Dalits and tribal. Collectively, these three communities form a population of 39% with a share of 14.2%, 16.6% and 8.6% of population respectively according to 2011 census. But the proportion of prisoners, both convicted and undertrials, from these communities is larger than their share in the country's population.
 - As far as conviction is concerned, they seem to get convicted faster than the rest as they account for 50.4% of all convicts.
 - Amongst Muslims, the community's share of convicts is 15.8%, slightly above their representation in population, but their share among undertrials (20.9%) is far higher.
 - Among all convicts, scheduled castes and scheduled tribes have a population of 20.9% and 13.7% respectively, which is fairly higher.

The fundamental rights guaranteed by the Indian constitution, undertrials are presumed innocent till proven guilty. But in reality, they are often subjected to psychological and physical torture during detention and exposed to unhuman living conditions and prison violence which is against the Criminal Procedure Code.

Many lose their family neighborhood and community ties and, mostly their livelihoods. Furthermore, prison time attaches social stigma to them as individuals and as community members. Even their families, relatives and community are prone to disgrace and humiliation. Even after they are acquitted, under-trials discover their employability critically jeopardized for none of their faults.

Undertrials have a tendency to have restrained access to legal representatives. Many undertrials are poor people accused of trivial offences, locked in prisons for long intervals because of the fact that they're not aware about their rights and cannot get access to proper legal resource. Lack of financial resources and a robust support system, and also the limited capability to communicate with lawyers in the jail premises which hamper their ability to defend themselves from the charges put on them. Despite there being a landmark ruling by the Supreme Court that Article 21 of the constitution entitles prisoners to a fair and speedy trial as a part of their fundamental right to life and liberty. Due to this lack and access of proper systems and procedures there are overcrowded jails which lead to health hazards.

Although they are given the rights under Section 55A of the Criminal Procedure Code, 1973 as arrested person has to be medically examined (Sec 54,55A) which means that the person who is arrested should be given the right to have his body examined by the medical officer when is produced before a magistrate or at any time under custody, with a view to enabling him to establish that the offence with which he is charged was not committed by him or that he was subjected to the physical torture. With the insertion of 55A, "it shall be duty of a person having custody of an accused to take reasonable care of the health and safety of the accused" and it is an attempt to take care of "custodial violence" (torture, rape, death in police custody/lock-up) to some extent.⁹ The law is very clear with the rights given to the prisoners. It provides proper medical examination so that the other inmates do not become prone to communicable diseases and further the prisoners are not subject to

⁸ Over 55 per cent of undertrials Muslim, Dalit or tribal: NCRB. Deeptiman Tiwary <https://indianexpress.com/article/india/india-news-india/over-55-per-cent-of-undertrials-muslim-dalit-or-tribal-ncrb-3731633/>.

⁹ All about Procedure of Arrest under Code of Criminal Procedure By: Komal Srivastava. Latestlawsteam-<https://www.latestlaws.com/articles/all-about-procedure-of-arrest-under-code-of-criminal-procedure-by-komal-srivastava/>.

any violence which may be rape due to lack of conjugal life, torture, murder due to depression or anger or anxiety as they may be locked up for none of their faults, custodial death etc. There can be infinite number of reasons to take proper health and safety measures for the prisoners.

Severe Staff Crunch

- **According to a report**
 - 33% of the entire requirement of jail officers still lies vacant, almost 36% of vacancy for supervising officers remains unfulfilled.
 - Delhi's Tihar Jail ranks third in terms of staff crunch. The manpower recruited in this prison is sort of 50% short of its real requirement. Delhi has the maximum over-crowded jails and suffers from acute scarcity of jail guards and senior supervisory workforce because of the reason that it is the country's capital.
 - States like Uttar Pradesh, Bihar and Jharkhand have the most scantily guarded jails, seeing over 65% group of workers vacancies among jailers, prison guards and supervisory positions.
 - In the absence of adequate jail personnel, overcrowding of prisons leads to rampant violence and other criminal activities in the jails. In separate incidents, 32 prisoners escaped in Punjab in 2015, even as in Rajasthan, the wide variety of such cases has risen to 18. Maharashtra witnessed the break out of 18 prisoners.
 - In 2015, on an average, 4 prisoners died each day. A count of 1584 prisoners died in jails, 1,469 of which were natural deaths and the remaining 115 had been attributed to unnatural causes. Two-thirds of all unnatural deaths (77) had been stated to be suicides, whilst fellow inmates murdered eleven, 9 of which have been in jails in Delhi. About 12,727 human beings are pronounced to have died in prisons between 2001 and 2010.

If a professional gangster or a white-collar criminal is willing to grease the palms of the prison official, he could have mobile phones, liquor and weapons within the jail premises. On the other hand, the socio-economically disadvantaged undertrials may be deprived in their simple human dignity on the palms of the state machinery.

No wonder the department of prisons has always been a sought-after portfolio for a number of India's elected representatives with rankings of criminal cases registered against them.

In the absence of a sturdy Whistle-blower protection Act and structural changes to address the problems of overcrowding and under-staffing, India's prisons will remain heaven for politically connected criminals and hell for socio-economically disadvantaged undertrials, some regular media uproars notwithstanding.

MEASURES TO IMPROVE PRISON HYGIENE

Measures that can be followed:

- **Producing extra finances:** Prison authorities can undertake measures to lessen staff by increasing reliance on mechanical or electric ways as a safe and efficient opportunity. These would not only be most effective in cost cutting but additionally make sure that extra budget is saved for the purpose of enhancing prison services- hygiene based totally as properly. Furthermore, jails can also attract profits, via involving and rewarding inmates for commencing and building upon possible business means.
- **Greater governmental participation:** Prison administration should be made more efficient by the involvement of concerning officers on a larger scale. A dedicated and trained prison cadre, regular visits and inspections with the aid of politicians, governors and ministers in addition to

regular tracking of jail situations can help in keeping hygiene and safety of prisoners in detention centers.

- **Strategy to overcrowding:** There's an urgent need to build up and ramp up current prison facilities. A means of doing that should be to encourage building up of out of date and ignored sections of prisons into new blocks, organization of shelves and possessions. Open camps and open prisons can also be opened up after conducting a thorough security assessment. Hygiene levels can be maintained through better utilization of resources which can open up avenues for better utilization of resources.
- **Involving private parties-** Hygiene conditions and improved sanitary can be maintained if potential NGOs can work in tandem with prison management. By actively involving volunteers, detainees can be encouraged to properly cooperate with prison officials to improve the sanitary conditions in prisons.
- **Developing cordial relationship amongst the inmates and officials-** Through encouraging amicable relationship among the prison officers and detainees, i.e. one based on co-operation and not competition, a more conducive environment can be generated for the better management of the prison. Detainees must be adequately compensated for their good and positive behavior. By encouraging detainees to maintain certain level of hygiene and rewarding them for the same, not only prisons will stay clean and hygienic enough, however additionally create chances of a healthier character contributing to the society in his post detention period.

CONCLUSION

Thus, in conclusion, I would like to state:

There is an urgent need to adopt measures to overhaul the prevailing sanitary and hygienic conditions in Indian jails.

There are several measures undertaken in the past; the Mulla committee record and the Bureau of Police studies and improvement (BPRD)'s model prison manual. These reports and manuals came up with huge and significant measures and norms, that were meant to make detention centers humane and hygienic.

The prison department lacks good and adequate facilities, personnel and funds. These are crucial needs and should no longer be overlooked or to be precise can no longer be overlooked.

Furthermore, steps should be undertaken to promote a harmonious relationship among the jail guards, officers and inmates. It's far crucial, that there should to be a sense of harmony to make sure that there aren't any vested hobbies/interests and/or less than friendly relations since they adversely affect the functioning of jails in India.

There's a need to ensure that alternate complaint mechanisms are set up that permit prisoners to approach essential officers and share their distress.

However, it's to be mentioned that implementation of the aforementioned manuals and norms have been virtually non-existent. There have additionally been instances of maladministration and non-administration, which has most effectively worsened the living conditions in jails. Furthermore, these people suffer from several potential health risks all through and also post their detention period.

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