

## ARE PRISON REFORMS MERELY A PAPER VICTORY?

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### ABSTRACT

*“A nation should not be judged by how it treats its highest citizen, but its lowest ones”*

*- Nelson Mandela*

*The United Nations Charter serves as a guide for the adoption of human rights norms for every member country. The second paragraph of the Preamble to the UN Charter states that “one of the principle aims of the UN is: to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women, and of nations large and small”.<sup>1</sup> (United Nations, Human Rights and Prisons Manual on Human Rights Training for Prison Officials ) The Constitution of India has guaranteed every citizen with fundamental rights and equal treatment before the law. However, the prisoners are deprived of their basic human rights. They suffer a variety of pains throughout their imprisonment in the name of punishment, including mistreatment, third-degree torture, overcrowding, unsanitary conditions, etc. No one pays heed to their sufferings and their stories remain suppressed inside the walls of the prison itself. Prison reform is necessary to ensure that the human rights of prisoners are protected and their prospects for social reintegration are increased, in compliance with relevant international standards and norms.<sup>2</sup> Several prison reforms took place in India and the recommendations of various committees appear to be very progressive. Even so, the implementation fails to solve the burning issues of prisons. This research work intends to study the international legislation, findings of various prison reform committees, lacunas in the implementation of recommendations of reform committees, alternatives to imprisonment along with various judgments given by the Supreme Court and recommendations. With the use of the doctrinal research method, the research study has been concluded.*

**Keywords:** Prison, Prisoners’ Rights, Prison Reform, Imprisonment, Implementation

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<sup>1</sup> United Nations, *Human Rights and Prisons Manual on Human Rights Training for Prison Officials*, OHCHR, 2005, <https://www.ohchr.org/Documents/Publications/training11en.pdf>

<sup>2</sup> United Nations, *Why Promote Prison reform*, UN Office on Drugs & Crime, <https://www.unodc.org/unodc/en/justice-and-prison-reform/prison-reform-and-alternatives-to-imprisonment.html> (Last Visited on Jan. 25, 2023)

## **INTRODUCTION**

Crime can be described as an unlawful act or omission, or behaviour which is punishable by law. To punish the criminals, there are various kinds of punishments mentioned under section 53 of the Indian Penal Code 1860, one of them is imprisonment which contributes to the reduced crime rate by expulsion of criminals from society. It is a prison where criminals can undergo reform and rehabilitation. The terms "prison" and "police, law and order" are included in the seventh schedule's State List for India. Article 14 requires State to “*ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.*”<sup>3</sup>

The primary duty of all civil societies is to punish offenders. There is historical evidence of detention centres. Penitentiaries have existed for a while now, although not always. Complete isolation and imprisonment, it was thought, would compel the wrongdoers to alter their behaviour. But experience had given a false impression of this urge, and regular imprisonment had the opposite effect. Social sciences advancements made it evident that imprisonment alone would not be sufficient to rehabilitate alleged offenders.

Prisons are not ordinary places. The ultimate goal of sending criminals to prison is to turn them into moral, law-abiding citizens, but in practise, the prison system uses force and coercive methods to reform the prisoners. Prisoners are denied their liberty and the chance to interact with their loved ones privately. Because of this, when convicts are locked up, their behavior alters, and as soon as they are released, they are drawn back to crime. Presently, there is an emphasis on the conversion of prisoners into useful members of society. By bringing improvements to prisons, this objective can be achieved in a number of ways.

Today's prisons are considered more like correctional homes, which primarily suggests that there is a greater emphasis on prisoner reformation through punishment. To accomplish this, it is necessary to make jails ‘houses for reformation’ for the inmates. In addition to emphasizing social and ethical norms for reintegration into society after release, facilities for education, recreation, and job training are needed for prisoners. This will assist in providing support to them after their release.

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<sup>3</sup>Bureau of Police Research and Development Ministry of Home Affairs, *Handbook on Prisoner's Rights & Obligations*, Page 24, [https://bprd.nic.in/WriteReadData/News/202208210931423734890handbookonprisonersrightsandobligation\(1\).pdf](https://bprd.nic.in/WriteReadData/News/202208210931423734890handbookonprisonersrightsandobligation(1).pdf) (Last Visited on Jan. 26, 2023)

The harshest treatment received by political prisoners during their time in prison in India led to the need for prison reforms, which did not originate from the social movement. In the November 1947 issue of Harijan, Mahatma Gandhi wrote, “*All criminals should be treated as patients and the jails should be hospitals admitting this class of patients for treatment and cure. No one commits crime for the fun of it. It is a sign of a diseased mind.*”<sup>4</sup>

## **DEFINITION AND MEANING OF PRISON**

The Online Oxford English dictionary defines prison as, “*A building to which people are legally committed as a punishment for a crime or while awaiting trial.*”<sup>5</sup>

Prison means “*any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners, and includes all lands.*”<sup>6</sup> The administration of prisons is the responsibility of the State Governments, who carry it out in accordance with their various State Governments' Prison Manuals and the Prisons Act of 1894. As a result, it is mostly the province of the states to alter the existing prison laws, rules, and regulations.

Although today's prisons should serve more than only custodial and coercive purposes to ensure that the laws and court orders are followed by the populace, these purposes nevertheless tend to be more coercive and intrusive than corrective and rehabilitative.

Justice V.R. Krishna Iyer, a former Supreme Court Justice who is credited for modernising the criminal justice system, has quoted, “*In our world, prisoners are still laboratories of torture, warehouses in which human commodities are sadistically kept and where spectrums of inmates range from driftwood juveniles to heroic dissenters,*”<sup>7</sup>

Following are the existing statutes that govern the regulation and management of prisons in the country:

1. The Indian Penal Code, 1860.
2. The Prisons Act, 1894.

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<sup>4</sup> Sushant Kulkarni, *How Mahatma Gandhi has influenced the correctional policy in many Indian jails*, THE INDIAN EXPRESS, (Jan. 26, 2023, 12:46 p.m.) <https://indianexpress.com/article/express-sunday-eye/gandhi-jayanti-gandhi-150-years-jalna-jail-strait-is-the-gate-6034184/>

<sup>5</sup> OXFORD LEARNER'S DICTIONARIES, <https://www.oxfordlearnersdictionaries.com/definition/english/prison> (last visited Jan. 26, 2023)

<sup>6</sup> The Prisons Act, 1894, No. IX, Acts of Parliament, 1894 (India).

<sup>7</sup> *Judge comes to rescue of prisoners*, THE HINDU, (Jan. 26, 12:53 p.m.) <https://www.thehindu.com/news/cities/Madurai/Judge-comes-to-rescue-of-prisoners/article14580242.ece>

3. The Prisoners Act, 1900.
4. The Identification of Prisoners Act, 1920.
5. Constitution of India, 1950
6. The Transfer of Prisoners Act, 1950.
7. The Representation of People's Act, 1951.
8. The Prisoners (Attendance in Courts) Act, 1955.
9. The Probation of Offenders Act, 1958.
10. The Code of Criminal Procedure, 1973.
11. The Mental Health Act, 1987.
12. The Juvenile Justice (Care & Protection) Act, 2000.
13. The Repatriation of Prisoners Act, 2003.
14. Model Prison Manual (2003).

## **INTERNATIONAL LEGISLATIONS**

On December 10, 1948, the General Assembly of the United Nations (UN) adopted the Universal Declaration of Human Rights (UDHR) to promote human rights across the world. According to Article 3 of the UDHR, "*Everyone has the right to life, liberty and security of person.*"<sup>8</sup> One of the fundamental human rights is the right to life, which is guaranteed to both prisoners and free men. In jails, prisoners are not subjected to torture or other cruel or inhumane treatment. The text of UDHR Article 5, which specifies that, would make it apparent, "*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*"<sup>9</sup>

### **The International Covenant on Civil And Political Rights**

The International Covenant on Civil and Political Rights is one of the universal instruments on protection of rights of prisoners. On 10<sup>th</sup> April, 1979 India signed the covenant and declaration II states, "*With reference to article 9 of the International Covenant on Civil and Political*

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<sup>8</sup> United Nations, *Universal Declaration of Human Rights, 1948*, Art. 3, [https://nhrc.nic.in/sites/default/files/UDHR\\_Eng\\_0.pdf](https://nhrc.nic.in/sites/default/files/UDHR_Eng_0.pdf)

<sup>9</sup> United Nations, *Universal Declaration of Human Rights, 1948*, Art. 5, [https://nhrc.nic.in/sites/default/files/UDHR\\_Eng\\_0.pdf](https://nhrc.nic.in/sites/default/files/UDHR_Eng_0.pdf)

*Rights, the Government of the Republic of India takes the position that the provisions of the article shall be so applied as to be in consonance with the provisions of clauses (3) to (7) of article 22 of the Constitution of India. Further under the Indian Legal System, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State.”<sup>10</sup>*

### **The United Nations Standard Minimum Rules for the Treatment of Prisoners**

Standard Minimum Rules for the Treatment of Prisoners was adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.<sup>11</sup> There are numerous guidelines and rules stated in this document covering prisoners' rights and their treatment.

The United Nations Standard Minimum Rules for the Treatment of Prisoners also established detailed guidelines for how to treat prisoners detained without cause, those who are awaiting a sentence, those who are insane or mentally ill, those who are in custody pending trial, civil prisoners, and those who are under arrest.

### **The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**

The convention provides for the setting up of an international committee empowered to visit all places where persons are deprived of their liberty by a public authority. The committee, composed of independent experts, may make recommendations, and suggest improvements in order to strengthen, if necessary, the protection of persons visited from torture and from inhuman or degrading treatment or punishment.<sup>12</sup>

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<sup>10</sup> Chapter IV Human Rights 3. International Covenant on Economic, Social and Cultural Rights  
<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

<sup>11</sup> Standard Minimum Rules for the Treatment of Prisoners  
[https://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_Treatment\\_of\\_Prisoners.pdf](https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf)

<sup>12</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment  
<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

### **United Nations Basic Principles for the Treatment of Prisoners**

Basic Principles for the Treatment of Prisoners was adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990.<sup>13</sup> It stated that all inmates should be treated with dignity for their inherent worth as human beings, without any form of discrimination. All the fundamental freedoms and human rights outlined in universally accepted international treaties should be extended to them, with an exception of the freedom of movement.

### **The Nelson Mandela Rules**

The Standard Minimum Rules for the Treatment of Prisoners were adopted in 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders. This was a crucial beginning, and the UN General Assembly expanded the standards in 2015, naming them the "Nelson Mandela Rules" in honour of perhaps the most well-known prisoner of the 20th century. The Nelson Mandela Rules emphasize that the provision of health care for prisoners is a State responsibility, and that the relationship between health-care professionals and prisoners is governed by the same ethical and professional standards as those applicable to patients in the community. Moreover, the Rules oblige prison health-care services to evaluate and care for the physical and mental health of prisoners, including those with special needs.<sup>14</sup>

## **PRISON REFORMS IN INDIA POST-INDEPENDENCE**

*"It is not the prisoners that need reformation, it is the prisons"* – Oscar Wilde

### **1. The Pakwasa Committee, 1949<sup>15</sup>**

The Committee proposed the use of prisoners for road construction without any vigilance supervision over them. The prisoners were given payments in the form of wages for their labour. This was the first time the concept of wages to prisoners was introduced. As a result, several liberal provisions were also implemented in prisons, under which prisoners who well behaved during the tenure of their imprisonment were rewarded by suitable reduction in the

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<sup>13</sup> Basic Principles for the Treatment of Prisoners <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-treatment-prisoners> (Last visited Jan. 26, 2023, 1:00 p.m.)

<sup>14</sup> Andrew Gilmour, *The Nelson Mandela Rules: Protecting the Rights of Persons Deprived of Liberty*, UNITED NATIONS UN CHRONICLE, <https://www.un.org/en/un-chronicle/nelson-mandela-rules-protecting-rights-persons-deprived-liberty> (Last visited Jan. 26, 2023, 1:18 p.m.)

<sup>15</sup> Members' Reference Service Larrdis Lok Sabha Secretariat, New Delhi, *Prison Reforms In India*, No.23/RN/Ref/July/2017, [http://parliamentlibraryindia.nic.in/writereaddata/Library/Reference%20Notes/Prison\\_reforms\\_in\\_India.pdf](http://parliamentlibraryindia.nic.in/writereaddata/Library/Reference%20Notes/Prison_reforms_in_India.pdf)

period of their sentence. In Lucknow, a Model Jail was also built in 1949, where prisoners were forced to work on domestic markets and handloom machines.

## **2. Dr. W.C. Reckless**

A United Nations expert in crime prevention and correctional reforms of offenders was called by the Indian government to conduct a study on prison administration and make policy reform recommendations in 1951. He pleaded for the conversion of jails into reformation centres in his paper titled "*Jail Administration in India.*" He suggested updating outdated jail manuals as well. The recommendations of Dr. Reckless for prison reform were likewise accepted by the Eighth Conference of Inspectors General of Prisons in 1952.<sup>16</sup>

Accordingly, in 1957, Government of India appointed All India Jail Manual Committee for the preparation of Model Prison Manual.<sup>17</sup>

## **3. All India Jail Manual Committee, 1957<sup>18</sup>**

Based on advice from Dr. W. C. Reckless, All India Jail Manual committee was established in 1957 to draft a Model Prison Manual. Dr. Reckless emphasised the use of rehabilitative strategies like probation and parole to lessen the strain on jails. The committee submitted its report in 1960s.

Central Bureau of Correctional Services was established at the federal level in 1961, which was a significant development (later renamed the National Institute of Social Defence in 1975). In addition to assisting and advising states on social security-related matters, this was the first central organisation to include social safeguard research, planning, recordkeeping, and other aspects.

## **4. Mulla Committee, 1980**

In 1980, the Indian government gave Mr. Justice Anand Narain Mulla permission to chair an All India Jail Reforms Committee. For India's jail system to be modernized, the Committee recommended the creation of a National Prison Commission. It emphasized the necessity of finding a federal and state solution to the ongoing disagreement over jail administration. For

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<sup>16</sup> WEST BENGAL CORRECTIONAL SERVICES, <http://wbcorrectionalservices.gov.in/history05.html> (last visited Jan. 26, 2023)

<sup>17</sup> Saloni Maheshwari and Surbhi Agrawal, *Legal Backdrop of Prison Reforms*, IPLEADERS, (Nov. 11, 2022, 11:30 a.m.) <https://blog.ipleaders.in/legal-backdrop-prison-reforms/>

<sup>18</sup> Bureau Of Police Research & Development Ministry of Home Affairs, *Implementation Of The Recommendations Of All-India Committee On Jail Reform*, Volume 1, (1980-83), <https://www.mha.gov.in/MHA1/PrisonReforms/NewPDF/Mulla%20Committee%20-implementation%20of%20recommendations%20-Vol%20I.pdf>

the jail employees to be properly trained into various cadres, the Mulla Committee proposed an all-India service named the Indian Prisons and Correctional Service be established for the training and development of prison officials. The Committee recommended –

- a. Review of laws relating to prison management,
- b. Recruitment policies,
- c. Living conditions in jail,
- d. Systems of open-air prisons,
- e. Remission and specialized treatment for women, juveniles and the sick.

The Committee's major goal was to assess the laws, regulations, and policies with the goal of sustaining the social system and rehabilitating the offenders. To create Indian Prisons and Correctional Service as a national service for hiring prison guards. Some of the recommendations were goal-oriented while some others were actionable. A prisoner's benefits package should include everything from imprisonment through parole and rehabilitation.<sup>19</sup>

### **5. Krishna Iyer Committee, 1987**

In 1987, the Justice Krishna Iyer Committee was appointed by the Indian government to investigate the conditions of women prisoners. It has been suggested that more women join the police force due to their special role in dealing with women and children's offenders. A new Section 436-A of the Code of Criminal Procedure was added, which stipulates that the Court may release an under-trial offender on his personal bond, with or without sureties, if he has been detained for a period equivalent to one-half the maximum period of imprisonment allowed for that offence.<sup>20</sup>

### **6. The Repatriation of Prisoners Act, 2003**

The Indian government passed the Repatriation of Prisoners Act, 2003 to make it easier to transfer prisoners from India to other countries and areas. According to the Act, it is the responsibility of the Indian Government to arrange for the transfer of a prisoner who is currently serving a sentence given by a Criminal Court order. The transfer agreement has been signed by both nations, but it will not go into force until both nations have ratified it.<sup>21</sup>

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<sup>19</sup> Implementation of the recommendations of All-India Committee on jail reform <https://www.mha.gov.in/MHA1/PrisonReforms/NewPDF/Mulla%20Committee%20-implementation%20of%20recommendations%20-Vol%20I.pdf>

<sup>20</sup> Parliamentary Committee on Empowerment of Women [http://wbcorrectionalservices.gov.in/pdf/empowerment\\_of\\_women.pdf](http://wbcorrectionalservices.gov.in/pdf/empowerment_of_women.pdf)

<sup>21</sup> The Repatriation Of Prisoners Act, 2003 <https://legislative.gov.in/sites/default/files/A2003-49.pdf>



### **7. National Policy on Prison Reforms and Correctional Administration, 2007**

It recommended that Prisons should be added to the concurrent list, and the constitution should be amended to contain ideas about how to run prisons and treat people who are undergoing trials under the Directive Principles of State Policy. The adoption of a comprehensive and unified prison law. Each state's Department of Prisons and Correctional Services, along with UT, will be independent. All the aforementioned clauses were written into policy.<sup>22</sup>

### **8. Model Prison Manual, 2016<sup>23</sup>**

The Bureau of Police Research and Development, Ministry of Home Affairs Government of India prepared a Model Prison Manual in 2016; it is a thorough document that addresses a variety of subjects, including management of incarceration, basic healthcare, education in jails, legal assistance, skills training, computerization, and technical training programs. The Supreme Court mandated that the Department of Justice look into many aspects of jail reform nationwide and offer answers to the Inhuman Conditions in the 1382 Prisons case. The Court described a variety of issues, including supporting open jails, writing guides for prison administrators, and filling staffing gaps in prisons. In 2005, a committee was led by the director general of the bureau of police research and development. The Justice Mulla Committee Report and the Justice Krishna Iyer Committee Report were used by this committee to make a variety of fresh and unique suggestions. In 2007, a draft of a national policy on correctional administration and prison reforms was also produced.

### **9. Justice Amaitava Roy panel on prison reforms, 2020<sup>24</sup>**

In 2018, the Supreme Court appointed this panel. The committee's report was made public in February 2020 and contained several significant recommendations. Following are the same:

- Due to overcrowding, petty offences ought to be handled in special fast-track courts. A minimum of one attorney should be present for every thirty prisoners. The hiring process for available positions should start as soon as the Supreme Court issues directives.
- Video conferencing mode should be used for trials of prisoners.
- To open semi open prison.

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<sup>22</sup> BUREAU OF POLICE RESEARCH AND DEVELOPMENT, MINISTRY OF HOME AFFAIRS, <https://bprd.nic.in/WriteReadData/userfiles/file/5261991522-Part%20I.pdf>

<sup>23</sup> BUREAU OF POLICE RESEARCH AND DEVELOPMENT, MINISTRY OF HOME AFFAIRS, <https://bprd.nic.in> (Lat visited Jan. 26, 2023)

<sup>24</sup> Krishnadas Rajagopal, *Supreme Court Panel Recommends Several Prison Reforms*, THE HINDU, Dec 4, 2021, (Jan. 26, 2023, 6:30 p.m.) <https://www.thehindu.com/news/national/supreme-court-panel-recommends-several-prison-reforms/article61635639.ece>

- To help a new convict get through his first week in prison, he/she must be entitled to one free phone call every day to his family members.
- Investigating into additional alternative punishments is also necessary.

Despite the aforesaid, one has no option but to keep raising concerns and suggestions towards the prison reforms.

## **TECHNIQUES OF ALTERNATIVES TO PRISON:**

### **1. Probation**

Probation is the first stage in the correctional system of an offender. It is an alternative non-custodial method of correction. Under probation, the accused is discharged into the community subject to certain terms and conditions which are monitored by the Probation Officers. He does not enjoy the same level of liberty as that of a normal citizen. Court judges diligently grant probation instead of imprisonment. Normally, it is observed that probation is allowed for first time or low risk offenders only.<sup>25</sup>

### **2. Parole**

The word parole originates from French expression "*je donne ma parole*," which means "*I give my word*". Parole is a temporary release for prisoners and comes with conditions to be followed by the prisoner during that period. It is an opportunity for prisoners to reintegrate in society and interact with their relatives, friends and family. For a specific time period, it necessitates routine reporting to the authorities.<sup>26</sup> It is given to the offender who has already completed some part of their sentence. It enables the prisoner to take care of family issues and build a successful life for himself or his family.

### **3. Furlough**

Furlough is granted in cases of long-term imprisonment. During a prisoner's furlough period, their sentence is deemed to have been reduced. It should be permitted on a regular basis solely to allow the prisoner to keep up with family and friends and to offset the negative effects of a protracted sentence.

'*Furlough not a legal right*,' the Supreme Court bench of Dr. D.Y. Chandrachud and B.V. Nagarathna, JJ has formulated "broad, general" principles governing rules for granting parole

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<sup>25</sup> GIRISH KATHPALIA, CRIMINOLOGY AND PRISON REFORMS, 2014, Page 235.

<sup>26</sup> *Id.* at 238.

and furlough, holding that parole and furlough are distinct in nature and that although furlough can be claimed without a reason, the prisoner does not have an absolute legal right to claim furlough.<sup>27</sup>

#### 4. Pardon

The victim is not permitted to grant pardon under Indian law because crimes are committed against the State. According to Article 72 and Article 161 of the Constitution, the Head of the State, which is either the President of India or the Governor of the State, has the authority to give a pardon or executive clemency. Additionally, state governments commute all prisoner categories' sentences in remembrance of particular noteworthy occasions. As a result, convicted criminals' terms of imprisonment are reduced, which lowers the overall population of prisons. With a view to rationalise the grounds for pardon, the Supreme Court is also examining the issue of pardons being granted by the heads of state governments.

#### 5. Open prisons

The Maharashtra and Tamil Nadu Prison Manuals defined the term “open prison” as “*any place so used permanently (or temporarily) under any order of the State Government for the detention of prisoners [under clause (1) of section 3 of the Prisons Act, 1894].*”<sup>28</sup> There are total 26 open prisons in India, each with a capacity of a 4353. Based on their good behaviour, inmates serving life sentences are transferred to open prisons. By creating a sense of responsibility in the individual, open prisons restore the individual's dignity and give them a sense of self-confidence and self-reliance.

Sanjay Phadtare, the technical officer, prisons (agriculture), Pune told TOI, “*Each day, about 30 inmates from Yerawada Central Prison’s open jail visit the fields. The prisons department provides packed food to these inmates at the College of Agriculture.*”<sup>29</sup> However, it is suggested that open prisons should also have an industrial or manufacturing base, along with agricultural bases. Women should also be encouraged to use open prisons.

#### 6. Work Release

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<sup>27</sup>Prachi Bharadwaj, ‘Furlough not a legal right’: Supreme Court explains difference between Parole and furlough, SCCONLINE, (Jan. 26, 2023), <https://www.scconline.com/blog/post/2021/10/21/furlough-not-a-legal-right-supreme-court-explains-difference-between-parole-and-furlough/>

<sup>28</sup>Shreya Chatterjee, *Open Prison System in India and Its Significance*, THE AMICUS QRIAE, (Jan. 26, 2023, 6:40 p.m.)[https://theamikusrqiae.com/open-prison-system-in-india-and-its-significance/#\\_ftn9](https://theamikusrqiae.com/open-prison-system-in-india-and-its-significance/#_ftn9)

<sup>29</sup>Yerawada Prison Inmates to learn farming at agricultural college, TIMES OF INDIA (Jan. 26, 2023, 6:15 p.m.)<https://timesofindia.indiatimes.com/city/pune/yerawada-prison-inmates-to-learn-farming-at-agri-college/articleshow/62974102.cms>

A work release programme enables prisoners who have a good history record of behaviour to work outside the jail or prison during the weekends while still serving their sentences. Former prisoners will have the chance to reintegrate into society and acquire the skills necessary to be responsible citizens with the aid of the work release programme. Prisoners who are a good fit for this programme are also prepared for their future, which includes returning to their neighbourhood and place of employment without losing their jobs. Additionally, it gives these prisoners a platform to bounce back from the losses associated with imprisonment.

## **7. Vipassana**

The art of Vipassana, a meditation technique of self-realization through self-observation, encourages intentional lifestyle choices, improves mental focus, and allows for deeper psychological analysis to result in long-lasting behavioural changes. It is being used as a tool for reform in prisons of India, the United States, and other nations with an ultimate goal of lowering recidivism.

Vipassana is also learnt by the police and prison administrators in India to change the prison atmosphere and fostering internal transformation in inmates. It even makes police morally responsible towards their duty. The practise is most advantageous to released prisoners since vipassana helps them learn how to behave morally and responsibly in society.

## **JUDICIAL PRONOUNCEMENTS ON PRISON REFORMS IN INDIA**

Some precedents by the Indian Judicial System which have contributed to the treatment of prisoners and to ensuring their protection and security are:

### **1. Sunil Batra V/s. Delhi Administration<sup>30</sup>**

The Supreme Court held that, prisoners have freedom to every fundamental right that is compatible with their confinement.

In Sunil Batra, the Supreme Court made the following observation in order to highlight the importance of providing humane treatment to prisoners and defending their fundamental human rights: “*Fundamental rights do not flee the persons as he enters the prison although they may suffer shrinkage necessitated by incarceration.*”

The court also outlined the prisoners' substantive and procedural rights, stating that “*infliction may assume numerous protean forms aside from physical assaults. Transfer to a faraway*

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<sup>30</sup>Sunil Batra v. Delhi Administration, 1980 AIR 1579

*prison where visits or the company of friends or relatives may be interrupted, placement in a solitary cell, denial of a vital amenity and, occasionally, the more horrifying allotment degrading labour, assigning him to a desperate or tough gang and the like, may be punitive in effect. Every such affiliation or abridgment is an infraction of liberty or life in its wider sense and cannot be sustained.”*

## **2. Sheela Barse V/s. State of Maharashtra<sup>31</sup>**

The Supreme Court ordered that *“those vulnerable victims of prison injustice shall receive legal counsel at the state's expense and be safeguarded from torture and other cruel treatment in response to a complaint of custodial violence against female inmates in jails.”*

The court also ruled that prisoner interviews are required since otherwise accurate data may not be gathered, but such access must be supervised and regulated.

## **3. D. K. Basu V/s. State of West Bengal<sup>32</sup>**

According to the Supreme Court, the friend or relative of the suspect must be immediately told that he has been arrested. The purpose of this communication is very clear.

The accused's family or friends can start attempting to gather information about the case's details, contact an attorney, build a defence against a request for remand, and make the required arrangements for bail.

## **4. Rudul Sah V/s. State of Bihar<sup>33</sup>**

The ‘jurisprudence of state liability’ was discussed and refined by the Court. It is considered particularly important as it led to the emergence of compensatory jurisprudence for the violation of fundamental rights under the Constitution. It is a significant verdict based on the Court's interpretation of the scope of its remedial powers as there is no express provision in the Indian Constitution for paying compensation. Since the Supreme Court's creation, this was the first instance in which a person received monetary compensation for the violation of one of his or her constitutionally protected basic rights.

## **5. Sanjay Suri V/s. Delhi Administration<sup>34</sup>**

The Supreme Court emphasised that juvenile inmates needed to be urgently segregated from other inmates because they were at risk of sexual assault by them. Juvenile inmates at Tihar

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<sup>31</sup>Sheela Barse v. State of Maharashtra, AIR 1983 SC 378

<sup>32</sup>D. K. Basu v. State of West Bengal, 50 AIR 1997 SC 610

<sup>33</sup> Rudul Sah v. State of Bihar, 1983 AIR 1086

<sup>34</sup> Sanjay Suri v. Delhi Administration, 1988 AIR 414

jail were transferred to a different jail building that was built for better organisation and management of prisoners of all age groups. Judges made the point that juveniles should not be permitted to work alongside other adult prisoners because doing so decreases their chances of rehabilitation. He encounters more brutality.

#### **6. Ramamurthy V/s. State of Karnataka<sup>35</sup>**

In this Landmark case, the Supreme Court mentioned that *“it has identified nine major problems which needed immediate attention for implementing prison reforms. They were Overcrowding, Delay in trial, Torture and ill treatment, Neglect of health and hygiene, Insufficient food and inadequate clothing, Deficiency in communication, and Management of open prisons.”*

#### **7. Ramkumar’s case**

The Apex Court expressed regret about the fact that most of the problems mentioned in the above case remained unsolved. With Ramkumar’s death, the context may be new but the increasing number of unnatural deaths is gravely concerning, as ex-chief justice L. R. Lahoti pointed out. The Supreme Court lamented that prisoners are *“kept under conditions that are unacceptable.”*<sup>36</sup>

#### **8. Dharambir v. State of Uttar Pradesh<sup>37</sup>**

Court stated that longer prison terms do not humanise or rehabilitate the prisoners rather it promotes recidivism. Life imprisonment means to languish in the prison for years and years. Such indurations of the soul induced by indefinite incarceration harden the inmates, not often their responses. The punishments awarded for different offences must be reviewed and made more reformatory in nature.

#### **9. Re Inhuman Conditions in 1382 Prisons<sup>38</sup>**

Under Article 32 of the Indian Constitution, the petitioner's counsel filed a petition before the Hon’ble Supreme Court of India requesting an update on India's prison reform efforts and, if necessary, the issuance of instructions for jail reform. Convicts must be treated with dignity since they are equal to other people in terms of their humanity. On March 14, 2016, the

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<sup>35</sup>Ramamurthy v. State of Karnataka (1997) 2 SCC 642

<sup>36</sup> Ibid

<sup>37</sup> Dharambir v. State of Uttar Pradesh, 1979 AIR 1595

<sup>38</sup> Re Inhuman Conditions in 1382 Prisons, W.P. No.406/2013

Supreme Court of India issued a landmark judgment regarding the legal and constitutional rights of Indian prisoners.

## **SUGGESTIONS AND CONCLUSION**

It has been observed through the research that the goal of reformation can be achieved only if all the components of the prison system work in coordination and cooperation with each other. Indian prison system consists of prison laws, judiciary, and prison administrators. Several prison reforms headed by different experts have been carried out in India but what makes it mere paperwork is the lack of effective implementation, inefficient trained prison administrators and lack of sufficient funding for enforcement of committee recommendations. One of the reasons for this is the jail administration is entrusted to state governments. It must be transferred to the concurrent list of the seventh schedule to enable the union government to work effectively like the US federal prisons.

The focus of prisons has significantly changed from custody to training and re-education of prisoners. A reformatory approach must be adopted for first-time offenders only and a deterrent approach towards habitual or hardened criminals. There is a widespread need for 'reformed prisons' which will produce 'reformed convicts.' India either needs a new prison law or amendments to existing prison laws based on the recommendations of the reform committees and international framework on prisoner's rights. Efforts must also be taken for effective implementation of the laws, policies etc., and gender-sensitive approaches to be adopted towards prisoners to meet their human rights.

There is a need to make jails modern, and technologically proficient with stringent security measures and better living and health facilities for prisoners. Library awareness and training programs must be held to help prisoners to get back into society and gear up their mental development.

There is an urgent need to alter our society's perception of prisons. Not every prisoner is a natural criminal. Hate the crime, not the perpetrator. Punishments are required to protect society. We cannot have a healthy society without sanctions. However, the types and mechanisms of punishment available must be modified and rethought. Because the present system was designed by the British to subdue political inmates back in the day, India's jail system is a neglected sector and it is prone to abuse even today.