



Prison Reforms and Way Forward

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This article is based on the editorial "The state of Indian prisons" which appeared in The Hindu on 26 June 2019. It talks about the present condition of Indian prisons and reforms that must be taken to resolve the issue.

The Prison Statistics India 2016, published by the National Crime Records Bureau (NCRB) in 2019 highlights the plight of prisoners in India. The data, with its set of advantages and limitations, can guide policy framework towards better prison reforms in India.

Prisons are expected to undertake human engineering, influencing and modifying perceptions, attitudes and behaviour of those who come into their charge, but Indian prisons have become workshops of crime and atrocities.

Prisons'/persons detained therein' is a State subject under Entry 4 of List II of the Seventh Schedule to the Constitution of India. So administration and management of prisons is the responsibility of respective State Governments.

Some of the key findings of the report are:

India's under-trial population remains among the highest in the world and more than half of all undertrials were detained for less than six months in 2016.

- The report highlights that at the end of 2016, there were 4,33,033 people in prison; of them 68% were undertrials.
- This suggests that the high proportion of undertrials in the overall prison population may be the result of **unnecessary arrests and ineffective legal aid** during remand hearings.

Who are undertrials?

Undertrials are the people who are yet to be found guilty of the crimes they have been accused of.

There is the rise in the number of people held under administrative (or 'prevention')

detention laws in Jammu and Kashmir.

- A 300% increase, with 431 detainees in 2016, compared to 90 in 2015.
- Administrative, or 'preventive', detention is used by authorities to unfairly detain persons without charge or trial and circumvent regular criminal justice procedures.

What is Preventive Detention?

The imprisonment of a person with the aim of preventing them from committing further offences or of maintaining public order.

- There is a **gap between the number of prisoners eligible to be released and actually released**, under Section 436A of the Code of Criminal Procedure.
 - Section 436A allows undertrials to be released on a personal bond if they have undergone half of the maximum term of imprisonment they would have faced if convicted.
 - In 2016, out of 1,557 undertrials found eligible for release under Section 436A, only 929 were released.
 - Also, research by Amnesty India has found that prison officials are frequently unaware of this section and unwilling to apply it.
- The **number of "unnatural" deaths in prisons has doubled** between 2015 and 2016, from 115 to 231.
 - The rate of suicide among prisoners also increased by 28%, from 77 suicides in 2015 to 102 in 2016.
 - The National Human Rights Commission in 2014 had stated that on average, a person is one-and-a-half times more likely to commit suicide in prison than outside. This is a possible indicator of the magnitude of mental health concerns within Indian prisons.
- There was only **one mental health professional for every 21,650 prisoners in 2016**, with only six States and one Union Territory having psychologists /psychiatrists.
Also, the NCRB had said that about 6,013 individuals with mental illness were in jail in 2016.
- As per the Prison Act, 1894 and Prisoner Act, 1900, **there should be a welfare officer and a law officer in each jail but recruitment of these officers is still pending**.
This state explains the low political and budgetary priority which prisons have received during the preceding century.

Limitations of the Data

- The data **does not include demographic details of religion and the Scheduled Caste and Scheduled Tribe status of prisoners**, which are crucial to understanding India's prison population.

This information was consistently published for the last 20 years and **instrumental in revealing the problematic overrepresentation** of Muslims, Dalits and Adivasis among under-trials in prisons.

- The data **does not include the number of prison visits by official and non-official visitors** which typically include district magistrates and judges, social workers and researchers.

This is essential to uncover torture and other forms of ill-treatment, increase transparency and balance the power asymmetry in prisons.

- The data on the mental well-being of the prisoners does not provide information on **whether these prisoners were diagnosed with mental illness before entering prison.**

This makes it difficult to determine whether prison conditions worsened their plight.

What should the prison reform scheme look like?

- Pre-trial detention has become the particular source of injustice in the Indian justice system, this is majorly because of lack of legal services to the undertrials.
It is high time that **the access to legal aid** (which is a directive principle to state policy under Article 39A) **should be made a fundamental right.**
- **Undertrials should be released on Bail:** In 2017, the Law Commission of India had recommended that undertrials who have completed a third of their maximum sentence for offences attracting up to seven years of imprisonment be released on bail.
- **Unified prison management system:** There should be a unified prison management system that has records of all inmates so they don't have to run from pillar to post for copies of documents like court orders. The project has been recommended by NALSA as well. Also, this project has worked well in Delhi's Tihar jail.
- **Capacity building of prison staff:** It is of paramount importance that the prison staff is trained in how to treat and deal with inmates.
The Supreme Court, in September 2017, has directed that there should be proper training manuals for senior staff.
- **Post-release financial security for prisoners:** Wages that are paid to prisoners who are serving sentences should be increased and should be on par with global benchmarks. So that when they come out, they have some better finances.
- **Skill development of the prisoners:** The major role prisons should play is of reformation and making sure that, once out, inmates are properly integrated into society. That is possible when more skill development programs are introduced in the jails to enhance their chances of earning.
- Open prisons should be encouraged.
- Implementations of recommendations of All India Jail Reforms Committee (Mulla committee) must be done as soon as possible.

Way Forward

- The data can provide a strong base for the prison reform policy in the country. Its limitations should be analysed by the policymakers to bring out a strong, humane and transparent reform structure.
- The reform policy should deal with both, the problem of paucity of resources and the mindset that those in jail do not deserve better.
- Overcrowding, brutality, a lack of sanitation and unacceptable standards of health care should be taken into serious consideration. Growing aggressive nature of public discourse on the treatment of offenders should also be acknowledged and debate should be reinitiated keeping in mind the human rights concerns.

India is the champion of human rights causes all across the world, but the dismal condition of Indian prison reflects the paradox that exists in the Indian criminal justice system. So prison reforms need to see the light of the day, but it **must be accompanied by the judicial system reforms and police reforms, as trio forms the pillars of the criminal justice system.**

Drishti input:

India's prison reflects the misery of human rights, in this scenario discuss the steps that must be taken by the government in the direction of prison reforms?
