Journal of Contemporary Law and Society, *Volume 1, Issue 2, June 2024, pp. 78-88*

*Technical Article*
Online ISSN: 3139-1079
*DOI: 10.18311/JCLS/2024/v1i2/48825*

Online ISSN : XXXX-XXXX

Journal of Contemporary Law and Society

**Contents available at:** *www.informaticsjournals.co.in/index.php/jcls*

JCLS

# Examining the Idea of Restorative Justice in Modern Prison Systems in India

**Abhijeet Nandy**

The West Bengal National University of Juridical Sciences, Biddhannagar, Kolkata – 700098, West Bengal, India; abhijeetnandy5@gmail.com

## Abstract

*Restorative justice has become a significant method of addressing crimes. It is founded on the principles of accountability and rehabilitation. Restorative justice has emerged as an effective and efficient method of conflict resolution strategy. The idea of justice has evolved with the changing patterns of crimes in society. Society has therefore witnessed not only a change like crimes but also a change in the idea of prisons. The idea of prisons is rooted in the concept of retribution majorly. However, with the idea of justice constantly evolving, prisons have developed in a way that the purpose is to serve the welfare of society by rehabilitation criminals. In this paper, the author examines the way prisons have operated in their utility, structure and administration. One of the major findings that is discussed in the paper is how the development of restorative justice in the modern prison system has gradually replaced the traditional approach of retribution. The paper identifies the methods and approaches of restoration adopted in modern prisons in the contemporary period. The aim is to focus on the consequent rehabilitation of criminals in society.*

**Keywords:** *Correctional Homes, Historical Perspective, India, Jail Reforms, Prison, Rehabilitation*

## 1.0 Introduction

The prison system in the early ancient days across the world was significantly different from the modern prisons of the contemporary world. From time immemorial, all the old countries of the world had prisons, mostly in the shape of dungeons. Various countries like China, Egypt, Rome, Babylon, Renaissance Europe and even India had developed the system of imprisonment to be a kind of punishment. Prison, as we know it today, is a comparatively newer origin. Initially, it was being used as an interim centre for the detention of the culprit who was waiting for his trial and punishment, but when it was found that this sort of detention usually involves a separation from family and other members of the society and also that the culprit has to live in a very unfavourable condition, most countries, then, decided to adopt this method as a system of punishment as a suitable replacement for corporal punishment. (Morris & Rothman, 1995) In structure or appearance, the early prisons were not very different from the dungeons. They were mostly maintained by corrupt private persons who were trying to make profits out of these, and it was only after several protests from various social workers that the maintenance of the prisons was taken over by the governments. (Mohanty & Hazary, 1990) The main intention behind this imprisonment was to reform the culprit and make him a better human being after his release, but in reality, it served the opposite purpose. (Barnett, 1977) The late 19$^{th}$ and 20$^{th}$ century period focused on the building of structured prisons. These prisons focused on reforms but chose brutal methods including solitary confinement. However, the development of behavioural sciences has gradually replaced the traditional approach of retribution with the modern idea of social defence, which mainly focuses on the protection of society and the avoidance of criminal

activities. This resulted in the transition of prisons. The prisons transformed the brutal facilities and emerged as structured institutions aimed at reforming incarcerated individuals. This evolution founded the premise for the modern prison system. Before examining the idea of restorative justice, reformation and rehabilitation in contemporary prison systems in India, it is imperative to discuss the administration of jails in British India.

## 2.0 British Administration of Jails

The administrative structure of India took a new form with the beginning of British Rule in India. Jail is the smallest unit of the prison system. The institution of jail originated in Britain, and this system began in India as a part of the British administration. (Schwartzberg & Edney, 1998) As we have seen, earlier imprisonment was never a popular form of punishment. Jails were mainly used as detention centres for under-trials. But the British changed that form of penal structure which was unduly harsh and barbarous and substituted it with imprisonment as the primary method of punishment in the criminal justice administration of India. Initially, English East India did not want to spend much on such a system of punishment. As a result of this, the condition of the jails became very deplorable. The inmates did not have proper food, clothing or even medical services. Under the Company's rule, there were one hundred and forty-three civil jails, seventy-five criminal jails and sixty-eight mixed jails, which had a total capacity of seventy-five thousand one hundred prisoners. (Mohanty & Hazary, 1990) With the enactment of 1824, reforms of the Indian prison system got attention for the first time. In 1836, the Prison Discipline Committee was set up, of which Lord Macaulay was a member. The president of the committee was H. Shakespeare. The report was submitted in 1838, which highlighted the corruption in the system and the slackness of discipline. However, this committee rejected all ideas of reforming criminals through an educational or religious system and imposed very rigorous treatment for all prisoners. (Caesar, 2016) Subsequent commissions (1864, 1877, 1888-89) that were appointed from time to time, throughout the 19th century, did not pay much attention to the subject of adopting restorative justice in the modern prison system.

### 2.1 The 1919 Commission

The last Jail Committee before independence was set up in 1919 under the Chairmanship of Sir Alexander G. Cadrew, which examined not only the jails in India but also of other countries like the USA, UK, Japan, etc. Its report included several recommendations on certain subjects like prison staff, classification of prisoners, medical facility, prison hygiene, prison labour, etc. (Government of India, 1920) 'Reformation and Rehabilitation' was recognized as the aims and objectives of prison for the first time in the history of the prison. The officials believed that, while in prison, the prisoners should be brought under such influences that would not only prevent them from committing further crimes but also would assist them in reforming their characters. The members felt, like all other penologists around the world, that criminals cannot be reclaimed from severity alone. They felt that humanizing influences was the need of the hour because it would make the prisoner realize the negative impact of crime on himself and upon society and would assist him in bringing about real changes in their character and purpose. One of the primary ways, the officials felt, through which reformation could be brought about within the prisoners, was to apply remission to those prisoners who would show good behaviour and encourage habits of the industry. Previously, only those prisoners who were sentenced for a year or more were eligible for remission. But now members suggested that it should be reduced to six months. (Government of India, 1920) The Committee, to promote good behaviour amongst the prisoners, also suggested that the Inspector General must provide a certain sum, as gratuities, to well-behaved and deserving prisoners. This money was to be generated from the net profit that was earned from the manufacturing department. Five percent of that profit was to be given to the Inspector General of jails which would enable them to provide the gratuities.

The Committee further felt that the maintenance of ties with family members was an important aspect of prisoners' lives. They very much understood the importance of communication between a prisoner and his family members in changing the nature of the prisoner and bring about positive changes in his behaviour. (Government of India, 1920) Similar importance was also given to providing basic elementary education, especially to prisoners below the age of 25, providing a recreation

room where the prisoner can read, play indoor games, or receive education, and imparting religious and moral instructions and also religious observances in prison as crucial ways to bring about reforms within the prisoners. (Government of India, 1920)

Along with these, the committee also realised the need to provide an efficient organization for the guidance and aid of released prisoners. Unlike the members of the Indian Jail Conference of 1877, who felt that there was no need for creating discharged prisoners' aid societies in India because they felt that the Indian prisoners found it less difficult to regain their place in society than their British counterparts, the members of the 1919 Committee felt otherwise. They felt forty years had passed since that conference and a lot has changed in these forty years and during the early part of the 20th century, the released prisoners were finding it quite difficult to regain their place in the society. As a result, they felt that a central association in the Presidency town or at the capital city of each Province should be created that would not only look after the work among the discharged prisoners in the Presidency towns but also help in forming a connecting bond with the other societies in the province. For each central or district jail outside the Presidency town local societies were suggested to be formed which would be affiliated to central societies and would work in cooperation with each other. (Government of India, 1920)

With the passing of the Montford Reforms in 1919, Jails became State subjects, and the provinces made serious efforts to bring about certain reforms in jail as well as the conditions of the prisoner's life there. With this aim in view, several Jail Committees were enacted, like the Punjab Jail Reform Committee (1919) and the Uttar Pradesh Jail Reform Committee (1929, 1928, 1946) etc. (Mohanty & Hazary, 1990). However, due to the unfavourable political environment at that time, these measures could not be implemented successfully. With the passing of the Government of India Act 1935, provincial governments began to control jails which resulted in the elimination of the possibility of uniform implementation of prison policy throughout the country. In the last ten years before independence, certain levels of concerns regarding prison conditions were raised in certain progressive states like West Bengal, Maharashtra, Tamil Nadu etc. The first-hand experience of the freedom fighters of these States has compelled the government to look into the matters of the conditions of the prison, which resulted in the formation of various committees relating to prison reforms (The Mysore Committee on Prison Reforms, 1940-41, The U.P. Jail Reforms Committee, 1946, The Bombay Jail Reforms Committee, 1946-48) and legislations (The Bombay Probation of Offenders Act, 1936, The C.P. and Berar Conditional Release of Prisoners Act, 1936, The U.P. First Offenders Probation Act, 1938) too.

Thus, the British, from time to time, tried to make adjustments to the prison system and bring about elements of modernization in the system. Although they introduced this institution mainly to put away political prisoners, maintain law and order, curb the national movement and thus extend their stronghold in the nation at the same time, being influenced by the ideas of utilitarians like Bentham, also due to the hue and cry raised by different political prisoners of India, the British started to think about the reformative approach in matters of prison administration, at least from the beginning of 20th century onwards. However, since the political situation at that time was very volatile, and the Indian national movement for independence was in full swing at different corners of the country, it was difficult for the British to implement a reformative and humanistic approach towards the convicts inside the prison. Thus, it can be said that although the British had developed certain progressive ideas, they did not feel the urge to implement them when their hold over India was at stake.

## 3.0 Reforming Jails in the Post-Independent India

The work on the reformation of jails gained acceleration after the independence of India. To improve the conditions of prisons in India, various committees were constituted from time to time. The first such committee was the Pakwasa Committee (1949) which suggested the idea of employing prisoners as labour for road work and paying them wages for their services. (Rao & Kumar, 2017) Over time, certain other measures were also introduced, like remission in the sentence of well-behaved prisoners.

In 1951 an expert on correctional work from the United Nations, Dr. W.C. Reckless, was invited by the Government of India to study the prison administration in India and suggest suitable changes in it. His recommendations were accepted at the Eighth Conference of the Inspector General of Prison (1952),

and subsequently, the All-India Jail Manual Committee (1957) was appointed to prepare a model prison manual. In 1960 it submitted its report, which suggested uniform policy regarding jail administration throughout India, probation, juvenile and remand homes, suppression of immoral traffic, reformatory schools, etc.

In matters of providing humane treatment to the prisoners inside the prison and also preventing the jail authorities from unnecessarily torturing the prison inmates, the Supreme Court of India gave a landmark judgment in the Sunil Batra Case. In the *Sunil Batra v. Delhi Administration* and others case, 1978, the Supreme Court raised objections to Section 30(2) and Section 56 of the Prison Act of 1894 and found them to be a violation of the fundamental rights of the prisoners. (Muthalaly, 2021). The apex court stated that Section 30(2), which gives the jail authority the right to put prisoners in solitary confinement, does not give them the right to torture them. Moreover, the court also found this provision too arbitrary because it found Section 30(2) to violate Article 21, which states that a prisoner's rights can only be curtailed when there is substantial backing of the law. (Muthalaly, 2022) It also said that the jail authorities would only have the right to put prisoners in solitary confinement when their death sentence is irreversible. (Muthalaly, 2022) The court found Section 56 to violate human dignity and decided it should be controlled. It put the powers of the Superintendent under constant check and also took away their right to put the prisoners in chains unless and until the local government advised him to do so. (Muthalaly, 2022)

In 1980, a committee on Jail Reforms under the chairmanship of Justice A.N. Mulla was set up by the Government of India. It submitted its report in 1983. To bring modernization of prisons in India, the committee suggested the setting up of a National Prison Commission. It also suggested the abolition of the practice of keeping juvenile offenders together with hardened criminals and the creation of an All-India Service called Indian Prisons and Correctional Service to recruit prison officials. This committee further recommended allowing media persons and public men to visit the prison so that they can experience first-hand the actual condition of the prisons. In 1986, the Juvenile Justice Act was enacted to keep juvenile delinquents away from non-juvenile ones in prison and for this purpose, special homes were created. In 1987 the Justice Krishna Iyer Committee was appointed by the Government of India to examine the present condition of the women prisoners of India. It recommended the inclusion of more women in the police force to deal with women and child offenders. In the *Ramamurthy v. State of Karnataka* case, 1996, the Supreme Court was directed to bring uniform prison laws and draft a model prison manual. (Supreme Court, 2002) The Bureau of Police Research and Development set up a committee for this. To replace the Prison Act (1894), a draft Prison Management Bill was circulated in 1999 by the central government to the state governments. But this bill has not yet been finalized.

In 2003 a model prison manual was prepared by the Government of India and sent to all State Governments. (BPRD) It was related to issues regarding prison reforms. Over time, the need to bring about certain changes to this manual was realized, and in 2014, an expert committee was constituted to reform the model prison manual of 2003. The Home Ministry finalized the Model Prison Manual 2016 and sent it to all the states and union territories. Among its various recommendations included the computerization of prisons, special care for women prisoners, rights of prisoners who have been awarded capital punishment, repatriation of foreign prisoners, etc.

## 4.0 Understanding Restorative Methods in the Prison System

A prison is a place where prisoners and undertrials are kept for a specific period as per their sentencing. It was a place which is under constant surveillance and very strictly regulated. Individuals hardly enjoy any freedom within the prison. Every country treats its criminals differently, and thus, the environment within the prison also varies greatly across the world. (BDHRL) The United Nations adopted the United Nations Standard Minimum Rules for the Treatment of Prisoners in 1955, which declared that reformation and rehabilitation were the ultimate motives of the prison administration. In 1977, The International Covenant on Civil and Political Rights, propounded by the United Nations, of which India is also a member, also observed the same objective. In 2015, The Standard Minimum Rules for the Treatment of Prisoners were revised and adopted as Mandela Rules. The Mandela Rules provide detailed guidelines about how a prisoner should be treated, but sadly most prisons around the world do not follow them. (Penal Reform International,

2022) A nation's prison administration depends upon a variety of factors. Various proponents have tried to point out different theories behind punishing an offender and one of the questions that have been raised over the years is whether punishment is awarded for reforming the offender or for taking revenge for his actions. Regarding punishing the offenders, various opinions have been raised over the years, starting from traditional methods to modern methods. And from such opinions, broadly, four categories or theories of punishment have evolved. The first among them is the deterrent theory which believes in inflicting harsh penalties on criminals to create fear in their minds and also of others from committing such criminal acts in the future. (Paranjape, 2001) The second theory is the retributive theory which means the idea of revenge or vengeance. (Paranjape, 2001) The third theory is the preventive theory which believes in the idea of preventing crimes rather than avenging them. Imprisonment is one of the vital parts of the preventive theory because it helps confine the offenders inside the jails, away from society, and prevents the reoccurrence of such illegal acts. (Paranjape, 2001) The final theory is the reformative theory which believes in the idea of reforming and rehabilitating criminals so that they can go back to society as law-abiding members. (Paranjape, 2001)

## 4.1 The Corrective Theory

In modern times the purpose of punishment has been highlighted to be the deterrence or prevention from occurring such incidents in the future. It has been found that prisoners who have faced very bad experiences are likely to suffer from severe physical and mental problems throughout their lives and find it very difficult to get back to their normal lives. To avoid such a situation, a need for prison reform has evolved throughout the world, which has shifted the focus towards a scientific, societal approach from a punitive approach, a part of dealing with the prisoners. The rationale behind such an approach was reform rather than revenge.

The integrity that focuses on taking a person back to his former position or lifestyle is termed Restoration. Restoration in prison administration is linked to the formulation of diverse and unique management strategies for the prisoners. In the field of penology, restoration mainly focuses on changing the person who has committed the crime and emphasizes the fact that he gets proper treatment inside the prison so that when he gets out after serving his term, he gets a chance to re-establish himself within the society and lead a normal life. (Inside Prison Project, 2022) The policy of restoration is a part of the preventive theory that promotes the prevention of crime and not avenging it. Thus, reformative theory can also be defined as the rehabilitative theory or corrective theory.

In the early days, the conditions of the prisons were very deplorable, and practically no attention was paid to improving their conditions. Such situations affected the physical and mental well-being of the prisoners. After quite a long time, the penologists finally realized the futility of brutality in punishing the prisoners and decided to bring about changes in methods of punishment. Various factors led to this change in mindset, including various movements related to prison rights, overcrowding, lack of funds etc. (International Committee of The Red Cross, 2022)

Restoration is very much required for the prisoners because after being imprisoned for so many days inside the prison cells, it was not easy for them to get back to their normal lives. With the objective of redress, compensation and pacification in mind, the process of restoring a prisoner can be achieved. The prisoner stays in prison with a mind full of guilt and a diminished self-confidence level. Thus, it is important to lift their spirits through the restoration process, which will eventually help them to get rid of the after-effects of their prison life. The prisoner should be allowed to socialize by engaging in various kinds of educational, vocational, and artistic activities that will help them divert their minds towards constructive activities. (Farley & Pike, 2016) Prisoners should be allowed to realize their mistakes, reform themselves and not engage in criminal activities in the future. Many a time, prisoners, especially younger ones, find it difficult to adapt to the prison environment. (Keele University, 2021). Thus, it is the responsibility of the prison management to address this issue. Various initiatives that are being taken regarding the restoration of prisons should address the various needs of prisoners with a focus on rehabilitation.

## 4.2 The Restorative Tools & Methods

The prison environment plays a crucial role in determining the behaviour of prisoners. A darker and isolated inner

prison creates an environment that is more susceptible to violence. Since inmates inside the prison come from different criminal backgrounds, prison violence is a very common phenomenon in many prisons. Improved prison environments can reduce the occurrence of such crimes. Moreover, if the prisoners are engaged in purposeful activities, that could also create a less violent environment. The UN Standard Minimum Rules for the Treatment of Prisoners states that the environment of the prison should be suitable enough that human dignity can be conserved. (UNODC, 2022) Besides this, since many of the prisoners live with various kinds of criminals inside the prison for a very long time, it sometimes creates certain kinds of psychological damage. Also, lack of mental stimulation within the prison has a degrading effect on the mental health of the prisoners. To avoid those, certain kinds of mental health programs must be organized, which include treatment for substance abuse, psychotherapy etc. Considering the level of damage, it does to the minds of the prisoners, the system of putting prisoners in solitary confinement should also be reconsidered at times. (Morin, 2022)

The maintenance of good relations between the prisoners and their families plays a crucial role in their restoration and rehabilitation process. Prisoners should be allowed to meet their families; that will help them to develop loving sentiments and repair their relationships with their family members. Thus, family members should be allowed to participate in their restoration process. (Express Web Desk, 2018) This will also give them hope for a better life with their family members once they are released. As a part of their restoration process, the prisoners can be engaged in a variety of constructive works. This will help them to divert their minds from criminal activities and also to learn certain necessary skills that will help them to fetch certain kinds of jobs once they are released. (Gaur, 2009) The prisoners must be allowed to practice their religion inside the prison. This will help him to inculcate mental peace and induce him to divert his mind away from unlawful activities. (Moustafa, 2014)

Proper restoration of prisoners will help the government to save expenses on prison administration which is currently quite large in India as well as in other countries. In the United States of America, the average rate is somewhere between $20,000 and $40,000, whereas in the United Kingdom, it is around 65,000 pounds, and it is $110,000 in Australia per prisoner every year. (Hirschberger, 2020) In India, the average expenditure on prisoners per year is around Rs. 29,538. (Dubbudu, 2016) the rate at which the number of prisoners is increasing each year, it is important to develop a proper restoration process so that it could cut down the prison administration costs.

The prison officials play a very important role in the restoration process of the prisoners because once the accused person enters the prison, he is at the mercy of the various officials that run the prison. So, prison officials should inculcate certain basic qualities that will help in the restoration process. Primarily the officials should make sure that the environment within the prison is conducive to human dignity. He should try to avoid conflicts and fights among the prisoners and prevent prison victimization. The officials should be caring and sympathetic towards the prisoners and treat them like human beings. (Jain, 2020) He must make sure that when the prisoner leaves the prison, he is a better person who can find his place in society. (Jain, 2020) He should not hurl abuses at them, bully them or discriminate against them based on caste, religion, language etc. The officials should develop good relations with the prisoners so that the prisoners don't hesitate to communicate any problems that they are facing with them. One of the serious issues that the officials had to deal with inside the prisons was HIV/AIDS infection among the inmates. Since prisoner do not get the chance to fulfil their sexual needs with the opposite sex inside the prison many a time, they engage in homosexual activities that lead to the development of HIV infections among them. (Sagarin, 1976) Thus, the officials must be properly trained to deal with such situations by implementing effective strategies.

## 4.3 Restorative Approaches in Jails in Modern India

It is worth mentioning here that the prison conditions in today's world are far better than the ones in the past. But still, a lot of work is yet to be done, especially in the arena of proper treatment of the prisoners. Still, the Indian prisons are trying their best to live up to that standard of treatment of the prisoners. In matters of restoration of the prisoners, the Indian prison administration is trying its best by providing education, vocational training, industrial works etc. They are also engaged in certain physical activities like yoga and meditation for their physical as well as mental well-being. All these attitudes

arise from the belief that no one is a perpetual criminal, and if given a chance, they can change and be a good member of society. Keeping this view in mind, various prisons in India have started to adopt different kinds of measures as a part of their restoration process. The Central Prison in Kannur, Kerala, has opened a male beauty parlour called Phoenix Freedom Expression. (Express News Service, 2019) The Tihar jail has established an automotive manufacturing unit where the inmates work and acquire the necessary skills for future employment. It also engages the inmates in preparing various kinds of products related to bakery, handloom, furniture, textiles, food items, bags, candles, lamps etc. (*Pacific Mall Partners With Tihar Jail to Promote TJs- "Redefining Life Behind Bars" - Core Sector Communique*, 2016) The Taloja Jail in Mumbai allows the prisoners to spend time with their near and dear ones without the presence of a glass wall. (Plumber, 2014) An organic farming venture, as a part of the restoration process, has been planned by the Balasore District Jail in Odisha. (Kundu, 2017) The Telangana Prisons Department organized a Job Mela in 2018 where many released prisoners found various kinds of jobs, which eventually helped to re-establish themselves in society. (Kundu, 2017) The National Human Rights Commission, in association with the National Institute of Criminology and Forensic Sciences, organized a seminar on 'Prison Reforms' in 2000, where matters regarding restoration and rehabilitation of prisoners were emphasized. (NHRC, 2022) Similar seminars were also organized by the National Human Rights Commission in 2011 and 2014, where proper restoration of prisoners was one of the important issues that were discussed. (NHRC, 2022)

As per the Prison Statistics Report, in the year 2020, a total of more than 82000 prisoners have been educated. Around 40% of them were provided with elementary education, 39% with adult education, and 13.80% of them received higher education. (NCRB, 2021; Prison Statistics India 2020). Besides these, various states have adopted certain individualistic attempts to improve the quality of education for the prisoners, like the state of Andhra Pradesh, which has recruited teachers to impart primary and secondary education to the prisoners and also started graduate and post-graduate courses. It has also established computer labs. Indira Gandhi National Open University (IGNOU) and National Open School (NIOS) are imparting education to prisoners across many states like Andhra Pradesh, Bihar, Assam, Chhattisgarh, Haryana etc. Madhya Pradesh is conducting training to enable the prisoners to read and write. Tamil Nadu has started a drive to completely eradicate illiteracy among all the prisoners. (NCRB, 2021)

In matters of health and sanitation, many states have taken certain serious steps to ensure that prisoners receive proper health care. States like Assam, Nagaland, Tripura, and Sikkim conduct regular checks on TB and HIV prisoners. Besides these, Andhra Pradesh has developed hospitals inside its prisons. They have also installed water purifiers to prevent the prisoners from water-borne diseases. They are also organizing medical camps. To keep a check on the mental health condition of the prisoners, Union Territories like Jammu Kashmir and Delhi have organized psychotherapy sessions. Besides these, many states across India have started to organize Meditation, Yoga and P.T. sessions for the physical and mental well-being of the prisoners. (NCRB, 2021) Along with these, the inmates are engaged in various kinds of outdoor sports like volleyball, cricket, badminton and indoor games like ludo, carrom etc. Some of the prisons are even providing television, radio and library facilities for their inmates. The state of Assam is also imparting music lessons to its prisoners as a part of their recreation activities. To destress the prisoners, many states across India like Haryana, Andhra Pradesh, Rajasthan, Tripura, Jharkhand, Odisha etc., are organizing spiritual and cultural activities. Different NGOs and spiritual organizations visit these prisons and conduct lectures on religion and morality and also sing bhajans for the mental well-being of the prisoners. (NCEB, 2021)

The inmates are also provided with vocational education where they are trained to make various kinds of products, including garments, baskets, brick, dyeing, weaving, phenyl, pickle, notebooks, jute bags, shampoo, Hawaii slippers etc. They are also trained in agriculture, animal husbandry, horticulture and poultry farming. These products are then sold in the market. In the year 2020, Tamil Nadu had the highest value of products sold in the market which is followed by Telangana and Bihar. Many states and union territories are also providing telephone and video conferencing facilities to their prisoners. STD facility is provided to inmates of Goa and Bihar. A telephonic system called e-Mulakath was started by the Karnataka state for their prisoners. Creche and Nursery facilities are provided in women's prisons of

Andhra Pradesh and Delhi. (NCRB, 2021) To integrate and computerize all activities which are related to the prison and prisoner management in the jail, the National Informatics Centre has developed an application suite called the ePrisons. (NIC) Through this suite important information regarding the prisoners would reach the jail authorities in quick time and through this application online grievance redressal and requisition for visits can be made. (NIC)

In matters of legal aid, 1,45,822 prisoners received it in the year 2020. Delhi ranks highest on the list, followed by Uttar Pradesh and Chhattisgarh. Legal aid clinics have been set up in the prisons of Assam, Gujarat, Haryana, Jharkhand, Sikkim, Tripura, Andaman and Nicobar Islands etc. As a part of the rehabilitation program, the Tamil Nadu government have started the 'Pattam" (Personality and Attitude Transformation through Therapeutic Assistance and Management) program to reform young offenders (18-24 years) and help them to reform themselves and reintegrate into society. Besides legal assistance, financial assistance is also provided to prisoners of Gujarat, Odisha, Rajasthan etc. (NIC)

## 5.0 Challenges and Way Forward

Despite significant reforms in the policies and legal measures undertaken by the judicial system to restore and rehabilitate the prisoners of India, the ground reality is far from the desired results. Diverse reasons relating to police, judiciary and, more importantly, the mainstream society's approach towards convicted criminals become significant reasons for the unfortunate state of the prisoners. Primarily there is a huge pendency for cases of undertrials which has prolonged the period in justice delivery. This has resulted in forcing the prisoners to be incarcerated for an indefinite amount of time. As a result of this, most prisons suffer from the problem of overcrowding. In March 2019, when the COVID-19 pandemic started to spread in India, the Supreme Court ordered all the states to decongest their respective prisons as quickly as possible since this disease spreads very rapidly and is also life-threatening. After this, various state governments have formed various kinds of committees to chalk out plans to decongest their prisons. But surprisingly, the population of prisons has increased drastically. In India, there are a total of 1378 prisons that can accommodate 4,03,739 prisoners. (Shantha, 2022) But as of July 2022, the number has risen to 6,22,585, a jump of 155 per cent. (Shantha, 2022) Among the states, Haryana has shown the maximum jump, followed by Uttar Pradesh, Delhi and Maharashtra. (Shantha, 2022) More than 80 per cent of these prisoners are pre-trial detainees who have been waiting for their trials for many years.

Due to the prolonged process of trials and consequent overcrowding of prisons, first-time offenders are often incarcerated with criminals convicted of serious crimes. The presence of criminal subculture hinders the reformative approaches, not only on the part of the prison authorities but also for prisoners who seek to be reformed. This is contrary to what Justice Iyer suggested in *L. Vijayakumar v. Public Prosecutor* –

"The need to keep first offenders who were young, however, grave the nature of their offence may be, away from the hardened criminals in jail, to provide them with opportunities of reforming themselves into better citizens." (Nair, 1981)

Secondly, the atmosphere inside the prisons and police custody is hostile and violent, often leading to police torture while extracting confessions from probable suspects. Violation of the rights of the prisoners is a serious barrier, and, in this connection, it is mentioned that the prison authorities should be properly trained in the modern version of criminology and psychology. They should be trained to become less violent and adopt a more humane attitude towards the convicts. In various instances, the Supreme Court of India has intervened by issuing writs to curtail the illegal actions of the jail authorities, exposing the corruption in the way of the rehabilitation process of the criminals. Thirdly, despite the suggested reforms of the Supreme Court of India on the Prison Act and Jail Manuals, the states have not been able to implement the suggestions due to paucity of funds, lack of political will, lack of infrastructure and planning etc. Lastly, there is a notion against convicted criminals, which many a time forbids the mainstream society to recognize them as a part of society. After the prisoners have served their sentence, they constantly face social stigma and a lack of scope to rehabilitate themselves back into society. Consequently, due to a lack of employment opportunities and social acceptance, they are forced to return to the world of crime.

However, in light of the above scenario in prisons, measures have been undertaken to change the brutal and inhuman scenario of the prisons in India. The condition

and position of the prisons have changed a lot in the past fifty years. Now restoration and rehabilitation of prisoners have become a prime focus of the prison authorities. The restoration process should be conducted with the right attitude and intention in mind. The prison officials should strive to provide the prisoners with a proper, humane and safe environment within the prison that will help them to preserve their physical and mental health. And once this is achieved, they will participate in the various kinds of activities that will be organized for them in prison willingly. Activities as a part of their restoration process should be chosen carefully as per a person's need and capacity. The training which would be provided to them will help them find a job once they are released and eventually help them to reintegrate into society. The prisoner should leave the path of crime permanently and start a new life. Prison officials also have an important role to play in this restoration and rehabilitation process. They need to inculcate a humanistic attitude to deal with prisoners, communicate with the prisoners, look into their needs manage the various kinds of conflict that arise in prison and maintain a healthy and safe environment in prison. As per the World Prison Population List (2021), there are more than eleven million prisoners all around the world, and this ever-increasing number and rapid acceleration of recidivism do question the effectiveness of the various restoration measures that have been applied in prisons both in India and across the world. (World Prison Brief, 2022) The United States of America tops the list with more than two million prisoners, followed by China and Brazil. (Fair & Walmsley, 2021) India, which has 478,000 prisoners, ranks fourth on that list. (Fair & Walmsley, 2021)

As a part of the restoration and rehabilitation programs, the concept of open prisons can be applied on a wider basis. Recent developments in the correctional field of penology in many Anglo-American countries have made Indian penologists realize that they also cannot deal with crime problems by putting criminals behind bars. Thus, as an alternative to the severe imprisonment system, open prison seemed to be a very suitable alternative. The main objective behind this system is to keep the criminals distant from the criminal activities after their release and bring them into mainstream society. And keeping this aim in view, they are allowed to engage themselves in a variety of activities and live a normal life. The security is very low in these prisons. In 1949 Uttar Pradesh was the first state in India to set up an open-air camp that was attached to the Model Prison at Lucknow. Open-air camps can also be seen in Andhra Pradesh, Gujarat, Punjab, Kerela etc. The open jails will allow the prisoners to roam around without confined areas. Such prisons will also help to solve the problem of overcrowding of prisons, and since it does not require a lot of security personnel to look after, the cost of maintaining such prisons will also be comparatively lower. Besides this, After-care Programmes are also a primary requisite to determine whether the person has changed or is continuing his old lifestyle. Such programs will also help to assess the mental condition of the person the effectiveness of the rehabilitation programs, and whether such programs require any changes. Along with these, separation of prisoners from hardcore criminals and juveniles or undertrials, providing proper educational facilities to prisoners inside the prison, good and adequate coordination among the various stakeholders while pronouncing judgments, and granting parole and probation are some of the other methods that can be utilized as a part of the implementation of the reformation and rehabilitation process of the prisoners in Indian prisons. While keeping in mind the fact that restoration and rehabilitation are the main purposes behind the prison administration in India, various states under the aegis of the Union government have adopted various initiatives to rehabilitate the inmates.

Recently, the Ministry of Home Affairs, Government of India, as part of its 'Modernisation of Prison' Project, has decided to provide financial assistance to all the states and union territories of India so that they can improve the conditions of the prisons. (MHA, 2022) This will include buying modern equipment that will enhance the security of the prisons, installing video conferencing facilities inside the prisons, training prison officials so that they treat the inmates more humanely, the appointment of counselling experts and psychologists for the prisoners and also providing skills and vocational training for them. (MHA, 2022)

Thus, the process of restoration of prisoners is a very complex one and has various layers. The Indian prison system has transformed from being particularly punitive to recognising a restorative approach, focusing on the development of skills, social reintegration and psychological; well-being. Apart from the policies and approaches of the government, it is imperative that the prisoners also need to inculcate in their minds the

desire to be a changed person and lead an honest life. A more structured and methodical approach towards restorative justice can lead to the improvement of society by reintegrating prisoners into mainstream society. This fosters a more humane and progressive justice system.

## 6.0 References


*A restorative justice agency*. (n.d.). INSIGHT PRISON PROJECT. http://www.insightprisonproject.org/a-restorative-justice-agency.html

Barnett, R. E. (1977). Restitution: a new paradigm of criminal justice. *Ethics*, *87*(4), 279–301. https://doi.org/10.1086/292043

Caesar R. (2016). "West Bengal Correctional Services Act, 1992 Prison and Prison Reform in West Bengal" *The Indian Police Journal*, 63(4), pp. 37. https://bprd.nic.in/uploads/pdf/The%20Indian%20Police%20Journal%20(1)%20(2).pdf

Express News Service. (2019, December 17). "Kerala capital gets first beauty parlour run by inmates of Poojapura Central Prison", *The New Indian Express*, https://www.newindianexpress.com/cities/thiruvananthapuram/2019/dec/17/kerala-capital-gets-first-beauty-parlour-run-by-inmates-of-poojapura-central-prison-2077096.html

Express Web Desk. (2018, January 25). What is the status of conjugal rights for prisoners in India? *The Indian Express*. https://indianexpress.com/article/what-is/what-is-the-state-of-conjugal-rights-for-indian-inmates-5038969/

Factly. (2016, June 22). *How much is spent on a prisoner in India?* Newslaundry. https://www.newslaundry.com/2016/06/22/how-much-is-spent-on-a-prisoner-in-india

Fair, H., & Walmsley, R. (2021). World Prison Population list. In *World Prison Population List* (thirteenth). https://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_13th_edition.pdf

Farley, H., & Pike, A. (2016). Engaging prisoners in education: reducing risk and recidivism. *Journal of the International Corrections and Prisons Association*, *1*(1), 65–73. http://eprints.usq.edu.au/29134/

From Our Online Archive, & From Our Online Archive. (2019, December 17). *Kerala capital gets first beauty parlour run by inmates of Poojapura Central Prison*. The New Indian Express. https://www.newindianexpress.com/cities/thiruvananthapuram/2019/Dec/17/kerala-capital-gets-first-beauty-parlour-run-by-inmates-of-poojapura-central-prison-2077096.html

Gaur, K. (2011). *Textbook on the Indian Penal Code* (8th ed., Vol. 1). New Delhi.

Hirschberger, J. (2020, August 5). *"Imprisonment is expensive" - breaking down the costs and impacts globally - Penal Reform International*. Penal Reform International. https://www.penalreform.org/blog/imprisonment-is-expensive-breaking-down-the-costs-and/

Jain, K. R. R. (2020). Effective and Humane Restoration of Prisoners With Special Reference to India. *Journal of Victimology and Victim Justice*, *3*(1), 113–127. https://doi.org/10.1177/2516606920904296

Keele University. (2021, July 7). *Incarcerated children adopt 'survival strategies' while living in prison, study shows*. https://www.keele.ac.uk/research/researchnews/2021/july/incarcerated-children/survival-strategies.php

Kundu, S. (2017, August 24). Organic farming in jail. *Telegraph India*. https://www.telegraphindia.com/odisha/organic-farming-in-jail/cid/1390523

*Lack of resources for prisons is having a severe impact on the lives of millions of detainees*. (2014, October 29). International Committee of the Red Cross. https://www.icrc.org/en/document/annual-conference-international-corrections-and-prisons-association-icpa

Ministry of Home Affairs, Women Safety Divison, Government of India, *Implementation of the 'Moderisation of Prisons' project in Prisons of all States and Union Territories,* last accessed on September 10, 2022, https://www.mha.gov.in/sites/default/files/GuidelinesModernisationPrisons_09042022.pdf

*Model Prison Manual for the Superintendence and Management of Prison in India*, Bureau of Police Research and Development, Government of India, New Delhi.

Mohanty, A., & Hazary, N. (1990). Indian prison systems. In *Google Books*. APH Publishing.

Morin, A. (2022, November 21). The mental health effects of being in prison. *Verywell Mind*. https://www.verywellmind.com/menta-health-effects-of-prison-5071300

Morris, N., & Rothman, D. J. (1995). The Oxford history of the prison: the practice of punishment in Western society. *Choice Reviews Online*, *33*(09), 33–5412. https://doi.org/10.5860/choice.33-5412

Moustafa, N. (2014). The right to free exercise of religion in prisons: How courts should determine sincerity of religious belief under RLUIPA. *Michigan Journal of Race & Law*, *20*(1), 213–244. https://paperity.org/p/84448542/the-right-to-free-exercise-of-religion-in-prisons-how-courts-should-determine-sincerity

Muthalaly, R. (2021, January 29). *Case analysis on Sunil Batra v. Delhi Administration & Others, 1978 - iPleaders*. iPleaders. https://blog.ipleaders.in/case-analysis-sunil-batra-v-delhi-administration-others-1978/

Nair, G. S. (1981). Problem's and Prospects of Correction and Rehabilitation in India. *Cochin University Law Review*, 194–214.

National Crime Records Bureau, *Prison Statistics India* 2020, Ministry of Home Affairs, New Delhi, 2021.

National Human Rights Commission, "Initiatives on Prison Reforms, National Human Rights Commission" last accessed on July 25, 2022, https://nhrc.nic.in/press-release/initiatives-prison-reforms#:~:text=A%20seminar%20on%20'Prison%20Reforms,seminar%2C%20Chairperson%20NHRC%2C%20Justice%20J.S.

National Human Rights Commission, National Seminar on Prison Reforms, last accessed on July 17, 2022, https://nhrc.nic.in/press-release/national-seminar-prison-reforms

*Pacific Mall partners with Tihar Jail to promote TJs-"Redefining Life Behind Bars" - Core Sector Communique*. (2016, August 19). Core Sector Communique. https://www.corecommunique.com/pacific-mall-partners-tihar-jail-promote-tjs-redefining-life-behind-bars/

Paranjape, N. V. (2001). *Criminology and Penology*.

Plumber, M. (2014, May 1). Now, Thane, Taloja prisoners can call family from jail. *DNA India*. https://www.dnaindia.com/mumbai/report-now-thane-taloja-prisoners-can-call-family-from-jail-1983837

*Prison conditions: the issue - Penal Reform International*. (2020, August 6). Penal Reform International. https://www.penalreform.org/issues/prison-conditions/issue/

*Prison Statistics India 2020*, National Crime Records Bureau, Ministry of Home Affairs, New Delhi, 2021.

Ramamurthy v. State of Karnataka, JT 2002 (8) SC 314

*Report of the Indian Jails Committee,* Government of India, Government Central Press, Simla, 1920, 1919-20

*Report of the Indian Jails Committee,* Government of India, Government Central Press, Simla, 1920, 1919-20.

Sagarin, E. (1976). Prison homosexuality and its effect on Post-Prison Sexual behavior. *Psychiatry*, *39*(3), 245–257. https://doi.org/10.1080/00332747.1976.11023894 PMid:940899

Schwartzberg, J. E., & Edney, M. H. (1998). Mapping an Empire: The Geographical Construction of British India, 1765-1843. *Geographical Review*, *88*(2), 318. https://doi.org/10.2307/215814

Shantha, S. (2022). *The Wire: The Wire News India, Latest News,News from India, Politics, External Affairs, Science, Economics, Gender and Culture*. https://thewire.in/rights/indian-prisons-congested-overcrowded

Shri G. Ranga Rao and Shri Vinod Kumar, Prison Reforms in India, 2017, https://www.studocu.com/in/document/dr-bhimrao-ambedkar-law-university/constitution-law-of-india/prison-reforms-in-india/64616260

United Nations & Government of Germany. (n.d.). *United Nations standard minimum rules for the treatment of prisoners (the Nelson Mandela Rules)*. https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

United States Department of State • Bureau of Democracy, Human Rights and Labor. (2012). Report on international prison conditions. In *United States Department of State • Bureau of Democracy, Human Rights and Labor*. https://2009-2017.state.gov/documents/organization/210160.pdf