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HIT THE CRIME NOT THE CRIMINAL- Harshit Raj¹**ABSTRACT**

As the essence of life lies in free living, imprisonment is considered to be a punitive measure and a deterrent against crime. Based on this philosophy the maxim “Ei incumbit probatio qui dicit, non qui negat” aims to secure that no person shall be punished until his guilt is proved. In India, this maxim is incorporated with full force into the constitution however the spirit of its applicability is questionable. The latest data from World Prison Brief indicate that 76.1% of the total prisoners in India are pre trial/remand prisoners. Further, the treatment in these prisons often raise cry for human rights violations. We used data from the National Crime Records Bureau to investigate into the root cause of such violations. Reports reveal that there are major structural hindrances contributing to the mismanagement of the prisons and ineffectivity of corrective and educational measures. Our findings call for immediate recruitment and actions from the top management.

INTRODUCTION

In India there are 1350 prisons, housing over 4,78,600 prisoners which is 18.5% more than their actual capacity. These figures are a greater source of concern based on state wise data which reveals that Delhi prisons are operating 74.9% followed by Uttar Pradesh 67.9% and Uttarakhand 59.0% beyond their actual capacity as on 31st December, 2019. On the other hand the figures reveal that out of sanctioned strength of jail-staff was 87,599 while the actual strength was 60,787 as on 31st December, 2019. So while on one hand the prisoners are more the staff seems to be falling short in numbers. This shortage means increased work load, mental stress for these staff members which in turn would result in improper management of the prisoners. In this light this article attempts to acknowledge the problems in our prison system.

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INTERNATIONAL CONVENANTS AND COMMITMENTS

This problem of maltreatment of prisoners is an international problem. The United Nations along with other international organizations have been working to sort these out. Despite having these general guidelines in form of International Covenant on Civil and Political Rights (ICCPR) and specific prisoner specific guidelines United Nations Standard Minimum Rules for the Treatment of Prisoners which mandate that the treatment of prisoners should be no different than that of any other human being, with just one category of exception that is deprivation of liberty. These guidelines are seen as authoritative guides for all the member countries of the world. However, the present scenario indicates that there is complete ignorance of these on the ground level of our country. Despite of having these being implemented on paper the data indicate to the contrary.

SHORTAGE OF CORRECTIONAL STAFF

Although a number of programs have been initiated by the government for the rehabilitation of the criminals, the credibility of these correctional programs is however doubtful as a total of 761 Correctional staff was actually posted in Indian jails against the sanctioned strength of 1,307 at the end of the year 2019. Reports further indicate not only shortage but even complete absence of such programs for thousands of inmates due to no correctional staff i.e. Andhra Pradesh (7,569 inmates), Assam (9,226 inmates), Haryana (20,423 inmates) and Punjab (24,174 inmates).

This raises reasonable doubts on political will and applicability of these programs beyond paper. It is due to this poor applicability that some offenders tend to escape, tend to breach peace inside jails and tend to commit offences habitually and spoil the atmosphere of prisons.

PLIGHT OF AN INNOCENT PRISONER

As per the Prisons Act there are 2 types of criminal prisoners in a prison. First is the category of criminal prisoner commonly known as under trail prisoners, those committed to custody during the pendency of trial. The second category is of “convicted criminal prisoner” commonly known as Convicts, those sent to prisons on being found guilty upon sentence. To the surprise of many, majority of prisoners in jail fall under the latter category i.e. under trail 70% followed by convicts 29%.

Such data prima facie challenges the applicability of much enshrined principle innocent till

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proven guilty and its applicability in our judicial system and at the same time explains how the criminal reformation system is used as a means of exploitation of common man who languishes in these prisons for reasons as simple as inability to procure a surety and bail amount to as complex as inability to afford good legal practitioners.

RIGHTS OF A PRISONER

In India every person is entitled to certain constitution fundamental rights. These can be suspended only as per procedure established by law. The case of a prisoner is no different; once a person is sent to prison it is only his Right to liberty which is suspended. He remains a human for all other purposes and so all other constitutional rights are equally available to him.

The Supreme Court of India has reiterated in plethora of judgments that prisoners do not cease to be human beings and the constitution equally guards their rights. Several provisions of the Prisons Act reflect this spirit which is also in consonance with the international human rights standards.

However the actual situation reflects a completely different agony of the prisoners.

THE VICIOUS MINDSET

Being a prisoner comes with a stereotype of being a criminal and so a menace for the society. This stereotype distinguishes them from the mainstream sees the prisoners differently and justify that they can be treated differently. This brings with it the mindset among the people to see them with disgust and react differently when dealing with them. This vicious mindset is definitely one of the source of why the authorities at often times is seen using beyond reasonable force when dealing with them. Various incidents of prison violence and abuse of power by the authorities and use of excessive force and prison deaths are reflective of this mindset

This mindset is further aggravated by the fact that the prisons are not just overcrowded but also the staff is less not only in numbers but also poorly equipped and often resorts to using weapons to attack like batten due to lack of other alternatives weapons used for disarm such as taser and stun guns.

ARE DECILPLINARY ACTION AND SUSPENSIONS ENOUGH

It has often been seen that when a prison official uses excessive force and violates the Prisons

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rules, the inquiry is conducted by the prisons board and if the allegations found true, the official is suspended and imposed a fine and at most terminated.

Further in absence of a definition of “excessive force” there is a lack of uniformity and management in dealing with situation of chaos in the prisons. Such loopholes in the law open up to new perspectives of why the Indian Penal Code provisions should not be brought to force in such conditions where the special laws (The Prison Act) fall short.

THE WAY FORWARD- A SYSTEMATIC REFORM

Prisoners do not cease to be human beings when put behind bars. Spirit is behind a plethora of judgments of Supreme Court of India which have come to safeguard the rights of the prisoners and now there is a dire need to inculcate this spirit into system by bringing in systematic reform at multiple levels. Firstly, at the individual level by providing proper training to the prison officials who are directly confronted with such situations. Secondly, at the organizational/prison level by proper management of prisons, ranging from ensuring adequate staff force to availability of advanced proper equipments to deal with tension situations. Thirdly, at the policy level to setup a Standard Operating Procedure to deal with such situation and laying down penalties and punishment for its violation. Such an approach would help in civilizing the prison system of the country.

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