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CRIMINAL JUSTICE SYSTEM IN INDIA

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ABSTRACT

India's criminal justice system has come under serious scrutiny as of late. The law, made to protect those who cannot protect themselves, has failed in its duty to do so. The victims have become the perpetrators and our criminal justice system is no longer a place for rehabilitation but merely punishment. The paper holds a mirror to the Indian criminal justice system and underlines its drawbacks, limitation, and major criticisms. It also provides steps to curb these weaknesses and also highlights some foreign practices that may help if implemented in India.

Keywords - Criminal justice system of India, Human rights abuse, solitary confinement, prison overcrowding, police corruption, extra judicial actions, prison reform, therapy for prisoners, rehabilitation and restoration instead of punishment, minors in prison

INTRODUCTION

Criminal Justice refers to the agencies of government charged with enforcing law, adjudicating crime, and correcting criminal conduct. The criminal justice system is essentially an instrument of social control: society considers some behaviours dangerous and destructive that it either strictly controls their occurrence or outlaws them outright. It is the job of the agencies of justice to prevent these behaviours by apprehending and punishing transgressors or deterring their future occurrence. Although society maintains other forms of social control, such as the family, school, and church, they are designed to deal with moral, not legal, misbehaviour. Only the criminal justice system has the power to control crime and punish criminals.

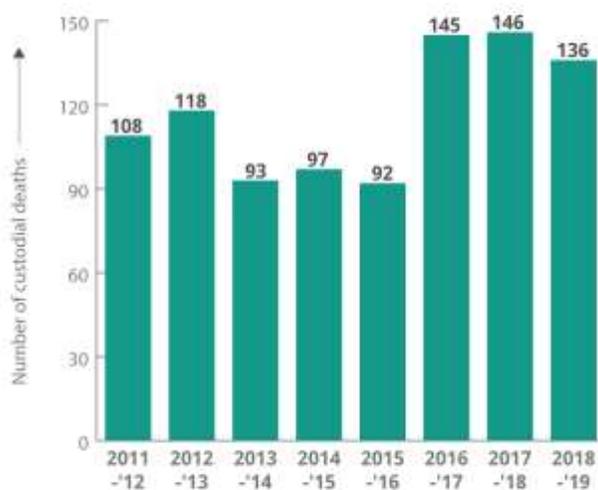
Of late, the relevance of our criminal justice system is being seriously questioned. They have always come across as law for the poor rather than law of the poor. It operates against the weaker sections of the community, notwithstanding constitutional guarantee to the contrary. This project aims to underline the faults in the system and come up with suggestions that help counter them.

II. DRAWBACKS, LIMITATIONS AND CRITICISM OF OUR CRIMINAL JUSTICE SYSTEM

1. HUMAN RIGHTS ABUSE

Talking about the humans’ rights violation during arrests and detention and the criminal justice system in India, go hand in hand. It has always been a contention that detention and imprisonment are a violation of the basic right of a human being. But it has been established to be a due process of law and something above basic human rights. However, that does not excuse the blatant disregard of other rights¹. The tales of starvation², abuse, sexual harassment³⁴, custody deaths and mistreatment of prisoners in jails are common in our country. The police using force to get confessions⁵ is another human rights abuse despite cases and laws stating that such use of force is not allowed.

427 people died in police custody between 2016 and 2019



Source: Data from 2011 to 2015 is from the National Crime Records Bureau's annual report on crime statistics. This has not been published since 2016. Data from 2016 onwards is from a parliament answer by the Minister of State in the Ministry of Home Affairs on June 26, 2019

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Source: National Crime Records Bureau's (NCRB) Annual Report On Crime Statistics 2011-15

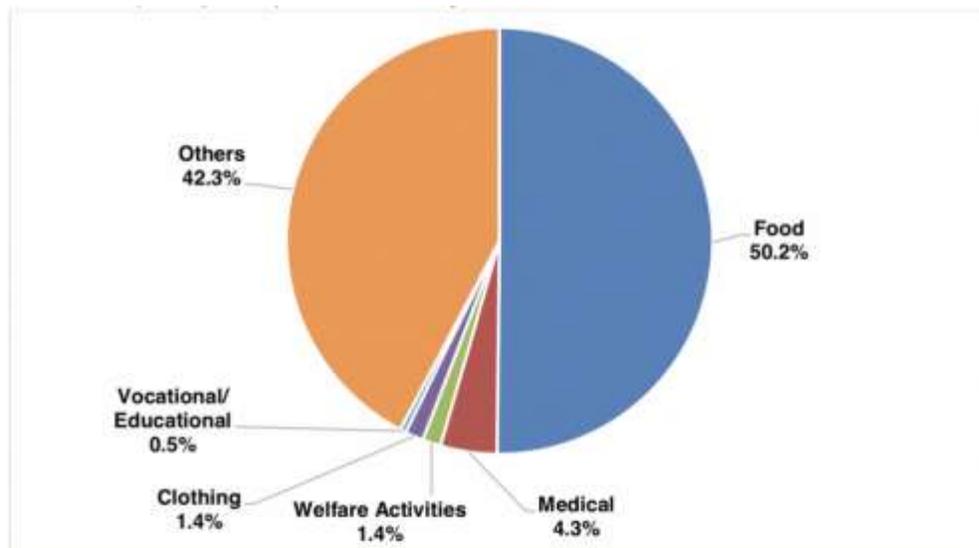
¹ Bhagwati, P. N. (1985). Human Rights in the Criminal Justice System. *Journal of the Indian Law Institute*, 1-22.
² Deep, A. (2020, August 10). Starvation Rations, Zero Rights, No Phones: My Three Months in a Bengal Jail. *The Wire*.
³ Yadav, P. (2020, May 02). Growing Concern about Sexual Abuse in Indian Prisons. *Cafe Dissensus Every day*.
⁴ Shekhar, R. (2015, June 11). Rampant Sexual Abuse is a Real Nightmare in Tihar. *Times of India*.
⁵ Sengupta, A. (2006). Confessions in the Custody of a Police Officer: Is it the Opportune Time for Change? *Student Bar Review*, 31-44.

2. BIASES IN THE SYSTEM

Countries like US and Australia face the issue of racism colouring justice in their country. In India issues like caste system, wealth, and, political power ties the hands of justice and shroud our system in darkness. To have power and position in India, is to get away with all crimes. The Police, who are tasked with bringing crimes to light and making sure no innocent is on the wrong side of law, often close their eyes when money or political power are concerned or let their own gender and caste biases turn them away from the truth. Sometimes money also brings about a situation where the victim becomes the accused or an innocent bystander becomes the culprit.

3. OVERCROWDING OF PRISONS

An important issue that needs immediate redressal is the overcrowding of prisons⁶. When we imprison someone, we become responsible for them⁷. Their wellbeing then becomes the responsibility of the government. That means having the means to feed them, cloth them, find enough space to sleep, maintaining enough staff etc.



• As per data provided by States/UTs.

Percentage Distribution of Expenditure on Various Items on Prison Inmates during 2018-2019

Source: The National Crime Records Bureau (NCRB), 2018 statistics.

⁶ Neier, A. (1990). Prison Conditions in India. *Human Rights Watch*.

⁷ Das, S. (2020, September 07). Indian Prisons Record Highest Overcrowding In 10 Years In 2019. *The Logical Indian*.

Taxpayers’ money is used for maintaining prisons but general public is not benefited by this expenditure. Overcrowding in prisons⁸ also leads to prison riots and violence and it becomes difficult to keep those imprisoned for violent crimes and nonviolent crimes apart. The overcrowding in prison also becomes an issue during outbreaks of any kind. During the COVID-19 pandemic, these overcrowded prisons became a source of great threat since there was no way to ensure social distancing in those conditions⁹.

4. CORRUPTION AMONG THE POLICE

Our police force, the executives in the federal system, are responsible for maintaining peace in the country and for upholding our laws. Their job is to make sure that anybody who breaks the law is brought to justice. However, that is not the case anymore. While it is not fair to put every policeman/woman under the same umbrella, stats show that an appalling number of police officers fall to bribes and corruption¹⁰. Policemen charge innocents with crimes, threaten people, refuse to file FIRs, show bias, harass and hurt prisoners, file false FIRs and use their powers for malicious and corrupt things. They charge a price from people for doing their jobs and yet, do not do their jobs.



Source: Report Published By Her Majesty’s Inspectorate of Constabulary (HMIC), 2014

⁸Bhattacharya, A. (2019, November 07). Some Indian States Have More than Twice as Many Prisoners Than They can House. *Quartz India*.

⁹Lalwani, V. (2020, June 30). Why India’s Jails Remain Overcrowded During the Pandemic, Even as Prisoners are Released on Parole. *The Scroll*.

¹⁰Lamani, R. B., & G, V. S. (2013). Police Corruption in India. *International Journal of Criminology and Sociological Theory*, 228-234.

Their job is to protect the weak and the helpless but if they're the ones hurting the weak and the helpless, where do they go to complain?

5. EXTRA-JUDICIAL ACTIONS

With great power comes great responsibility but what happens when this right is misused? Though our legal system does its best, sometimes justice is delayed and this has become an excuse for many to resort to extra-judicial means of “justice”. When justice is served up by anyone outside a court, we get the Hyderabad encounters¹¹ and the “beef mob lynching¹²”. As much as we say that justice delayed is justice denied, it is impossible to deny that being sentenced for a crime without being given a proper trial is a gross miscarriage of justice. Our judicial system is slow because it allows everyone a chance to be heard and it works on the principle that even one innocent man may not be punished even if a hundred guilty men walk free. These extra judicial actions going unpunished and unchecked is another failure on part of our criminal justice system.

6. DIFFERENT RULES FOR RICH AND POOR PRISONERS

Though India has different kinds of prisons, the distinction between poor and rich is not because of the different kinds of prisons¹³. Rich in prison are not treated similarly as the poor. In fact, most poor people in prisons are those under trial who cannot afford bail expenses. Prison term for the rich starts on conviction but they still find themselves in luxury. Money ensures that they are supplied with anything they might want in prison including alcohol, weapons, phones, sexual partners, and better food than the rest. It is also imperative to note that while the poor languish without bail and paroles, the rich are whisked from prison at every pretext including doctor's visits, funerals, and marriages. Rules are different for them since they often commandeer a single cell while many have to share the cells with five to ten others.

¹¹ Venkataramakrishnan, R. (2019, December 06). Hyderabad Encounter Killing May Seem Like Justice, But Here's Why No Good Can Come of It. *The Scroll*.

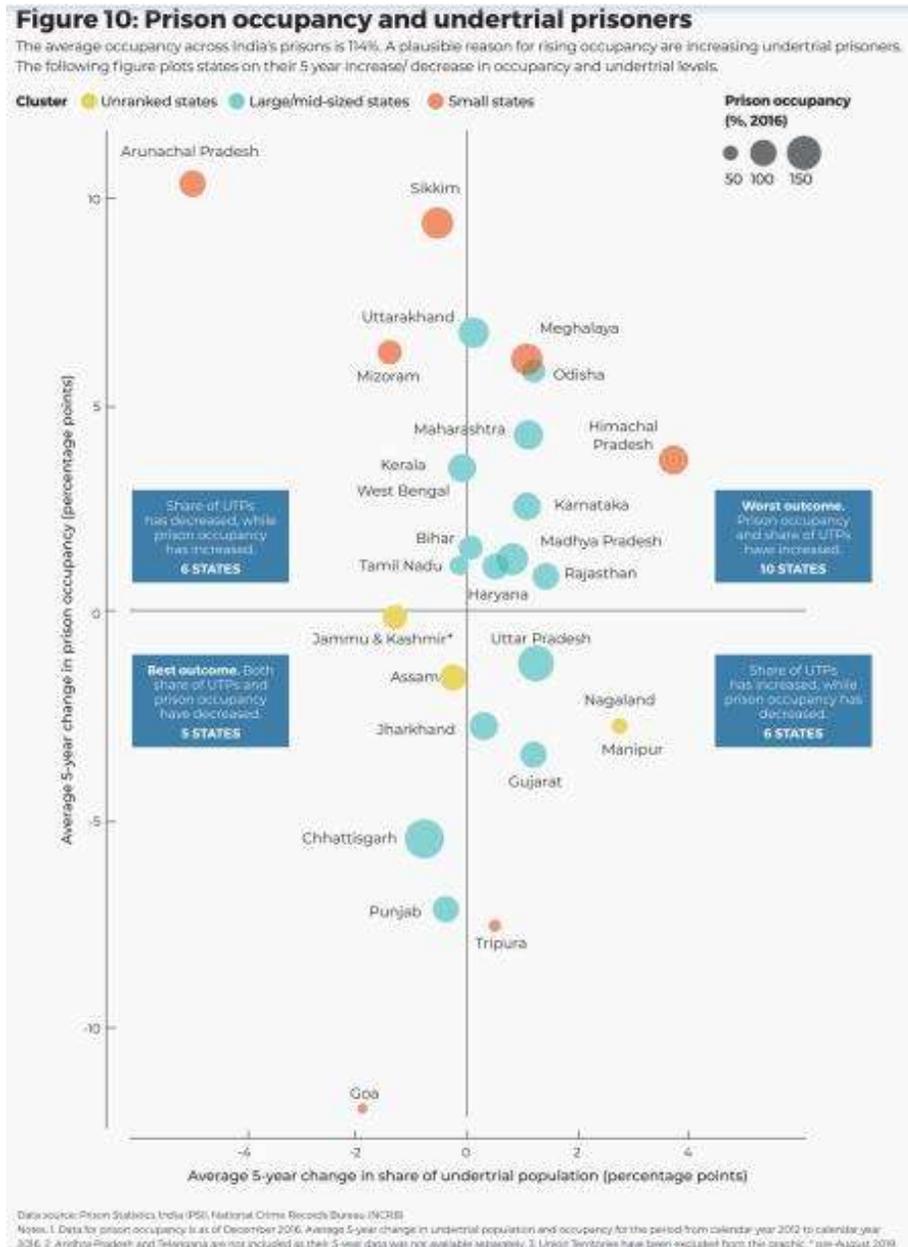
¹² Vashishtha, A., & Pachauri, A. (2020, August 05). Mob Lynching: A Crime That Exonerates the Offenders In India? *The Outlook*.

¹³ Shivaram, C. (2018, March 23). Criminal Justice System in India Skewed Against the Poor; Judiciary Losing Credibility Due to Repeated Legal Oversights. *First Post*.

III. SUGGESTED CHANGES

1. PRISON REFORM AND STOPPING SOLITARY CONFINEMENT

When we talk about prison reform, we have to talk about solutions to overcrowding. A simple answer would be to reduce the number of remands during the course of an investigation and to allow bail to those convicted of non-violent crimes.



Source: National Crime Records Bureau (NCRB), Prison Statistics 2013

Another suggestion is the segregation of prisoners. We already segregate prisoners into maximum security prisons for those who are convicted of greater crimes and open prisons for those who are not. But it is important to note that such prisons do not exist in every state. Some states still have a low number of prisons. Reducing sentences for certain crimes like theft and negligence is a step in the right direction rather than building new prisons.

While we talk about segregation, we must note that this segregation is not for the rich and the poor. If two people are guilty of the same crime, they must face the same punishment for it. Our constitution promises us equality before law and it must apply to the prisoners too. Money shouldn't buy you a home away from home in prison.

Solitary confinement, a means of punishing unruly prisoners, has been shown to be a cause of grave mental health problems and issues. Studies taking place in the United States, Canada, Denmark, Germany, and South Africa report¹⁴ that those who experience solitary confinement experience "anxiety, fatigue, confusion, paranoia, depression, hallucinations, headaches, and uncontrollable trembling." Under IPC, a prisoner can be given up to three months of solitary which would be absently devastating to their mental health. It is something that must be outlawed with immediate urgency.

2. STRICTER RULES FOR POLICEMEN AND PUNISHMENT FOR POLICE ENCOUNTERS

Police rules provide for punishments for misuse of powers. However, they are not adequate to check misuse of power by the police. Rules need to be stricter, their enforcement stronger. Suspension from work, suspension of pay, losing their job, they are all great deterrents. There should be security cameras in police stations that are monitored by higher officials. There must be a check to see if FIRs are being registered. There must be checks to see if the arrested are being abused for confessions. Medical check-ups before appearance in courts must be compulsory and should happen in the presence of an unbiased person. There must be sensitization camps organised

¹⁴ Manson, J. (2016, October 28). UN Report Compares Solitary Confinement Practices in the U.S. and Around the World. *Solitary Watch*.

for police officers, they must be taught to empathise with the victims. Higher pay and better benefits are a good step in the right direction in curbing bribery.

3. THERAPY FOR PRISONERS AND THE RESTORATION AND REHABILITATION OF PRISONERS

Many criminologists believe that the cause of crime is often past trauma, a poor childhood, mental health issues, and abusive past and negligent parenting. With such minors and even adults, the goal is to address the issue at its core and help them overcome it from within. Therapy will help them cope with the trauma¹⁵. Sometimes what we see as an unstable condition could be just an untreated mental illness. Nobody deserves to be locked up for something that they cannot help.

With minors especially, the goal is not to punish them but to make sure that they break the cycle of crime and walk away from it. If the crime stems from a bad past of abuse and trauma, therapy will help them break that cycle.

Restoration homes for minors teach them vocational skills and that is a great idea to be applied to adults too¹⁶. Taking on a vocational skill would be a great way for them to channel their time well and the same can be utilised when they are freed. A prison record can often stop employment opportunities for ex-prisoners and having a skill like carpentry or stitching is a great way to ensure that they have a job to fall back upon and leave the world of crime.

IV. CRIMINAL JUSTICE REFORMS THAT MAY BE ADOPTED FROM OTHER COUNTRIES

1. Canada has its prisoners work on farms to help them with their recovery. It promotes teamwork, builds morale, and gives them life skills and helps with their mental health. They also have their prisoners attend a program called “puppy love”¹⁷ where they play with puppies which helps with their anxiety and loneliness.

¹⁵ McMahon, A. (1997). The Role of Therapy in Prison. *Irish Association of Humanistic and Integrative Psychology*, March.

¹⁶ Niriella, M. (2010). Effective Prison Rehabilitation System: Special Reference to Sri Lanka. *US-China Law Review*, 15-29.

¹⁷ Donato, A. (2013, June 11). FROM PUPPIES TO FARMING: CANADA’S MOST INNOVATIVE PRISON REHAB PROGRAMS. *CBC*.

2. Prisons in Germany have people living in separate cells with adequate sunlight and are allowed to decorate their cells with personalized items and photos¹⁸ to remove feelings of loneliness and help with their morale and mental health.

3. Norway has moved away from punitive lock up approach to taking steps to rehabilitating prisoners with the help of peace and tranquillity¹⁹.

V. CONCLUSION

For all its fault, the India criminal justice system is not all lost. We have shown over and over again that we have a firm grasp of our shortcomings and are continuously and diligently working to better them. Prison reform and a criminal justice reform are not events that can be accomplished overnight. There are steps that precede decisions such as these reforms and that procedure is important too. The aim of laws must be to achieve justice and equality and with these reforms, we can assume that such a utopian future is not far for India. With the advent of the new generation of lawyers, judges, and law enforcement who want to revolutionize the country, change for the better is not far off.

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¹⁸Jehle, J.-M. (2015). Criminal Justice in Germany. *Federal Ministry of Justice and Consumer Protection*, 88-175.

¹⁹ How Norway Turns Criminals into Good Neighbours. (2019, July 06). *BBC*.

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