

## ADMINISTRATION OF PRISON INMATES ARRESTED BY THE CENTRAL LAW ENFORCEMENT AGENCIES – A CRITICAL STUDY

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### Abstract

Prison administration is a crucial component of the criminal justice system in India, requiring regular updates to align with evolving social ideals and institutional needs. The prison system has shifted from a punitive to a reformatory approach, aiming for the reintegration of prisoners into society. Governed by the century-old 'Prisoners Act, 1894', prison administration includes various types of institutions such as central jails, district jails, and sub-jails, and classifies inmates into criminal and civil categories. Despite numerous reforms recommended by prison committees and law commissions, new forms of offenses affecting the country's economic, social, and internal security continue to pose challenges. Central legislation has been enacted to address issues like drug abuse, socio-economic crimes, terrorism, and corruption, with central law enforcement agencies registering numerous cases in recent years. This study examines whether the British colonial-era legislation meets contemporary societal needs and how recent central laws align with or complicate existing prison regulations.

*Keywords: Prison, Central Law Enforcement, Prison inmates, Transportation*

### 1. INTRODUCTION

Prison administration is an essential part of criminal justice in the country. Prison administration adjunct in crime prevention requires consistent review and reorientation in consonance with evolving social ideals and increasing institutional requirements. 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 and buildings appurtenant<sup>758</sup>. The Prison System has undergone a paradigm shift from punitive approach to reformatory approach with a goal towards reintegration of prisoners into the society. Under the Constitution of India, prisons and persons detained are provided under State List of the Seventh Schedule.

The various type of prison institutions which are in existence in the States/Union Territories are Central jails, District jails and Sub jails. Prison inmates are generally classified into criminal and civil prisoners and the criminal prisoners are categorized as convicts, undertrials, detainees under prevention laws. The administration of prisons in India is governed by a century old central legislation 'The Prisoners Act, 1894'. In India, several prison reform committees, law commissions and judicial pronouncements extended a vast range of recommendations for the reforms of existing prison administration throughout the country. But still there are several problems were arising out new form of offences which affect economic, social and integrity of the country. To cater these issues, the Central Government has enacted central legislations to prevent the drug abuse, socio-economic offences, offences affecting the internal security and social peace

<sup>758</sup> Section 3(1) of the Prisoners Act, 1894

of the society. Various Central law enforcement agencies were constituted to enforce the provisions of such central legislations.

It is significant to note that several cases were registered by the Central law enforcement agencies in recent years with respect to the abuse of narcotics and psychotropic substances, illegal trafficking of drugs/humans, terrorism, fraud by companies, money laundering, corruption, etc., It anticipated that the offences under these legislations will increase in fore coming period. The significance of this study to determine whether the British colonial central legislation in relating to prison administration will serve the need of contemporary needs of the society which has undergoes several reforms through various recommendations jail reform committees and constitutional shift of subject of prison under State. The latter enacted central legislations and adjudication by the Central law enforcement agencies are fitting with the existing legislations of prison or finding itself difficult in the course of investigation.

## 2. PRISON ADMINISTRATION IN INDIA

The Prison system in India undergoes notable changes in the following periodic years and shall be classified into prison system during pre-independence era and reforms post-independence in India.

### PRE-INDEPENDENCE

In Ancient India, society was bounded by the principles enunciated by Manu and explained by Yagnavalkya, Kautilya and others. The offences committed by the offenders were punished by cruel treatment commonly known as imprisonment and corporal punishments such as branding, hanging, mutilation and capital punishment suggested by Hindu Scriptures. The prisons were considered as a detention place of offender which is totally dark dens, improper sanitation and no means of facility for human dwelling. Apart from imprisonment, most common form of punishment is fine or penalty. Those who fail to pay the fine were forced to do bonded labor till

the realization of fine. It is evident that non existence of proper prison system in ancient India.

As the East India Company empowered by the British Parliament to rule India in eighteenth century, they have made to introduce reforms in administration of law and order and enforcement of punishments on law-breakers and rebels. Imprisonment was foremost form of punishment for serious crimes. As an outcome, several prisons were established in different parts of the country. The modern Prison Administration conceptualized in 1835 by Lord Macaulay and he is regarded as the founder of prison reforms. Lord Macaulay proposed to appoint a committee to look into the deplorable conditions of the Indian Jails. The Legislative Council of India accepted the proposal and appointed 'The Prison Discipline Committee' in 1836. The Committee submitted its report in 1838. On recommendations of the Committee, the first Central Prison was constructed at Agra in 1846 followed by Central Prison in Bareilly and Allahabad in 1848, Lahore in 1852, Bombay in 1867, Alipore in 1864, Banaras and Fatehgarh in 1864 and Lucknow in 1867. The Committee emphasized the conditions and health of the prisoners. The Committee of 1864 also recommended that every Central Prisons should have cellular accommodation for 15 percent of its population and separate detention place for Juveniles as well as education should be provided. After sipoy mutiny of 1857, large number of political prisoners were transported to the Cellular Jail in Andaman Islands and Kala Pani. But the conditions in Andamans were very worse because of break out of Malaria, Tuberculosis and Cholera among the prisoners and conditions of life was very harsh. Thus, three storied Cellular Jail was built in the Andamans to accommodate about 1000 prisoners.

The Government of India passed the Prison Act in 1870 related to prisons of the country. The Act lays down the basic structures of prison administration, duties of prison officials and separation of prisoners. Based on committee

recommendations in 1877 and 1889, the Prison Act, 1894 was passed that outlined the rules for the management and administration of prison in British India. Meanwhile, the offenders of young age become a problematic to the society and mainly to control them Reformatory Schools Act was passed in the year 1897.

The British Government formed Indian Jail Reforms Committee led by Sir Alexander Cardio in 1919-20 to enquire on the subject matters of jail management. The Committee suggested that the prison systems should adopt rehabilitation strategy as an alternative to penal punishments. It recommended intake of prisoners should be according to the prison structure, separate institutions like Borstal school for juveniles, classification of habitual offenders from others, abolition of transportation of convicts to Andaman Islands and solitary confinement. Such reforms were faced a sudden set back due to constitutional changes in Government of India Act, 1919. The Government of India Act, 1935 resulted in transfer of jail department from the control of Government of India to that of Provincial Government.

The legislations enacted by the Government of India before independence in relation to prisons and prisoners are as follows,

#### **THE PRISON ACT, 1894**

The very purpose of the Prisons Act, 1894 is enforcement of discipline and order in prisons and to keep the custody of prisoners. The Act emphasis on the classification of prisoners as well as medical facilities and better basic amenities to the prisoners. The Act includes provisions for the accommodation of women prisoners and separate prisons for the males under the age of 21 years. The Inspector General was appointed and exercise his power on general control and superintendence of all prisons situated in the territories under Government of India. The Act also provide provisions for the appointment of Superintendent and subordinate officers to monitor the entire prison management

established in each territory. The Superintendent was responsible for the prison matters including discipline, labour, expenditure, punishment and control. No subordinate officers to the Superintendent were given power to award any punishment for prison offences mentioned under chapter XI of the act. The Medical officer was responsible for the health and well-being of inmates of the prison and also required to visit the prisoners confined in a cell for more than 24 hours for at least once in a day. Summating, the Act was largely focused on deterrent principles in line with prison offences and punishment to their effect than with treatment of prisoners.

#### **THE PRISONERS ACT, 1900**

The Prisoners Act, 1900 empowers officers in-charge to take custody and detain all persons committed by any Court or until such person is discharged or removed in due course of law. Such officers were appointed by the Provincial Government. Part III of act dealt with appointment of Superintendents of Presidency prisons and enforcement of sentences committed on a person by High Court or other Courts. The Part IV of Act emphasis on removal of any prisoner confined in a person to any other prison in the State and removal of lunatic prisoners to asylum or any place of safe custody within the State and get treated. The Act also deals with the discharge of prisoners where High Court may recommend such prisoner for the grant of free pardon. It envisages to permit prisoners to be at liberty on his own recognizance.

#### **THE IDENTIFICATION OF PRISONERS ACT, 1920**

The Identification of Prisoners Act, 1920 authorize the police officer to take measurement and photograph of certain categories prisoners i.e., convicted, non-convicted, habitual offenders, etc. The Act empowers the Magistrate to make an order if measurements or photograph of any person to be taken for the purposes of any investigation. The person directed through order should be present at the time and place as specified and allow his measurements or

photograph to be taken by a police officer. It further provides for the destruction of photographs and records of measurements on acquittal. If any person to be taken resists or refuses to allow the taking of the measurements or photograph, it shall be lawful for the concerned authorities to use all means necessary to secure the same.

### TRANSPORTATION OF PRISONERS

The British East India Company established the first penal settlement at Bencoolen in 1685, facilitating the transportation of South Asian felons to the Straits Settlements (Singapore, Malacca, and Penang). This practice expanded, with prisoners from Bengal, Madras, and Bombay being transported as part of the British Empire's strategy to manage criminal offenders. In 1790, the first batch of convicts was sent to Penang, followed by 100 convicts to Malacca in 1805. After the 1857 Sepoy Mutiny, the number of transportees increased significantly, with many sent to Singapore. Convicts of economic crimes were deported to Bencoolen following the 1793 Permanent Settlement, later extending to political deportations. In 1858, the British established a penal settlement on Ross Island in the Andaman and Nicobar Islands. This notorious "Kalapani" penal colony was infamous for its brutal conditions. Political prisoners, including Indian independence activists like Vinayak Damodar Savarkar, were subjected to harsh treatments, hard labor, and inhumane conditions. By 1891, 12,197 convicts had been deported to the Andaman Islands. Prominent freedom fighters, such as the Maruthu Pandiyar brothers, faced severe persecution, including the deportation of their children to prevent future resistance. Similarly, Sheikh Abdullah, a significant Kashmiri leader, was imprisoned in Ooty in the early 1950s due to political charges. The punishment of transportation for life was repealed in 1955 through an amendment of the Code of Criminal Procedure, 1898.

During British rule, the deportation of political convicts was common. The rebel prisoners were freed from the brutal condition of Andaman

Cellular Jail, 1937 after nonviolence measures taken by Mahatma Gandhi and agreement reached between Lord Linlithgow. The last prisoner from Andaman was released on 1939 from Port Blair Prisons<sup>759</sup>. Similarly, two murder convicts of Sir Lorne, Salt Inspector, Kulasekarapattinam was housed in the jail at Tirunelveli. Sir Rajaji, then Governor General released both the convicts on Clemency petitions in the year of 1940s. (*Prof.A.Siva Subramanian*)<sup>760</sup>

### POST-INDEPENDENCE IN INDIA

In 1947, Independent India was emerged and raised to the status of Republic in the year 1950. The Constitution of India was written and gave to the citizens of India in 1950. The subject matter 'Prison/Persons detained' is entered in the 'State list' subject under Entry 4 of List II of Seventh Schedule to the Constitution of India. The prison management and prisoners' administration vests with State Governments, who are solely responsible to make appropriate legislative provisions. As an outcome, the Transfer of Prisoners Act, 1950 was came into force with purpose of removal of persons confined in a prison of one State to another.

The Republic India has adopted pre-independence legislation 'the Prison Act, 1894' for administration of prisons in India and enforced as an existing law in force unless it is contrary to the provisions of the Constitution as per Article 13 of the Constitution. Hence, it is to be distinguished that three legislations enacted during the British Colonial period in India in relation to the prison administration and prisoners were continued to be in force till date. Major reforms were taken place in 1956 where Presidential colonies and territories of India reorganized into new states in line with linguistics. Subsequently, administration of the Central jail and other jails within the boundaries of State shifted to the control of State

<sup>759</sup> Article on The Cellular Jail or Kala Pani in the Andaman & Nicobar Islands, A tribute to the 75<sup>th</sup> anniversary of Indian Independence, available at <https://amritmahotsav.nic.in/>

<sup>760</sup> Information received from Prof. A. Siva Subramanian, Author of "August Porattam" book

Government. Then, the State Government has framed prison rules under Indian Prison Act, 1894 according to the state of affairs.

### 3. LAW ENFORCEMENT AGENCIES ESTABLISHED BY CENTRAL GOVERNMENT

Enforcement of Law is the important function of the Government to maintain internal security of the country. Internal security of India from threat and terrorism lies in the hands of Ministry of Home Affairs (MHA) to ensure the integrity and sovereignty of the country. The Ministry of Home Affairs ensures the internal security by establishing various law enforcement agencies. The law enforcement agencies constituted under the Central Government were taken into consideration for this study are as follows,

#### DIRECTORATE OF ENFORCEMENT

The Directorate of Enforcement (ED) is a multi-disciplinary organization founded in Department of Economic Affairs in the year 1956 was shifted under the administration control of Department of Revenue in 1960. The Headquarter of Directorate was at Delhi. Presently, the Directorate is functioning beneath the Department of Revenue, Ministry of Finance, Government of India. The Directorate mandated with investigation of offence of money laundering and violations of foreign exchange laws. The Directorate entrusted to discharge the functions includes the enforcement of the following statutory legislations,

1. The Prevention of Money Laundering Act, 2002 (PMLA,2002)
2. The Fugitive Economic Offenders Act, 2018 (FEOA,2018)
3. The Foreign Exchange Regulation Act, 1973 (FERA,1973)
4. The Foreign Exchange Management Act, 1999 (FEMA,1999)
5. Sponsoring agency under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA)

#### The Prevention of Money Laundering Act, 2002

The PMLA,2002 enacted to prevent money laundering and to provide for confiscation of property involved in money laundering. The person who indulged in committing offence of money laundering<sup>761</sup> shall be punished with rigorous imprisonment for a term not less three years upto seven years and fine<sup>762</sup>. In case, the offence relating to narcotics drugs and psychotropic substances involved in money laundering shall be punished with rigorous imprisonment upto ten years<sup>763</sup>. The Central Government giving effect to the Section 6 of PMLA,2002 had authorized Directorate of Enforcement to exercise jurisdiction, power and authority conferred under the act. Therefore, the Directorate of Enforcement would enforce the provisions of PMLA,2002 by conducting investigation by conducting investigation to trace the assets derived from proceeds of crime, to provisionally attach the property and to ensure prosecution of the offenders and confiscation of the property by the Special court. Section 19 of the act empowers the directorate to proceed with arrest of a person, who found guilty of committed offence under the act. The Directorate obliged to inform the ground of arrest to him and produce him within twenty hours before Special Court constituted under this act<sup>764</sup> or Judicial Magistrate or Metropolitan Magistrate of competent authority. The Special Court conduct trial for offence of money laundering in accordance with provisions of the Code of Criminal Procedure (Cr.P.C.), 1973.

The Directorate of Enforcement has filed 5906 ECIR out of which 176 ECIR was filed against existing and Ex. MPs, MLAs and MLCs. As of 31.01.2023, 513 persons were arrested and 45 persons were convicted under PMLA, 2002<sup>765</sup>.

#### The Fugitive Economic Offenders Act, 2018

The Fugitive Economic Offender Act (FEOA), 2018 was enacted by Parliament in July 2018 which

<sup>761</sup> Section 3 of Prevention of Money Laundering Act, 2002

<sup>762</sup> Ibid 4, Section 4

<sup>763</sup> Section 4 and Paragraph 2 of Part A of the Schedule, PMLA,2002

<sup>764</sup> Ibid 4, Section 43

<sup>765</sup> Statistics upto 31.01.2023 available in [www.enforcementdirectorates.gov.in](http://www.enforcementdirectorates.gov.in) last visited on 09.05.2024.

intended to prevent fugitive economic offenders from evading the process of law in India by staying outside the jurisdiction of Indian courts. The FEOA, 2018 empowers Special Court set up under PMLA, 2002 as a designated court under the act to confiscate all properties and assets of fugitives who are charged in scheduled offences where the total value is over INR 100 crores and are evading prosecution by remaining outside the country. The Directorate of Enforcement was appointed as an Authority to enforce the provisions of the act. The Directorate mandated to attach and confiscate the properties of fugitive economic offender to Central Government<sup>766</sup>. Once the person declared as fugitive by the Special Court, the Directorate warrant arrest against the person and the properties belong to him be confiscated and disallow him to defend any claim or right against the properties. The Directorate of Enforcement has initiated proceedings against 15 persons where 9 persons were declared as fugitive economic offenders and confiscated Rs. 862.43 crores worth of properties<sup>767</sup>.

### **The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974**

The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974 was enacted to detain a person as a preventive measure for purpose of conservation and augmentation of foreign exchange and prevention of smuggling activities. The Act empowers Directorate of Enforcement to sponsor cases of preventive cases with respect to contraventions of provisions of Foreign Exchange Management Act, 1999 which facilitates external trade and payments and maintenance of foreign exchange market in India<sup>768</sup>. A detention order can be executed at any place in India in the manner warrant of arrest executed under Cr.P.C, 1973. The detained person was subject to removed from one place to another place of

detention upon the order of Central Government, where State Government has no power to make such order. In case of absconding person, written report is given to the Magistrate of competent jurisdiction where such person resides in order invoke Sections 82, 83,84 and 85 of Cr.P.C,1973 and said person fails to comply the direction issued be punished with imprisonment up to one year or fine or both.

The Directorate of Enforcement has initiated 33,988 numbers of investigations out of that 16,148 numbers were disposed. It also issued 8,440 show cause notices out of that 6,847 were adjudged<sup>769</sup>.

### **NATIONAL INVESTIGATION AGENCY**

The National Investigation Agency (NIA) is a nodal agency constituted under National Investigation Agency Act, 2008 to investigate and prosecute offences against national security and terrorism at national level. NIA is presently functioning as the Central Counter Terrorism Law Enforcement Agency in India. The superintendence of NIA is vested with Central Government. The NIA commences its investigation against offences specified in the Schedule of the act on the basis of information received from Central Government either directly or based on report of State Government. If scheduled offences committed outside India, NIA directed to register the case and proceeds with investigation. For this purpose, the Special court at Delhi shall have the jurisdiction.

The NIA has the power to investigate the connected offences which the accused is alleged to have committed. The Special Court have jurisdiction over the place of scheduled offences committed<sup>770</sup>. The Special court take cognizance of offence punishable with imprisonment not more than three years or fine or both and tried as summary trial in accordance with Cr.P.C,1973. The Special court also have the powers of a Court of Session. The NIA has registered 556 cases against the persons who were involved in the terrorism and

<sup>766</sup> Section 4 and 12 of Fugitive Economic Offenders Act, 2018

<sup>767</sup> Supra note 12

<sup>768</sup> Section 3 of COEPOSA,1974 and Section 36 of FEMA, 1999

<sup>769</sup> Supra note 12

<sup>770</sup> Section 13 of National Investigation Agency Act,2008

threat to the internal security of India<sup>771</sup>. The NIA was empowered to investigate and prosecute the offences committed under the Acts as mentioned under Schedule. Some of the acts are of, The Explosive substances Act, 1908

- a. The Unlawful Activities (Prevention) Act, 1967
- b. Offences under section 121 to 130, 1860, 370-370A, 489 A to 498 E of Indian Penal Code, 1860<sup>772</sup>
- c. Offences of Cyber Terrorism under section 66F of Information Technology Act, 2000
- d. Offence of Illegal handling of prohibited Arms and Ammunition under section 25 (IAA) of Arms Act, 1959

### CENTRAL BUREAU OF INVESTIGATION

The Central Bureau of Investigation (CBI) is the premier investigating police agency in India, functioning under Ministry of Personnel, Pension & Public Grievances, Government of India. The power of investigation of CBI vested in the Delhi Special Police Establishment Act (DSPE), 1946. Section 2 of the Act vests DSPE, 1946 with jurisdiction to investigate offences in the Union Territories only. However, the jurisdiction can be extended by the Central Government to other areas including Railway areas and States under Section 5(1) of the Act, provided the State Government accords consent under Section 6 of the Act. As per Section 3 of the Act, Special Police Establishment is authorised to investigate only those cases, which are notified by the Central Government from time to time. The CBI was mandated to investigate offences committed under, a) Indian Penal Code, 1860, b) Prevention of Corruption Act, 1947 and c) Import and Export Control Act, 1947

Further, CBI was mandated to deal with economic offences in violation of fiscal laws and food offences regarding hoarding, black marketing, smuggling and profiteering in food grains, offences related to Bank Frauds & Securities scams. Presently, CBI has the

following divisions with respect to general offences and special crimes, a) Anti-Corruption Division, b) Economic Offences Division, c) Special Crimes Division, d) Directorate of Prosecution, e) Administration Division, f) Policy & Coordination Division and g) Central Forensic Science Laboratory.

### 3.1.1. NARCOTICS CONTROL BUREAU

According to Article 47 of Directive Principle of State Policy of the Indian Constitution, which direct the State to endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drugs injurious to health. Succinctly, the Government of India has enacted national policy on the subject matter of drugs, namely The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 which also guided by the international conventions known as Single Convention on Narcotic Drugs 1961, as amended by the 1972 Protocol, the Conventions on Psychotropic Substances, 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. The rules and regulations made to prohibit and restrict the transshipment of narcotic drugs and psychotropic substances deemed to be rules under Customs Act, 1962 and Drug and Control Act, 1940.<sup>773</sup>

The Narcotics Control Bureau (NCB) is the nodal agency to prevent and combat abuse of narcotic drugs and psychotropic substances and illicit trafficking. NCB acts a drug law enforcement agency in India, subject to supervision and control of the Central Government. NCB was mandated to enforce the provisions of central statutory legislations, namely, The Narcotic Drugs and Psychotropic Substances Act, 1985 and The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

NCB was empowered to arrest the persons who committed offences in relation to poppy straw, coca plant and leaves, opium, cannabis plant,

<sup>771</sup> <https://nia.gov.in/nia-cases.htm> Last visited on 12.05.2024

<sup>772</sup> The Indian Penal Code was replaced by new BNS Act

<sup>773</sup> Section 79 and 80 of the Narcotic Drugs and Psychotropic Substances, 1985

cannabis and psychotropic substances and forfeiture of illegally acquired property from or through the said substances under sections 42,43,43 and 44 of NDPS Act, 1985.

### 3.1.2. SERIOUS FRAUD INVESTIGATION OFFICE

The Serious Fraud Investigation Office (SFIO) has been established by Government of India in July,2015 as per the Companies Act, 2013. The SFIO is a multi-disciplinary organization under the Ministry of Corporate Affairs, for detecting and prosecuting or recommending for prosecution of white-collar crimes/frauds committed under Companies Act,2013<sup>774</sup>. According to section 210 of the Companies Act, 2013, the investigation into the affairs of a company is assigned to SFIO, where Government is of the opinion that it is necessary to investigate into the affairs of a company. The SFIO has an exclusive jurisdiction and power of arrest under the section 212 of the act.

- on receipt of a report of the Registrar or inspector under section 208 of the Companies Act, 2013
- on intimation of a special resolution passed by a company that its affairs are required to be investigated
- In the public interest or on request from any department of the Central Government or a State Government

In the course of investigation by SFIO, the documents or things received or statements recorded from any person on oath under Section 217 of the act deemed to evidence collected against the person alleged. The Karnataka High Court held that the SFIO alone has authority to probe fraud under section 447 of Companies Act hence the registration of FIR by CBI stands vitiated for want of authority.<sup>775</sup> The Delhi High Court has observed that the SFIO is not barred from investigating offences under the Indian Penal Code (IPC), 1860, or conducting further investigation after the Investigation Report has been submitted. A conjoint reading and harmonious reading of relevant provisions

of Cr.P.C, 1973 and Companies Act, 2013 cannot be said that the SFIO was barred from investigating an offence under IPC,1860.<sup>776</sup>

### CHALLENGES FACED BY THE CENTRAL LAW AGENCIES DETAINING THE PRISONERS IN THE PRISON

The mentioned below were considered as challenges burden the Central Law Agencies in detention of the person alleged in the prison and cause deficient in the process of investigation,

#### 1. Over Crowding

Overcrowding in prison is one of the most crucial issues faced by the Criminal Justice System in India. On total, 1330 prisons were constructed in India with intent to accommodate 4,36,266 prisoners. To the worse, the present prison inmates were counted to 5,73,220 with an occupancy rate of 131.4% as on 31<sup>st</sup> December 2022<sup>777</sup>. The Central prisons in India has recorded 124.9% of an occupancy rate. Delhi has 14 Central prisons and two women prisons in the Country with actual occupancy of 9,346 inmates and 680 inmates, respectively. But, as on 31<sup>st</sup> December 2022, the prison has been crowded with 17,814 inmates in Central prisons with occupancy rate of 190.6% and 670 inmates in women prisons of 98.5% occupancy. Hence, the Central Law Enforcement agencies would find difficult to detain the person alleged in the place convenient for them to conduct the investigation in free and fair manner. The agencies were forced to place the detainees in the prisons wherever the accommodation available upon the approval of State Government. Overcrowding results in poor hygiene and inhumane conditions in prison infrastructure. It may affect the health of the detainee and delay the investigation process.

#### 2. Shortage of Human Resources

The Central law enforcement agencies thrive to combat the socio-economic offences and

<sup>774</sup> Section 447 of the Companies Act, 2013

<sup>775</sup> Vijayraj Surana v. CBI & Anr, 2024 LiveLaw (Kar) 192

<sup>776</sup> R.K.Gupta & Ors vs UOI through M/o Corporate Affairs & Anr, 2023 LiveLaw (Del) 1339

<sup>777</sup> Prison Statistics in India, 2022, published by National Crime Records Bureau, Government of India, available in [www.ncrb.gov.in](http://www.ncrb.gov.in)



ensure to protect the welfare of the society. In recent years, the agencies face manpower shortages which put them in crucial position to handle registered cases and surveillance of suspects. Added to that, the CBI is facing 23% shortage of manpower in the year 2022<sup>778</sup> while NIA seeks more manpower.<sup>779</sup> The Government of India has thought of restructure SFIO and increase the manpower to double which predicted 23 to 30 cases might added each year<sup>780</sup>.

### 3. Political and Officials Arrest

The Central law enforcement agencies will inquire huge pressure on handling high profile cases. The agencies also face the heat of media and public. In 1992, grave mass crime against tribal community including gang rape of women occurred in Vachathi village, Dharmapuri by 269 Government officials, the case was not registered by the Police and State Government continued to ignore the incident. The case was transferred to CBI and taken for investigation in 1995 after three years of delay. The CBI faces several hurdles to probe the case since all accused where officials have deep rooted connection with prison management as well as police department. The CBI had finally concluded the investigation and able to get all accused convicted only in 2011, which delayed for 18 years<sup>781</sup>. The central agencies get harassed by party members and public when it subject to an arrest of political leader in power or leader who popularly known. The agencies might find it difficult when trial was commenced at the place of offence committed and accused is detained in one place.

In Rajesh Ranjan Yadav case<sup>782</sup>, the detainee was a known and influential person in Patna

lodge in Tihar jail but trial proceedings were conducted in Patna court. Since, the Court has no video conferencing facilities there is need to produce in person and few occasions the case gets adjourned on the insist of accused persons. Frequent interventions of the accused and filing of numerous counter petitions, the agency couldn't able to conclude the trial. Sometimes, witness turns hostile or didn't turn out to the court due to fear and threat by the persons of accused.

Apart from that, the Central agencies was subject to handle delicate areas such as communal riots, caste-based crimes, terrorist attacks to probe case includes detention of the accused, collection of evidence, prosecution of the trial will not yield fruitful outcome when there requires approvals and co-ordination with State official departments.

### 4. Transportation of Prisoners

The detainee lodge in the prison by the Central Agencies required to be transported to the Special Court for trial of case each and every time or day. The agencies need to obtain sanction from the prison officials between transport to court and remand custody each time. The cost of expenses incurred on prison inmates includes food, clothing, medical, education, skill development, welfare activities, transport facilities for movement of prisoners during Remand, Trial, Transfer and Hospitals, etc.,<sup>783</sup> Since, the prisons were under the control of State and allocation of funds for prison administration were not uniformly distributed among the States by the Ministry of Home Affairs, the detainees of the Central law enforcement agencies inhabited in the prison would cause additional burden of expenditure to the State.

### 4. CONCLUSION

The present study is approached in two subjects are of prison administration and central law enforcement agencies. Since, the century age old British colonial act of 1894

<sup>778</sup> <https://indianexpress.com/article/india/govt-23-manpower-shortage-in-cbi-over-1000-cases-pending-9144318/>

<sup>779</sup> <https://timesofindia.indiatimes.com/india/nia-seeks-more-manpower-centre-says-no/articleshow/41391727.cms>

<sup>780</sup> <https://economictimes.indiatimes.com/news/politics-and-nation/govt-to-restructure-sfio-increase-manpower-to-350-at-probe-agency/articleshow/74536046.cms?from=mdr>

<sup>781</sup> L.Nadhan vs State, rep by The Deputy Superintendent of Police, CBI/SEP Madras, Cr.L.A.No 618/2011 of Madras High Court order dated 29<sup>th</sup> September 2023

<sup>782</sup> Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director, Cr.L.A.No.1172/2006 of Supreme Court of India, order dated 30<sup>th</sup> November 2007

<sup>783</sup> Table 12.4 of Prison Statistics in India, 2022, published by National Crime Records Bureau, Government of India, available in [www.ncrb.gov.in](http://www.ncrb.gov.in)

serves as major legislation for present prison administration with focus on the deterrence of the offenders and punishment for the offence. The Act of 1894 enacted for administration of prison present in Presidential Colonies but the superintendence was with the British Government. In 1950, the prison was brought under the State list of Seventh Schedule of Constitution of India and the prisons territory got reorganized during 1956. India as a developing country is in the thriving rapidly along with global economy parallelly create a new form of crimes against the economic and social welfare of the country. Technology advancement also pave way for new regime of cyber terrorism and white-collar crimes. To address these issues, the Central Government has enacted various central legislations and established central law enforcement agencies to enforce the provisions of such legislations. The contravention arises when Central agencies held the custody of detinue with State prison which anticipates political pressure, non-cooperation of state agencies, overcrowding, transportation, etc., Thus, conceptualization of restructuring of prison administration has to be made to achieve the fair and speed disposal of cases by Central law enforcement agencies.

### **SUGGESTIONS:**

Some of the measures has been proposed related to management and administration of prisons in India, in particular concerning to the effective functioning of Central Law Enforcement Agencies, are as follows,

**1. Constitutional Amendments on Articles 246 and Seventh Schedule of the Constitution:** The subject matter of Prisons/Persons detained is in Entry 4 of the State List empowered to amend or enact a any legislation corresponds in that prison matters. Instead, the subject matter can be amended and placed under the Concurrent List, where both central and state governments would have concomitant powers to legislate on prison matters. This

could lead to uniformity or harmonization in prison laws across the country.

2. The existing legislations for prison administration for rehabilitation, reformation of prisoners, and delineating the rights of prisoners, which is in force since British rule can be reviewed for obsolete provisions and need for an amendment to the contemporary need be suggested. The Central Government on suggestion would consolidate all the prison legislations and bring them under a single code. The Uniform code on prisons will be applicable only to the Central prisons under the superintendence of Central Government. It can also be providing the powers on State Governments to frame a guideline of its own under State amendments. It may also involve specifying the powers granted to central law enforcement agencies in relation to prison operations and management.

*For example:* New provisions can be inserted on prison code for the areas of, namely, prison industry, Asylum camps under Central Government invoking the provisions of CAA<sup>784</sup>, etc.,

3. **Change of Nomenclature from Central Prison to State Prison:** Renaming prisons currently under State jurisdiction to reflect their alignment with Central-level administration. This could imply a shift in operational control and management responsibilities. No prisons in the State should hold the name as 'Central prison' instead possess the name with respect the place in which the prison situated. *For example:* Central Prison in Tamil Nadu situated at Puzhal, Chennai shall be replaced as Tamil Nadu State Prison at Puzhal, Chennai.
4. Establishment of New Central Prisons under the Ministry of Home Affairs, Government of India. These prisons would specifically accommodate individuals detained or

<sup>784</sup> Citizenship (Amendment) Act, 2019 (47 of 2019)

arrested by central law enforcement agencies such as the CBI, NIA, etc. Centralizing these facilities could streamline operations and ensure standardized procedures.

5. The Central and Regional Prisons must establish a prison industry within the prison complex as rehabilitation and reformative initiative. The Central Prisons complex must establish a prison industry in each prison according to the skill and population of the prison inmates whereas the State Regional Prisons complex must establish at least one prison industry according to the specialization of the prison inmates.

For example:

- 1) Technical training courses to the graduates of intra nature and should be allowed to be in contact with outsiders or public,
- 2) Printing press industry such as State education question paper printing, Gazette publications, etc.,
- 3) Weaving and Dying Complex in the Western districts State Regional Prison complex and engaging women prisoners for service of cloth for Uniformed Services, etc.,
- 4) Tools and instruments such as nuts, bolt, plastic body, etc., for manufacturing of Arms and Ammunition required in the respective industry.

6. **Classification of State Prisons:** The State Prisons established must be classified as follows,

- a) State Regional Prison Complex
- b) District Prison Complex
- c) State Regional Women Prison Complex
- d) Open Air Prisons
- e) Juvenile Homes

The prison inmates of State prison must be treated separately. The State prisons must establish separate unit for the transgender, undertrial prisoners, first time offenders, juveniles, etc.,

7. **Classification of Central Prisons:** The arrested and detained persons by Central law enforcement agencies are lodged in Central prisons governed by Central Government. Further, the Central Prison Complex should be divided into separate units to accommodate prison inmates who are convicted or highly vulnerable persons i.e., terrorism, genocides, etc., first time offenders, transgenders, women, persons detained under preventive detention laws, etc.,

8. The education plays an important role in reformation of prisoners and helps to socially reintegrate with the society. Every Central and State Regional Prisons must provide education to the Juvenile Offenders up to elementary school studies whereas for the convicts can be provided up to post graduation studies.

9. **Establishment of Designated Special Courts:** Special courts would be set up within the premises of these new central prisons. These courts would handle cases involving detainees, avoiding the need for high-security transportation for remand or trial purposes. This setup aims to expedite trials and ensure efficient judicial proceedings. The Special courts must be attached with the Juvenile Homes and also with prisons housing the prison inmates involved in terrorist activities, and other offences relating to internal security. Every Central and State Regional prisons must be equipped with video conferencing facilities.

10. **Medical Facilities:** The Central prisons and State regional prisons must be established with Government Hospitals in nexus to the prison complex. In Central prisons and State Regional prisons, Super Speciality Hospital should be established with two units in function. a) Unit I – Medical treatment facilities for prison authorities and extended to their families and b) Unit II – Medical treatment facilities for prison inmates including under trial prisoners. In the case of District Jails, Government Hospitals should

be established nearby the prison with separate units for prison authorities and their families and another for prison inmates. The surgeries or treatment are of minor nature can be treated in these hospitals. Rehabilitation centers shall be provided to the drug addicts, peddlers for psychological treatment and care within the Hospital premises.

11. The system of Sub-Jails in each State shall be removed and demolished. Since, the connectivity to the State Regional Prisons and District prisons are well in place and can be reached in the matter of few hours.
12. The District legal aid authority office should function in coordination with the Central and State Regional Prison authorities
13. **Mitigating measures on Political Arrest** : MP / MLA's arrested by the central law enforcement agencies and subsequently remanded to judicial custody with state prison authority would lead to favourism and emergence of corruption as well as bribery activities. It may also subject to life threat on the political detainees lodged in states prisons. As a mitigating measures, the Central prison under the control of Central Government shall be established.
14. **Transfer of cases from State enforcement agencies to Central law enforcement agencies**: The cases of high risks and of most importance transferred to Central agencies up on the order of State government, were subject to non-cooperation with the State enforcement agencies and delay in investigation process. In the case Vishnu Priya suicide case, where the victim is Deputy Superintendent of Police died on the mental and work pressure imposed by her higher officials. Here the accused are State police machineries who have deep rooted connection in the entire police department. Hence, the establishment of new Central Prisons would eliminate the biased investigation process.
15. **Right to Cohabitation**: The Homosexual cohabitation (LGBTQ) has been increased in

the prison campus<sup>785</sup>. In order to reduce such kind of offence separate quarters has been allotted to the married prison inmates within the campus with all facilities. Their legally wedded partners are allowed to resides in the quarter for 2 days per month not exceeding 15 days per year. This is subjected to discretion of the Prison Authorities.

16. **Right to Vote**: The prison inmates should be allowed to cast their votes without any barriers in their respective constituency through postal ballots.
17. **Uniform Parole System**: At present, there is no uniform parole system in operation in India. Hence, the guidelines for Uniform Parole system should be framed and applicable throughout the country.
18. **Parole Board**: The Transfer of Prisoners Act, 1900 has empowered to establish the parole board only at districts of State. Therefore, the provisions of parole board to be reviewed and uniform guidelines of parole board has to be framed. The Parole Board should be chaired by the Judicial Officers.
19. **Remission, Commutation and Pre-release of Convicts**: Some provisions have provisions for Remission, Commutation and Pre-release but special legislations have no provisions to cater this. Hence, Uniform guidelines for Remission, Commutation and Pre-release should be enacted. For example: The SC/ST have no provisions for Remission, Commutation and Pre-release of convicts
20. **Determination of term of Life Imprisonment**: The Supreme Court of India, in the case of *Bhagirath and Others v. Delhi Administration* (1985)<sup>786</sup>, defined life imprisonment as incarceration for the remainder of the convict's natural life. A person sentenced to life imprisonment must serve at least 14 years, but they could remain in prison for the rest of their life. Even though, there is a delusion and speculations in the term of life imprisonment among

<sup>785</sup> Reported by my guide Dr.N.Gowthaman, found during the official visit to prison on the direction of Tamil Nadu Open University

<sup>786</sup> 1985 AIR 1050

public and subject to judicial review. Thus, the Central Government must specify the term of life imprisonment in the new legislations corresponding to central prisons.

**21. Riot Prevention:** Police stations should be constituted outside the Central and State Regional Prisons and equipped with Armed Police Force as measures to prevent the riot by the prison inmates. *For example:* The riot was breakout among the prison inmates on the death of Boxer Vadivelu at Central Prison at Chennai where police administration finds difficult to control the riot which result in 10 death and 100 people were injured.

**22. Attendance of Prisoners:** All prisons should be established with advanced technologies for the attendance of the prison inmates namely, fingerprint biometrics, Retina scanning, face recognition, etc., The attendance should be made in morning and evening daily.

**23. Prisoners affected with communicable diseases, etc.,** Confinement cell housed with person inmates having communicable diseases such as HIV, Leprosy, and lunatics should be attached with hospitals present nexus to the prison complex.



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