



## Prison system in India

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### Abstract

This term paper provides an analytical approach to conditions of Indian prisoners. It throws light on prison system with objective of knowing the trends of prisons, reformation, prison population, prisoner deaths and study expenses on prisoners. This paper gives a brief review of prison system in India and integrated theory of penology. A view of punishment that takes into account retribution and deterrence but emphasizes on correction, reformation, rehabilitation. The prison is a place where treatment takes precedence over custody is said to be foundation of prison reform.

**Keywords:** Indian prisoners, analytical approach

### Introduction

Crime is a social phenomenon. Everywhere some human beings have fallen outside the permitted conduct. Crime cannot be abolished except in a non-existent utopia. The primitive societies did not have well developed agencies of criminal justice administration therefore settlement of private wrongs was a private matter but with advancement of time primitive societies transformed into civil societies. Thus private vengeance fell into disuse giving rise to public disposition of wrong doer. The system of imprisonment represent a curious combination of different objectives of punishment. Prison may serve to deter the offender or it may be used as retribution method or isolating them in prison in order to prevent them to repeat the crime and fulfill the preventive purpose of punishment. It helps us to control crime by eliminating criminals from society. It may be serves as an institution for reformation and rehabilitation of offender.

### Meaning of prison

The term "PRISON" means "a place properly arranged and equipped for reception of person who legal processes are committed to it for safe custody while awaiting trial or for punishment." The term "PRISON" means "a place properly arranged and equipped for reception of person who legal processes are committed to it for safe custody while awaiting trial or for punishment." The term "JAIL" means "a place for the confinement of people accused or convicted for a crime."

The term system means a set of connected things forming a complex whole in particular or a set of things working together as part of a mechanism or interconnecting network. So prison system also include whole area of confinement, its administration, mechanism covering all aspects of imprisonment. The term jail and prison are sometime used inter-changeably. Prison means any goal or penitentiary including the airing grounds and other grounds or buildings engaged for use of prison." The word prison means different to different people for a law bidding person. It is the place where criminals end up. To the criminal it may be vague hazard or unavoidable indignity. The Prison Act, 1894 defines prison as any jail or place used permanently or

temporarily under general or special orders of the state government for detention of prisoners and include all lands and buildings but does not include any place for the confinement of prisoners who are exclusively in the custody of the police. Prison institutions are one of the three main constituents of the criminal justice system. Now the prison is not considered as a place for punishment instead considered as a reformation of offender and conditions in jail are improved so that it have a healthy impact on prisoners developing a positive attitude towards life and society. The purpose is to integrate the prisoners in society after their release from the prison. The management and administration of prisoners falls in domain of the state government and is governed by Prison Act, 1894 and prison manuals are prepared of respective state government. IN 1949 United Nation convened a meeting to considered the problem of crime prevention and to frame standard minimum rules for this purpose. A draft of standard minimum rules for the treatment of prisoners was submitted by First Congress on Prevention of Crime And Treatment of Offenders, UNO Geneva in 1955. THE GENERAL Assembly of united nation assembly passes a resolution a world congress on prevention of crime and treatment of offenders in Geneva in 1955. The purpose was the treatment of offenders with correctional method.

### Types of prison in India

In India there are three levels of prison such as taluka level, district level, Central level. The jail in this level are known as sub jail, district and central jail. There are some other types of jail – women jail, borstal jail, open jail, special jail. prison in india-In India, the international covenant on civil and political rights remain the core international treaty on the protection of the rights of prisoners. India has ratified the covenant and his bound to incorporate the provision in domestic law. The international covenant on economic, social, culture rights states the prisoners should have the right for getting highest attainable standard of physical and mental health. The standard rule respects the separation of different categories of prisoners both men and women should be detained in separate institution, prisoners detained in civil and criminal offences should be kept separated. The

UN standard minimum rules made it mandatory to provide separate residence for young and child prisoners from adult prisoners. The rules states that no prisoner should be punished unless he /she has been informed of the offences alleged against them and given opportunity of being heard.

### History of Indian prison system

During early days punishment for criminal behavior tended to be a public event which was designed to shame the person and deter others from repeating same crime. The object of punishment during Hindu and Mughal period was to deter others this including death sentence, hanging, mutilation, pillory, whipping, branding, stocks. At that time sentence for many of the offence was death. In the history of Indian prison then the men, women, boy, girl, murderers were kept together in local prisons. The conditions of prisons were miserable. It shows that prison in India during ancient period were madly maintained and often controlled by negligent prison warders and many died because of some disease like goal fever which was a form of typhus.. In the end of 17th century they were absorbed into the prison system under the control of the local justice of the peace. During 18th century imprisonment with hard labor was seen as a suitable sanction for petty offenders. Transportation was a much used method for disposing of convicted people for prison in India. It was used as a means of detention only at ancient time. There are many fortress situated in different part of our country in which the criminals were detained during pending trial and judgment. The British period was a beginning of penal reforms in India. The British prison authorities made efforts to improve condition of prisons and prisoners. They introduced radical changes in existing system keeping in view the sentiments of indigenous people. The prison enquiry committee appointed by the Government of India in 1836 recommends the abolition of practice of prisoners working on roads. In 1855 first time the inspector general of prison was appointed and his main function was to maintain discipline among the prisoners and the prison authorities. The second jail enquiry committee in 1862 first time shows concern towards insanity conditions of Indian prisoners that resulted in death due to illness and disease. In 1877 the jail enquiry committee gives certain recommendation followed by further suggestion in 1889 and 1892. The conditions were created to segregate the young and juvenile offenders from habitual offenders.

The Indian jail reform committees in 1912-20 which was headed by Sir Alexander Car dew. He visited various prisons in Burma, Japan, Philippine's, Hong Kong, Britain besides the Indian jail and suggest =

- a. that prisoners should be utilized in productive work
- b. Maximum intake capacity should be fixed by jail committee.
- c. Need of aftercare programme for released prisoner

The Pakwasa committee in 1949 accepts the system of utilization of prisoner as labor for road work without any supervision. During this time system of payment of wages to inmates for their labor was introduced. The aim was to protect the society from criminals, reform offenders, deter them, retribute them to society. In 1950 prison in India were governed by Indian prison act 1894. The constitution of India has placed jail along with police and law and order in state list of 7th schedule. The government of India invited the Dr. W.C Reckless a technical expert of the United

Nation on crime prevention and treatment of offenders to main recommendation on prison reform in 1951. A committee was appointed to prepare an all India jail manual in 1957 suggested by Dr. Walter reckless as suggested by pakwasa a model jail was 1st time established at Lucknow in 1949 where prisoners were made to work on handloom machine and engaged in home industries and the 1st women jail was established at yarwada. The government of India appointed all India jail reform committee in 1980 with justice a mulla as chairman and he recommend class of prisoner. Following were the recommendation- condition of prisoner should be improved, staff of prisoner properly maintained, after care unit setup, media and public allowed to visit jail, lodging of under trial in jail reduced to bare minimum and they should kept separate from convicted prisoners. Crpc 2005 amendment inserted a new section 436a which states under trial conditions detention for a period extending to ½ of maximum period of imprisonment served shall be released by the court on his personal bond with or without sureties. mulla committee- In 1980 the Government of India setup a committee on jail reform under the chairmanship of justice a Mulla with the objectives to review the laws, rules, regulations keeping in view the overall objectives of protecting society and rehabilitation of offenders. krishna iyer committee= In 1987 the government of India appointed justice Krishna Iyer committee to undertake a study on situation of women prisoners in India. It recommended that involvement of women in police force to tackle women and child offenders.

### Rights of prisoners

Every Prisoner is entitled to fundamental rights and human rights except right of liberty provided to every criminal person.

1. Right to legal aid- Legal aid is a right of every person it is not a charity. The main purpose of legal aid is that justice is administered properly and easily available and accessible. It should be ensure that legal aid is available to all people who want to enforce their rights. In India it is available to those who cannot afford to retain the counsel and available at the time of trial.
2. According to justice Krishna iyer right to free legal is the state duty and not government charity in M.H Wadanrao Hoskot VS. State of Maharashtra the court held that the right to legal aid is the basic necessity of free trail. It should be free for indigent and poor accused.
3. Right to equality- According to article 14 like should be treated alike and the concept of reasonable classification as contained in art. 14 has been a guide to court to determine the category of prisoners and their basis of classification
4. Limitation on right to freedom- art. 19 guarantee six freedoms to the citizen of India. Among these freedom of movement, freedom to reside, freedom of profession, occupation, trade, business cannot be enjoined by prisoners but other freedom like freedom of speech and expression, to become member of an association etc. can be enjoyed by prisoner even behind the bar but subject to limitation of prison laws.
5. Protection against conviction of offences – art 201 states if an act is not an offence on the date of commission of offence it cannot be an offence at the date subsequent to its commission.

6. Protection against double jeopardy= every prisoner have the right to protected against double jeopardy means if a person is prosecuted for the same offence for which he has already been prosecuted he can take complete defense of his former conviction.
7. Prohibition against self-incrimination= article 20 3 of the constitution give right to the prisoner that he cannot be compelled to be a witness against himself
8. Right to life and personal liberty= art 21 provides no person shall be deprived of his life or personal liberty except according to procedure established by law. It is important concept available to an accused against arbitrary arrest or unlawful detention without procedure of law by police authority. State of Maharashtra vs. Prabhakar Pandurang Sanzgiri case it was held that the benefit of art 21 is extended further to person who are under trial, pretrial, convicted prisoners in jail. It is his basic right which can't be taken back. Olga Telis vs. Bombay Corporation it was upheld that every person has right to livelihood by means which are not illegal, immoral, opposed to public policy.
9. Right to live with human dignity – the right of a human being to live with dignity is protected by constitution. This right is also given to prisoners as their mere conviction does not render them inhuman. In Maneka Gandhi v. Union Of India the apex court propounded the new dimensions of article 21 wherein it stated that right to live or life does not confine itself to mere physical existence but also include right to live with human dignity.
10. Right to education= the trend is changing now a detained and imprisoned person shall have the right to get the reasonable education which can be availed from public sources within limitation of state. Provision must be made for education facility mainly women and youth offender so that they can improve their personality behind the bars.
11. Right to speedy trial- This is one the fundamental right of a prisoner that is implied through article 21 of the Indian Constitution. This covers both social as well as public interest. The SC has observed and held that provision of speedy trial is an obligation of state otherwise the operation of legal system would not promote justice. In case of Hussainara Khatoon vs. state of Bihar is has been seen that large number of men, women, juvenile are still in prison awaiting trial. This case laid down foundation for ensuring speedy justice.
12. Right in case of acquittal if the trial against prisoner concludes to acquittal the prisoner as a matter of right to be released forth with after order of acquittal he cannot be detained behind prison walls.
13. The prisoner has the right to be presumed innocent until proven guilty.
14. Prisoner has the right to be known about ground of arrest. It is the constitutional right of arrested person.
15. All prisoners have the right of free treatment and the basic dignity this would include security, remand, parole, premature release, prison transfer and prison visiting system.
16. Right against solitary confinement, handcuffing, bar fetters and protection from torture.
17. The prisoner has the right to engage a lawyer of his choice. If not have sufficient means then court shall

take step to engage a state defense counsel who will represent the prisoner.

18. Every prisoner has the right to clean and sanitized environment in jail free from any kind of disease. It is duty of medical officer of the jail to ensure environment of jail is sanitized.
19. The women prisoner should be segregated from men prisoners and the under trial women shall be kept apart from convict. Women adolescents should be kept away from under trial, habitual, non- habitual prisoners. There should be a separate hospital for sick women prisoners within or adjoining the women enclosures.
20. A prisoner may be released on parole in case of serious illness, death of any family member, or any sufficient cause. The Supreme Court in Rama Murthy v state of Karnataka identified nine issues facing prisons which need reform. They are =

### **Prison problem**

Overcrowding

Delay in trial

Torture and ill treatment

Neglect of health and hygiene

Insufficient food and inadequate clothing

Prison vices

Deficiency in communication

Stramlining jail visit

Management of open prison

### **Problem of overcrowding in prisons**

Prison in most parts of India are overcrowded there are 8500 prisoners in tihar jail of Delhi in 1995 as against capacity of 2500 persons the law commission 78th report made some recommendation on reducing overcrowding in prisons=

Release on probation

Release on parole

Conditional release of an individual from prison

Remission, leave, premature release is useful in tackling problem of overcrowding.

### **Problem of prisoner health**

The state of health of prisoners is also an important issue which needs attention of prison authorities. Sec 37, 39a, 39c of the prison act deal with sick prisoners and require at the time of their entry in prison be asked about health relating to to aids etc. Amend the treatment of that disease so that such prisoner is given a special treatment segregated from rest of others. In Anil kumar v. State of mp the high court enumerated the factors which account for increase in numbers of prisoners exposed to infection of TB in prisons. They are as follows-

1. Illtreatment of offenders in prisoners there are so many diseases occurs in jail administration in prison room.
2. Negligent on the part of administrative workers they did not take proper care of prisoners.
3. Failure of medical services to refer Tb.
4. Transfer of prisoners between and inside prison infected with TB.
5. No proper hygiene.
6. Poor ventilation and poor nutrition.

### **Problem of criminality in**

Prison is the problem. Criminality involve in jail also as there is no class of offender of 1st and habitual offenders

they all are kept in same cell. Habitual offender experience influences the person and young offenders commit illegal act under their control or pressure. Homosexuality is another reason for arise of crime I jail due to lack go conjugal matrimonial right of prisoner are not fulfilled and they commit crime in jail.

### Prison labour

According to pakwasa committee the prisoner's souls be utilized in productive work as laborers in road or construction and wages should be paid to them for their work. Keeping them engaged in productive work would be helpful for their physical and mental health.it will build self confidence among them and they can think of returning to society as a law abiding citizens. The wages earned by them can be utilized for supporting their family and dependents. In state of Gujarat and ors. Vs Honble court of Gujarat observed that reformation and rehabilitation is basic policy of criminal law hence compulsory manual from convicted prisoner is protected under art 23 of the constitution. Min wages paid to prisoners for their labor after deducting the expenses incurred on them no prisoner can be asked to do labor fee of wages.

### Problem of under trial prisoners

The problem of under trial prisoners has assumed new proportions in recent years. Thousands of under trial prisoners are in jail for a period much longer than maximum term for which they could have been sentenced if convicted. Many of them are innocent person who are waiting for their trial date and many of them are ready to confess their crime. in kalyan chandra sarkar vs rajesh ranjan the supreme court observed that fundamental right of an under trial prisoner under art 21 is not absolute and it may be circumscribed by orison manual. In this case the jail authorities of Bihar were unable to control the illegal activities of the accused that was holding regular durbars in jail. The court order his transfer to an orison outside Bihar and consequently transferred to Maharashtra jail. The court held they have the power to transfer in exercise of their power under art 142 of the constitution though the jail manual did not provide such order.

### Techniques of prison system

1. Parole means a term to designate conditional release granted in a penal institution. It is also known as premature release of offender after strict scrutiny of long term prisoners under the rules laid down by government.
2. Aftercare of release offender The necessity and importance of after care for released prisoner was appreciated 1 st time by Indian jail conference in 1877. The object of after care service is to extend help, guidance, counseling, support, protection to released prisoners. To help them to overcome his mental, social, economic difficulties, help in removal of any social stigma
3. Furlough = it is the technique of prison reform. It is to be granted to the prisoner periodically irrespective of any particular reason merely to enable him to retain family and social ties and avoid ill effects of continuous prison life.
4. Probation= In probation the sentence of offender is suspended and allowing them to stay in the

community while inculcating good behavior under the supervision of officer.

5. Pardon = It is an act of mercy by which the offender is absolved from the penalty which was imposed on him. The grant of pardon may be absolute or conditional. If conditional the criminal is left off with certain conditions breach of which will result into revival of his sentence
6. open prison= Open prison is another significant tool of criminal reformation.In open jail there is absence of material or physical supervision of guard on prisoner. It plays important role in reformation of a prisoner. In India there are open prisons which look to reformation and rehabilitation of their inmates. The adjustment level of prisoners in open camps is better because of the facilities provided to develop a healthy interpersonal relationship. And free environment. The aim is to allow the inmates to know the culture of rehabilitation and to re-socialize themselves with lessor amount of restriction.

### Conclusion

The prison system as it operates today is legacy of British rule in our country. The Indian criminal administration also includes prison administration. Men is not criminal by birth but the social, economic conditions makes him criminal Proper food shelter health care treatment must be given to prisoners by prison authority. They should not be treated inhuman because aim of imprisonment is not to punish but to reform criminal so that he can live in society normally after completion of his punishment. In India punishment system is bases on reformatory theory. There are many reforms in prison system in India but still there is need of some other reforms because condition of prisoner in prison is miserable.

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