

PRISON AND PRISONERS

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ABSTRACT:

“Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care”.

-Mahatma Gandhi

Imprisonment as a mode of dealing with offenders has been in vogue since time immemorial. Though the foundations of the contemporary prison administration in India were laid during the British period, the system has drastically changed over the years, especially since the dawn of Independence. Apart from the native genius which finds its expression in the Fundamental Rights and Directive Principles of State Policy enshrined in the Constitution of India, new ideas and correctional practices in various countries have considerably influenced the texture of prison reforms in the country. As early as in the year 1920, the Indian Jails Committee had unequivocally declared that the reformation and rehabilitation of offenders was the ultimate objective of prison administration. This declaration subsequently found its echo in the proceedings of various Prison Reforms Committees appointed by the Central and State Governments of the international influences. The United Nations Standard Minimum Rules for the Treatment of Prisoners, formulated in 1955, provides the basic framework for such a goal. The international Covenant on Civil and Political Rights, propounded by United Nations in 1977, to which India is a party, has clearly brought out that the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. It is, however, seen that whereas India is second to none in terms of an enlightened thinking with regard to the purpose and objective of imprisonment, the gap between proclaimed principles and actual practices appears to have been widening in recent years. This article tries to explain about Prison and prisoners. Types of prisoners, and prisons allotted to them according to crime committed in India. Prison administration specifically in Kerala and its Condition.

INTRODUCTION

WHAT IS A PRISON?

Prisonization symbolizes a system of punishment and also a sort of institutional placement of under trial and suspects during the period of trial. One cannot think of a society without crime and criminals, thus the institution

of prison is obligatory for every country¹. The word 'Prison' at first brings a sense of negative impact but earlier were not considered ignoble places. As R.N Sharma² observes, this is born by the fact that lord Krishna himself was born in prison. In ancient India prisons were so modeled as to provide sufficient opportunity for penance and remonstrance prisoners were kept in solitary confinement so that they can have self-introspection which helps in their improvement. However, during medieval period this thing changed.

The recognized modes of punishment were death sentence, hanging, mutilation, whipping, flagging, branding or starving to death. During the Mughal rule in India the prisoners were ill-treated, tortured and subjected to most inhuman treatment. Condition of prison in India were awfully draconic when the East Indian Company took over. The prisons were places of terror and torture and prison authorities were expected to be tough and rigorous in implementing sentence. In the Layman's language prisons are thought of as crime fighting device. It was believed that exposing offenders to prisons reduce crime but the size of prison population has increased manifold worldwide. Michel foucault³ in his book "Discipline and Punish: The Birth of the Prison" argued that prison invented delinquency in the sense that the individual criminal was one of the product of the formation of the prison Foucault went on to explain that prison needs to fail in its fast of controlling criminality if it is to survive as a prominent social function

A growing interest among sociologist in reflexive analysis provides a platform for thinking about the social location of the prison and its growth⁴. This analytical viewpoint situates prison within human experience and also within social life.

In British period with the movement of liberalization lot of reformatory measure were taken. Many enquiry committees were appointed to enquire in to conditions of the prisons and to suggest the measures of improvement. Prison acts were enacted solitary confinement and cells were abolished in many states. Our constitution placed jails in seventh schedule, so that administrative and legislative reforms can be affected in time to come by the union and the state. Vocational training and transcendental meditation and yogic exercises were suggested as very necessary for the development of the personality of the prisoners. Press and media also showed ample concern in removing the social contempt of the prisoners and stigma of crime. There are many reformatory measures have been taken to improve the scenario of prison in India.

2.2 PURPOSE OF PRISONS

Maintenance of law and order lies in the hands of the state and therefore if a person violates the law of the state and commits crime, he is put behind the bars so that he cannot commit another crime. The place where he is put is called 'Prison or Jail' is the oldest institution for incarcerating offenders. It is the portal of the criminal justice

¹Dr .Suresh. V. Nadagoudar "judicial contribution to prison reforms in India" an overview, Bangalore law journal 2010 page 55

²Formar DIG (Prison) Tihar Jail Delhi

³French philosopher, historian of ideas, social theorist and his book "Discipline and punish: The birth of the prison" published in the year 1975.

⁴Pierre Bourdieu, Philosopher and anthropologist.

system it can be described as ‘cesspools of crime’ ‘the ultimate ghetto’, ‘dumping grounds’ and festering sores in the criminal justice system.⁵

The purpose of prison can be broadly categorized as punishment, deterrence, isolated reformation and reintegration, if a person commits a crime he is put behind the bars. Therefore prison acts as agents of punishment on behalf of the society going behind the bars is considered to be a social stigma. As a result, the convicted person after his sentence is over and general public are deterred from committing crime in future because they have a fear of going behind the bars if they commit crime. The idea behind isolation of the criminal is to prevent contamination of law abiding members of society and also to protect them from potential danger to their lives or property reformation and reintegration have received a major emphasis lately.

2.3 TYPES OF PRISONS

Prison establishment in India comprise of 8 categories of jails. The most common and standard jail institutions are Central jails, District jails and Sub jails. The other types of jail establishment are woman jails, Borstal schools, Open jails and Special jails as mentioned in table 1.1

2.4 WHO IS A PRISONER AND TYPE OF PRISONERS

A prisoner also known as an inmate's or detainee is a person who is deprived of liberty against his or her will. This can be by confinement, captivity or by forcible restraint. According to justice-V.R Krishna lyer, He said that “In our world prisoners are still laboratories of torture warehouses in which human commodities are sadistically kept and where spectrums of inmates range from driftwood juveniles to heroic dissenters. Human life that necessitates human rights, being in civilized society organized with law and a system as such it is essential to ensure for every citizen a reasonably dignified life. Even if the person is confined or imprisoned because of his wrong, he is entitled to their rights unaffected by the punishment for wrongs, simply because if a person under trial, his right cannot be discarded as whole.

“No one shall be subjected to torture or cruel inhuman or degrading treatment of punishment”

Prisoners have basic legal rights that can't be taken away from them. These include:

- a. The right to food and water.
- b. Protection from bullying, violence and racial harassment.
- c. Being able to get in contact with solicitor.

⁵James.A.inclard, criminal justice 9th Edition, page 532 publisher MC Graw Hill Humanities

2.4.1 TYPES OF PRISONERS

Prison inmates lodged in Indian jails are categorized as Convicts, under trials and Detenves. A convict is “a person found guilty of a crime and sentenced by a Court” or “a person serving a sentence in prison”. An under trial is a person who is currently on trial in a court of law. A detente is any person held in custody. Prison inmates lodged in Indian jails in relation to non- Indian penal code (IPC) crimes are classified as civil prisoners. They consist of convicts and under trials.

The prison act 1894 gives the following type of Prisoners:-

Section 23⁶: convict officers – Prisoners who have been appointed as officers shall be deemed to be public servant within the meaning of the Indian Penal Code 1860 (U/s 45).

Section 27⁷ Separation of prisoners- The requisitions of this Act with respect to the separation of prisoners are as follows:-

- (1) In a prison containing female as well as male prisoners. The female shall be imprisoned in separate buildings or separate parts of the same building, in such a manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoners.
- (2) In a prison where male prisoners under the age of twenty one are confined means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not;
- (3) Unconvicted criminal prisoners shall be kept apart from convicted prisoners and
- (4) Civil prisoners shall be kept apart from criminal prisoners.

Prison inmates lodged in various jails are categorized as convicts, under trials and Detenves. This population can also be further classified on other parameters such as Gender, Nationality, mental health etc. The apex court in the case Rama Murthy Vs State of Karnataka⁸ brought to the fore an urgent need for bringing uniformity in laws relating to the prisons and has directed the central and state Govt to formulate a new model prison manual. Earlier The All India Committee of Jail Reforms (1980-83) had also emphasized the need for consolidated law on prisons. Accordingly, with the approval of ministry of home Affairs, The Bureau of police Research and Development Constituted a model prison manual committee at the National Level for the formulation of a Model prison Manual. This model prison manual lays down the following kinds of prisoners⁹.

⁶The Prison act 1894

⁷The prison Act 1894

⁸AIR 1997 SC 1739, 1997 CriLJ 1508,1997(1) SCALE 95 , (1997) Z SCC 642

⁹[http://ncrb.nic.in/psi 2005/chapter-3 pdf](http://ncrb.nic.in/psi%202005/chapter-3.pdf)

Adolescent Prisoner	Person not less than 18 Years but not more than 21 years of age.
Adult Prisoner	Any prisoner who is more than 21 years of age.
Casual Prisoner	A convicted criminal prisoner other than a habitual offender.
Civil prisoner	Who is not committed to custody under writ or warrant or by order of a court martial and who is not a detainee.
Convict	Any prisoner under sentences of court exercising criminal Jurisdiction under provision of chapter 8 of CRPC & Prisoners Act 1900.
Detainee	Any person detained in a prison at the order of the competent authority under the relevant preventive laws.
Habitual offender	A prisoner classified as such in accordance with the provisions of the law or rules.
Inmate	Any person kept in an institution.
Military prisoner	A prisoner convicted by court Martial.
Remand prisoner	A person who has been remanded by court to Prison custody, pending investigation by the police.
Under-trial prisoners	A person who has been committed to prison Custody with pending investigation or trial by a Competent authority.
Young offender	A person who has attained the age of 18 yrs and has not attained the age of 21 yrs

2.5 PRISON ADMINISTRATION IN INDIA

After the advent of freedom a new phase of humanitarian prison administration began in India. Ideas regarding punishment and functions of prisons changed. The changing circumstances on the socio-economic scene of the country after independence had also inspired a few conscientious prison administrators of our country to undertake some innovative experiments through their own individual efforts. In the constitution of Republic of India, Prison administration has been included in the state list. In view of the changed penological ideology from custodial security to correction and rehabilitation of offenders, the ministry of home affairs, Govt of India, set up a committee in 1957 to prepare an All India skeleton jail Manual to examine the prison Acts and other central legislation on the subject and to recommend prison reform to be applied uniformly throughout the country. The committee was further directed to examine and make recommendations regarding the classification of prisoners on scientific lines, abolition of short term sentence and provision of alternative measures to consider the question of care of children and of women offenders etc. The committee recommended that the prevention and control of crime, treatment of offenders and after care of prisoners should be treated as a unified program.

There should be a proper classification on the basis of sex, age, criminal record, security conditions and need of training and treatment. There should be separate institutions for women adolescent and recidivistic offenders,

mental cases and under trials. Tuberculoses and leprosy inflicted prisoners should be provided with separate institutions. The maximum strength of prisoners should not exceed 750 in a central prison and 400 in a district jail. The committee recommended compulsory educational program for all prisoners. Under -trial prisoners should be housed in separate institutions located near the court. Women, adolescents and habitual offenders should be segregated. The valuable recommendations of the committees appointed by these governments were not implemented in an effective manner.

Govt of India in 1978 requested the seventh finance commission to submit report on upgrading the standards of jail administration. The commission in its report admitted that jails had been neglected for too long and that there had been practically no improvement in their environment or on in the methods of dealing with inmates. The commission recommended that priority should be given: firstly to ensure that adequate direct expenditure was incurred on the prisoners; Secondly, to bring improvements in amenities in respect of water supply, Sanitary facilities, electrification etc. Thirdly, to provide for the construction of additional jail capacities in state where these were found short of the minimum requirements. While the planning and monitoring of the schemes recommended by the seventh finance commission were being assigned to the National institute of social defense through the ministry of home affairs, The government of India appointed another committee (The All India Committee on Jail Reforms) In July 1980 for making a comprehensive review of prison administration in the country and suggesting suitable measures for its improvement. Though total overhauling has not taken place yet as a result of recommendation made by various committees, some of the better amenities have been extended to the prison inmates. The committee was headed by Justice Anand Narian Mulla and it is submitted its report in 1983.

2.5.1 OBSERVATION MADE BY JUSTICE A.N. MULLA

The report of the All India Committee on Jail Reforms (1980-1983) chaired by Mr. Justice A.N Mulla had observed That “prison Administration in India has been and on, a subject of criticism in the press, The parliament and the judiciary” “over-crowded prisons, prolonged detention of under trial prisoners ,Unsatisfactory living condition, lack of treatment programs and allegations of an indifferent and even inhuman approach of prison staff have repeatedly attracted the attention of critics over the years.

Unfortunately, nothing much seems to have changed, even during intervening decade and more and there has been no worthwhile reforms affecting basic issues of great relevance to prison administration in India. The Mulla committee has noted that a majority of persons lodged in prison consisted of people belonging to the unprivileged sections of society and that the majority of the prison population was form rural and agricultural background. The report laid emphasis on the management of prisons to be entrusted to a cadre of professionals.

Again in 1987 the Government of India appointed justice Krishna Iyer committee to undertake a study on the situation of Women prisoners in India. It has recommended induction of more women in the police force in view of their special role tackling women and child offenders. The National Human Rights Commission (NHRC) in its

first Annual report (1993-94) has expressed its deep concern about The “Appalling conditions of overcrowding, lack of sanitation, poor medical facilities, inadequate diet and the like, in most of the jails in country. These serious deficiencies are compounded by un-conscionable delays in the disposal of cases for various reasons and mismanagement in the administration of jails, all of which need to be remedied.

Central Government launched a new non-plan scheme in the year 2002-03 with much higher outlay for construction of additional Jails, repair and renovation of existing jail, improvement in sanitation and water supply and construction of living accommodation for prison staff. The scheme which is known as ‘Modernization of prisons was implemented over a period of five years (2002-07) with an outlay of Rs 1800 crore on cost sharing basis with state Govt. The scheme was closely monitored to ensure its desired impact on the conditions of prisons and lives of prisoners.

2.5.2 PRISON ADMINISTRATION IN KERALA

In Kerala there are three central prisons, one each in Thiruvananthapuram, Thrissur and Kannur. In addition to these there are district jails and an open prison at Nettukaltheri near Neyyatinkara, besides these prisons we have exclusively for female offenders at Neyyatinkara. The director general of prisons controls the jail administration. The prison staff consists of Superintendent, Jailer, Deputy Jailer, Assistant Jailer, chief warder, Head warder, warder and female warder. The Jailer is the chief executive officer of the Jail and is immediately subordinate to the superintendent of the prison. It is the duty of the Jailer to maintain discipline among the prisoners and subordinates.

2.6 JAIL SITUATION IN INDIA IN PRESENT SCENARIO

An extensive investigation by ‘India Today’¹⁰ reporters across the country has exposed a dark sub-culture thriving in Jail across the country. Not very different from the Murky under world of organized gangs and criminals. In the absence of proper legal aid, the poor and the vulnerable especially women and youngsters, unwittingly become part of the sordid system. 70 percent of the total 4,00,000 inmates in India’s 1500 prisoners have not been convicted of any offence. They are under-trials, most of them victims of police high handedness and a grindingly slow Judicial system of them nearly 2500 have spent more than five years behind bars without being convicted of any crime.

2.6.1 JAIL CONDITION IN DIFFERENT STATE

Moradabad central Jail in Utter Pradesh is so chock-a block with inmates that there isn’t enough space for them to sleep so the 2200 inmates in the Jail, which is supposed to house only 650 sleep in shift. DMK M.P. Kanimozhi complained about the stench from the attached toilet in her cell in Tihar Jail No. 6 and the authorities bent over

¹⁰News Magazine ‘India Today’ The horror of Indian Jail published in March 2015

backwards to ensure proper water supply to her cell. She consider herself luck that she is not in the Tiruchirapalli women's prison in Tamil Nadu where inmates have to get Mud to clean their toilet since there isn't any water.

In 2007 Mr. Binayaksen¹¹ put to cell along with 30 prisoners each had a concrete slab for a bed Just a blanket, supply bad food, rampant overcrowding and poor ventilation resulted to dangerous conditions, inhuman treatment of prisoners and appalling healthcare. Most prisoners were not looked after if they fell sick Tuberculosis was rampant with overcrowding, absence of hygiene Malnutrition and lack of medical attention sickness and lingering death stalked the cells.

2.7 CONCLUSION

Prison institutions are one of the three main constituents of the criminal justice system. Prisons are no longer regarded only as places for punishment with the changing perception towards prisoners. They are now being considered as reformatories and greater attention is being given to ameliorate the conditions in Jails so that it has a healthy impact on prisoners in developing a positive attitude towards life and society.

A review of the existing prison administration in India shows that though numerous efforts have been made through the formulation of various Jail regulation and recommendations of committees from time to time, the ground reality, however presents a diagonally opposite picture. An overwhelming majority of the prison population is not even convicted. The inmates are mostly under-trial or even uncommitted to trial. As mentioned earlier, several committees have recommended classification of inmates on the basis of their status which is not been followed. Prisons are still following the concepts as prevalent in colonial India. Were imprisoned men and women do not cease to be human beings. As a consequence to this fact, it follows that what happens to people in custody most always have regard to their likely conditions during as well as after release. A part from the human and secure containment of inmates, the prison environment should provide controlled conditions in which they can move towards a better understanding of themselves and learn to accept and deal responsibly with the consequence of their own behavior.

Since the inmates are to be reformed, it become essential to provide them with a built environment and gives them a chance to introspect and not an environment that leads to a loss of self-control, self-confidence and self-esteem.

¹¹MrBinayaksen a former prisoner in an Article "It was the darkest phase of My life" India Today July 2011.

REFERENCE

Clause (11) omitted by Act 17 of 1925, s. 2. 2. Clauses (12) and (13) renumbered as clauses (11) and (12) respectively by s. 2, *ibid.* 3. Subs. by s. 2, *ibid.*, for “solitary”. 4. The words “as defined in clause (11)” omitted by s. 2, *ibid.* 5. Section 47 re-numbered as sub-section (1) of section 47, by s. 3, *ibid.* 6. Subs. by s. 3, *ibid.*, for “solitary”. 7. Subs. by s. 3, *ibid.*, for exception (3). 8. Subs. by Act 10 of 1914, s. 2 and the First Schedule, for “or”. 9. Added by Act 17 of 1925, s. 3. 10. Subs. by the A.O. 1937, for “G.G. in C.”. Ins. by Act 13 of 1910, s. 2. 2. Subs. by s. 2, *ibid.*, for the proviso. Subs. by the A.O.1937, for “60”. 2. Section 59 renumbered as sub-section (1) by the Act 4 of 1986, s. 2 and the Schedule (w.e.f. 15-5-1986). 3. Subs. by the A.O. 1937, for “The G.G. in C. may for any part of British India, and each L.G. with the previous sanction of the G.G in C. may for the territories under its administration”. 4. Ins. by Act 4 of 1986, s. 2 and the Schedule (w.e.f. 15-5-1986).