

Prison Administration in context with Prisoner's rights in India



Dr. Shikha Mishra¹, Dr. Uday Veer Singh²

¹LL.M., NET, Ph.D. Assistant Professor, Law, IFTM University, Moradabad

²LL.M. NET JRF Ph.D Assistant Professor, Law, IFTM University, Moradabad

ABSTRACT: Prisons are those dark wells, which are kept separate from the society. Suffering and torture of prisoners are remained in existence from the ancient time. Numerous agonies are faced by prisoners' in name of punishment during their detention as maltreatment, third degree torture, overcrowding or congestion, sanitation etc. The stories of prisons don't come out of their walls generally. Administering of the prison must be in accordance with the law so that the prisoners can live behind walls of prisons with human dignity. Administration of prison and prison rights jurisprudence is linked to each other. The prisoners' rights jurisprudence is evolved and developed because of inhuman attitude with prisoners in jails and growth of human right jurisprudence. Different human rights of the detained persons are protected and enforced through various laws at different times. However, even after the enactment of plethora of legislations not only the instances of violations are still continue but also many sufferings remain untold. The area of human rights is a dynamic in itself, it has been changed with the growth of civilizations. This paper deals with administration of prisons, types of prisons, officers of prisons and their duties. The paper examines the duties of jail officials. The paper has come to an end with the help of doctrinal method of research.

KEYWORDS: Prison Administration, Prison, officers of prisons and their duties, human rights.

INTRODUCTION

Human rights jurisprudence advocates that no crime should be punished in a cruel, degrading or in an inhuman manner.¹ On the contrary, it can be held that any punishment that amounts to cruel, degrading or inhuman should be treated as an offence by itself.² The protection to rights of prisoners is a recognized issue throughout the world but the scope of rights and their protection varies from country to country. In prisons there are different types of prisoners such as convicted, under trials, preventive detainees, women inmates, juveniles in care home, all are having distinct rights according to their needs and requirements. The primary effect of the incarceration is the loss of liberty and the right to locomotion because of which many other liberties and rights are restricted by law. *Mahatma Gandhi* observed in 1917 "*Criminals should be treated as patients in hospitals, and jails should be hospitals admitting such patients for treatment and cure. The outlook of the jail staff should be that of physicians in hospitals. The prisoners should feel that the officials are their friends*".³ From the twentieth century the issue of protection to rights of prisoners became vibrant and came into focus and come to the end of the century the concern did spread all over the world. The learned justice *V.R. Krishna Iyer* told that "*Imprisonment does not spell farewell to fundamental rights*".⁴ Government recommends to run jails as indoor hospitals and boarding schools and to avail this goal it is necessary that prison officials would be obligated to behave humanly with jail inmates. The officers must be obligated for not treating them inhumanly.⁵

Parliament with the judiciary in their combined efforts have been giving strength to the prison jurisprudence. The protection to prisoners from being abused by the police officials is a major interest in a democratic and welfare state. The tendency of dehumanization or inhuman treatment with prisoners by the prison authorities cannot be appreciated at all. Judicial decisions, given by the Indian Judiciary regarding giving protection to human rights of prisoners indicates that the judiciary has been playing a role of guardian and protector of human rights, whereas the executive and legislature have failed to address the problems of the people. The Supreme Court has come forward to take corrective measures and issued necessary directions to the executive

¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

² *ibid* Article 4.

³ Quoted, Report of All India Jail Manual Committee, 1957-59, para. 3.

⁴ *Charles Sobhraj vs. Superintendent Central Tihar Jail, Tihar New Delhi*, AIR 1978 SC 1514.

⁵ http://upprison.gov.in/pdf/admin_rpt_2010_final.pdf last visited on 25/7/21

Prison Administration in context with Prisoner's rights in India

and legislature for the sake of prisoners. From the perusal of the above contribution it is evident that the Indian Judiciary is very sensitive and alive to the protection of the human rights of the prisoners. Judicial activism was applied as tool and new remedy for the purpose of vindicating the most precious of the precious human right to life and dignity.

The scope of prisoner's rights is expanded by the judiciary with the help of the Constitution of India art. 21. The Supreme Court has observed in *Sunil Batra II*, "human rights jurisprudence in India has a constitutional status and sweep ... so that this *Magna Carta* may well toll the knell of human bondage beyond civilized limits.⁶ Though, Parliament has enacted lots of laws to protect the prisoners from inhuman treatment and to expand their rights but only the law cannot make a miracle. The pious efforts should be taken to protect them, and the process should be due process. The enforcement machinery should take the step in such a way so that the aspiring goals can be achieved. As the learned Justice Krishna Iyer opined prison as: A reformatory philosophy, rehabilitative strategy, therapeutic prison treatment and enlivening of prisoner's personality through a technology of fostering the fullness of being such a creative art of social defence and correctional process activating fundamental guarantees of prisoner's rights is the hopeful note of national prison policy struck by the constitution and the court.⁷

PRISON ADMINISTRATION IN INDIA

Prison⁸ 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 thereto, but does not include—

- (a) any place for the confinement of prisoners who are exclusively in the custody of the police;
- (b) any place specially appointed by the State Government under section 541 of the Code of Criminal Procedure, 1882;
- or
- (c) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail:

Prisons in official language may be called as, jail, workhouse, penitentiary, reformatory, state prison, house of correction or whatever else, it is simply a place where the punishment of imprisonment is executed. Prisons serve main three purposes, which may be described as custodial, coercive and correctional. Adequate administration of prisons, care homes would not harass the rights of prisoners'. The purpose of prison administration is to reform the prisoners through the discipline of punishment. Prison is a State subject under List-II of the Seventh Schedule of the Constitution of India. The administration of prisons fall exclusively in the domain of the State governments, and is governed by the Prisons Act, 1894 and the Prison Manuals of the respective State Governments. Thus, States have the primary role, responsibility and authority to change the current prison laws, rules and regulations. Indian Penal Code, 1860 recognizes death penalty, imprisonment for life, simple and rigorous imprisonment, forfeiture of property and fine as a punishment to be imposed.⁹

- i) **Ancient India:** The penology in ancient India developed under the connotation of "*danda-niti*" which literally means principles of punishments. The history of early penal systems of different countries reveals that punishments were cruel and barbaric in nature. It was towards the end of 18th century that humanitarianism began to assert its influence on penology. The common modes of punishment prevalent in different parts of the world included corporal punishments such as flogging, mutilation, branding, pillories, chaining prisoners together, imprisonment, forfeiture of property and fine. In ancient India at the time of *Arthashastra*, justice was administered in accordance with legal rules which fell under one or the other of the following heads:
 - (a) Sacred Law (dharma),
 - (b) Secular Law (vyabhara),
 - (c) Custom (charitra)
 - (d) Royal commands (rajasasana).

Sacred law is the personification of truth, Secular law depends upon evidence. Custom is decided by the opinion of the people, and Royal Edicts constitute administrative law.¹⁰ Vedic Culture in India laid a solid foundation for an overriding importance of

⁶ *Sunil Batra vs. Delhi Administration (II)*, AIR 1980 SC 1579.

⁷ P. C. Harigovind, "*The Indian Jurisprudence on Prison Administration and the Legislative Concerns*", *IOSR Journal of Humanities and Social Science (IOSR-JHSS) Volume 9, Issue 5 (Mar. - Apr. 2013)*, PP 24-29 e-ISSN: 2279-0837, p-ISSN: 2279-0845. www.Iosrjournals.Org

⁸ section 3(1) of The Prisons Act, 1894.

⁹ Section 53 of Indian Penal Code, 1860 (Act no. 45 of 1860)

¹⁰ John Lewis Gillin, "*Criminology & Penology*", rev. ed., 1935, pp.203-204

Prison Administration in context with Prisoner's rights in India

Dharma in private and public life.¹¹ Dharma was conceived as conducive for highest good and welfare of all. The omnipresent character of Dharma provided a unified forum for interaction and balancing of several individual and social interests. There was no prison in the Vedic periods, but the house of the accused served the purpose for jail and he was practically imprisoned in his own house till he managed to compensate the plaintiff.¹²

It is on record that Brahaspati laid great stress on imprisonment of convicts in closed prisons.¹³ In the age of Ramayana when *Sita* was confined by *Ravana* he kept her in *Ashoka Vatika* (open prison) under the surveillance of female soldiers. There is a reference from the Mahabharata, where Kansa threw his sister *Devaki* and her husband *Vasudeva* into jail. In the early years of *Ashoka*, there was an unreformed prison in which most of the traditional fiendish torture were inflicted and from which no prisoners come out alive. But from his moral edicts which belong to his later period of rule when he was influenced by Buddhism it appears that many reformatory measures were taken. Another reformatory method introduced by *Ashoka* was the visit to the prisoners made by the authorities concerned once a day, sometimes, once in five days, to enquire about their conditions.¹⁴ *Arthashastra*¹⁵ describes that the jail should be well guarded with many compartments provided with separate accommodation for men and women. Another interesting feature of the administration of justice in ancient India is that the offenders in most cases were allowed to pay fines to escape punishments.

- ii) Medieval India:** The cruel and barbarous penal system of the ancient days continued for a long time in our country until the down fall of Mughal empire. In this regime only the Quranic law was applicable in our country, Quran was the prominent source of law in the medieval period which prescribed brutal punishments for crimes. During the Muslim rule in India Punishment by imprisonment was not as common as in ancient Hindu India. Besides, convicted prisoners under trials were also kept confined in jails.¹⁶ During the period of the Sultanate, there were no regular prisons. Only old forts and castles were used as prisons. In Muslim India prisons were used both for detention and punishment of offenders. Muslim law divided punishment into Hadd, Tazir, Qusas, Tash-hir.¹⁷ Hadd had the purpose to deter others from committing similar offence and was considered 'the right of God'.

The forms of punishment in this category included stoning to death for adultery, cutting off the right hand for theft etc. Tazir is a punishment intended to reform the criminal and inflicted for such crimes as have no hadd punishment. It was not 'the right of God'. It could take the forms of Tajib or public condemn or threat, dragging the offender to the door and exposing him to public scorn, imprisonment or exile, boxing on the ear; scouring. Quisas or retaliation rested on the personal types of crimes such as a murder. Tash-hir or public degradation was a popular devised punishment of universal currency throughout the Muslim world and even in Hindu India and Medieval Europe. It included such punishments as shaving off the offender's head, making him ride on an ass with his face turned towards its tail, and his body covered with dust, sometimes with a garland of old shoes placed around his neck, parading him in this posture through the streets with noisy music and finally turning him out of the city.¹⁸

- iii) British India:** The modern prison in India originated with the historic Minute by T.B. Macaulay in 1835. The contemporary prison administration in India is thus a legacy of British rule. It was only after 1858, a uniform system of legal justice was initiated in India. It was the first time in 1835 when the Lord Macaulay drew the attention of Legislative Council of India to the deplorable conditions of Indian prisons and he termed it as a "shocking to humanity"¹⁹ consequently, proposed to appoint a committee for the purpose of collecting information as to the state of Indian prisons and of preparing an improved plan of prison discipline. The Council accepted Macaulay's proposal and a Prison Discipline Committee was appointed by Lord William Bentinck. The report of the committee came out in 1838. The committee highlighted the vices of prison administration prevailing in India at that time. The committee was of the view about the

¹¹ Manu Smriti VII, 15 quoted by P.Ishwara Bhat, in "Fundamental Rights" Eastern Law House, page 56

¹² Indra J. Singh, *Indian Prison-A sociological Enquiry*, concept, New Delhi, p. 20.

¹³ Prof. N.V.Paranjape, "Criminology, Penology & Victimology", Central Law Publications, 15th Ed. Reprint 2012, page 428.

¹⁴ Mohammad Hamid Khuraishi, Rajgir, revised by A. G. Ghose, Director General of Archaeology, New Delhi, 1958, p.p.27-28

¹⁵ Gairola, Vachaspati: *Arthashastra of Kautilya*, Chaukhamba Vidyabhawan, Varanasi, 2003, pp.95-96.

¹⁶ A.L. Srivastava, "The History of India: 1000A.D. 1707 A.D", 1st Edn.1964, p.522

¹⁷ C.S.Malliah, *op. cit.*, p. 36.

¹⁸ Jadunath Sarkar, *Mughal Administration*, M.C. Sarkar Sons Calcutta 1952, pp. 103-107.

¹⁹ Zubair Ahmed, "Jail reforms in India: A study of Indian jail Reform Committees", published in International Journal of Multidisciplinary Education and Research ISSN: 2455-4588; Volume 1; Issue 3; May 2016; Page No. 01-04(page 1)

Prison Administration in context with Prisoner's rights in India

purpose of punishment is the great end of punishment is, according to our view, to deter all men from crime who are capable of committing it and susceptible of the fear of punishment. The committee went through various aspects like housing of prisoners, discipline, health, diet, remunerative rewards, punishments, education and labour in details. The committee suggested that prisoners should be classified into different categories and should be kept separated according to their categories.

The second committee appointed in 1864 took into considerations the aspects of juvenile delinquency, female prisoners, diet.²⁰ Afterwards in 1876 third jail committee was appointed for introducing more uniform regulations and for making short sentence more deterrent.²¹ Then the committee of 1888 was appointed by Lord *Dufferin*, the work of this committee was corroborated by the recommendations of All India Committee of 1892. It resurveyed the general prison administration in India and drew up proposals on the subject of prison offences and punishment. This report, as a manuscript was accepted by the Government of India and got confirmed as the Prisons Act 1894. It provided for the classification of different offenders and tried to secure uniformity of treatment to all offenders in jails. This Act was basically based on principle of deterrence.²² 'All India Jail Committee' (1919-1920) was appointed to suggest measures for prison reforms was headed by Sir Alexander Cardew. It is indeed a major landmark in the history of prison reforms in India and is appropriately called the corner stone of modern prison reforms in the country. For the first time, in the history of prison administration, reformation and rehabilitation of offenders were identified as one of the objectives of prison administration.²³ The prisons should not only have deterring influence but they should also have a reforming effect on inmates. It recommended utilization of prison inmates in productive work so as to bring about their reformation. The Committee also emphasized the need for an intensive after-care programme for the released prisoners for their rehabilitation.²⁴

iv) Post Independence India: After the advent of freedom, a new phase of humanitarian prison administration has begun in India. Overcrowding in prisons, prolonged detention of under trial prisoners, unsatisfactory living conditions, lack of treatment programmes and allegations of indifferent and even inhuman approach of prison staff have repeatedly attracted the attention of the critics over the years.²⁵ In 1957, the Government of India appointed All India Jail Manual Committee for preparing an All India Skeleton Jail Manual, examining the Prisons Act, 1894 and other relevant central laws, making proposals for prison reforms throughout the country. The committee believed in the philosophy of Mahatma Gandhi that '*hate the crime not the criminal*' the report of the committee held that the problems cannot be solved neither by making punishment more deterrent nor by making the system of punishment too weak and diluted. The Committee wanted prisons to be transformed into correctional institutions to achieve the goal of rehabilitation of offenders.

In 1980, The Indian Government appointed an All India Jail Reform Committee under the chairmanship of *Justice A.N. Mulla*.²⁶ The Committee suggested Setting up of a National Prison Commission as a continuing body to bring about modernisation of prisons in India.²⁷ The Committee suggested that conditions of prisons should be improved by making adequate arrangement for food, clothing, sanitation, ventilation, etc. It was also focussed that prison staff should be properly trained and emphasized to have focus upon the reformation and rehabilitation of prisoners. Referring to the Justice Mulla Committee Report the Apex Court observed that "All prisoners under sentence should be required to work to their physical and mental fitness as determined medically. Work is not to be conceived as additional punishment but as a means of furthering the rehabilitation of the prisoners....."²⁸

²⁰ Reforms of Indian Jail Committee, 1864

²¹ The Imperial Gazetteer of India, *The Indian Empire*, Vol. IV-Administrative, p. 399.

²² R.N. Datir, *op. cit.*, p. 58.

²³ *supra* noted at 15.

²⁴ N.V. Paranjape, *Criminology & Penology with Victimology*, Central Law Publications; Sixteenth Edition; 2014, p 479

²⁵ Govt. of India: Ministry of Home Affairs, Report of All India Committee on Jail Reforms, 1980-83, p.1. (Referred also in Article Rights of the Prisoners: Behind the Bars, published in Criminal Law Journal, 2010 Journal 179p.)

²⁶ Prof. N. V. Paranjape, "Criminology & Penology with Victimology", Central Law Publications, Reprint 2012, page 431.

²⁷ Justice Mulla submitted its' Report on Jail Reforms to Home Ministry on 31st March, 1983.

²⁸ *State of Gujarat vs. Hon'ble High Court of Gujarat*, AIR 1998 SC 3164.

Prison Administration in context with Prisoner's rights in India

Further Justice Thomas held that "The rehabilitation of a prisoner need not be by closing our eyes towards the sufferings of victims of crimes. Dispensing justice to victims of crime cannot any longer be ignored."²⁹ The Committee made a demand for making possible visits of media persons and public men.³⁰ The Committee recommended the variety of institutions for catering to the needs of different categories of offenders. Afterwards, the another appointed National Expert Committee on Women Prisoners headed by Justice V.R. Krishna Iyer in its' report submitted to the Government in 1988 recommended induction of more women in the police force in view of their special role in tackling women and child offenders. The UP Jail Manual classified jails in Uttar Pradesh in four categories:

1. central prisons;
2. district jails;
3. juvenile jail; and
4. lock-up jails

Central prisons have accommodation ordinarily for more than 1,000 prisoners. Adult prisoners sentenced to imprisonment for life or to terms of imprisonment exceeding seven years will be sent to these jails.

There are five classes of district jails. First class, having accommodation ordinarily for prisoners exceeding 500. Prisoners sentenced to terms of imprisonment exceeding three years but not exceeding seven years will be admitted to these jails. Second class, having accommodation ordinarily for prisoners exceeding 300 but not exceeding 500 Prisoners, sentenced to terms of imprisonment exceeding two years but not exceeding three years will be imprisoned in this category of jail. Third class, having accommodation ordinarily for prisoners exceeding 150 but no exceeding 300. Fourth class, having accommodation ordinarily for prisoner exceeding 100 but not exceeding 150. In third and fourth category district jails prisoners sentenced to terms of imprisonment exceeding two years but not exceeding three years will be imprisoned. Fifth class of district jail, will have accommodation ordinarily for 100 prisoners or less. Prisoners sentenced to terms of imprisonment not exceeding one years will be imprisoned thereto. The jail authorities and their duties and responsibilities are composed in Prisons Act, 1894.

OFFICERS OF PRISONS AND THEIR DUTIES

Prison Act, 1894 states, an Inspector General shall be appointed for the territories and shall exercise, subject to the orders of the State Government the general control and superintendence of all prisons situated in the territories under such Government.³¹ For every prison there shall be a superintendent, a Medical Officer (who may also be the Superintendent), a Medical Subordinate, a Jailer and such other officers as the State Government thinks necessary.³²

Superintendent shall manage the prison in all matters relating to discipline, labour, expenditure, punishment and control.³³ The Superintendent shall keep, or cause to be kept a register of prisoners admitted; a book showing when each prisoner is to be released; a punishment-book for the entry of the punishments inflicted on prisoners for prison offences; a visitors' book for the entry of any observations made by the visitors touching any matters connected with the administration of the prison; a record of the money and other articles taken from prisoners; and all such other records as may be prescribed by rules under section 59 of the Prisons Act. The superintendent or jailor shall receive and detain all the prisoners committed to his custody. The superintendent shall report at once to the district magistrate about wounds, injuries, contusions found on prisoners which are not relevant to crime and case for which he is committed.³⁴ The Bombay High Court held that the principle of justice must be adhered to by the Superintendent himself and no other person. He must 'examine' the prisoners himself. He cannot simply rely on a readymade statement that would not be an 'examination'. The enquiry is of a quasi-judicial nature and includes the right of the prisoner to be heard, to be fully informed and to cross examine. Finally, the Superintendent must pass the reasoned order. In the instance case petitioner was punished by the prison authorities on account of an offence he had committed while serving a prison term.³⁵

²⁹ *State of Gujarat vs. Hon'ble High Court of Gujarat*, AIR 1998 SC 3164, referred in an article by Apoorva Goyal, "Victim's Right to Access to Justice", *Criminal Law Journal* 2012 Journal 196 p.

³⁰ supra noted as 19, page 432

³¹ Section 5 of the Prisons Act, 1894.

³² Section 6 of the Prisons Act, 1894

³³ Section 11 of the Prisons Act, 1894

³⁴ UP Jail Manual, 1894, Rule 22.

³⁵ *Damal H Walcott v. Superintendent, Nagpur Central Prison*, 1971 Bom LR 436

Prison Administration in context with Prisoner's rights in India

Medical Officer shall have charge of the sanitary administration of the prison, and shall perform such duties as may be prescribed by rules made by the State Government³⁶ under section 59. Whenever the medical officer has reason to believe that the mind of a prisoner is or is likely to be, injuriously affected by the discipline or treatment to which he is subjected, he will inform to the superintendent.³⁷ When the death is caused of any prisoner it is the duty of the medical officer to record in a register, the day on which he was first complained of illness, when he was admitted to the hospital, the diet on that day, the labour in which he was engaged on that day, the nature of illness, when he died and when he was last seen before the death by the medical officer.³⁸ Whenever a prisoner is admitted to prison he will be medically checked under the general or special order of the medical officer. Every prisoner on arrival at the main gate, and before he is locked up in the quarantine enclosure shall be examined carefully by the assistant medical officer³⁹ in the presence of the jailer or other officer on duty. The name of the prisoner, the time of examination and the result of the examination, with reference to any injuries, wounds, contusions or abrasions detected shall be entered in the jailer's report-book and the entries shall be signed by the jailer or another officer duly authorized by the superintendent and the assistant medical officer. The clothing of all prisoners shall be carefully examined, and if it is found to contain any stains of a suspicious character the district magistrate shall be informed and the clothing shall be stored under lock and key.⁴⁰ If the prisoner is transferred from one jail to another jail then the medical officer will certify that he is free from illness and can be transferred. The medical examiner shall examine the labouring prisoner from time to time.

Jailor shall reside in the prison, unless the Superintendent permits him in writing to reside elsewhere.⁴¹ Upon the death of a prisoner, the Jailer shall give immediate notice thereof to the Superintendent and the Medical Subordinate.⁴² The Jailer shall be responsible for the safe custody of the records to be kept under section 12 of the Prisons Act, for the commitment warrants and all other documents confined to his care, and for the money and other articles taken from prisoners.⁴³ The Jailer shall not be absent from the prison for a night without permission in writing from the Superintendent; but, if absent without leave for a night from unavoidable necessity, he shall immediately report the fact and the cause of it to the Superintendent.⁴⁴ Section 20 of the said Act states that where in a prison Assistant Jailor and Deputy Jailor is appointed subject to the order of superintendent he shall be competent to do all the duties of the Jailor. If any prisoner is sick then the jailor immediately will inform to the medical officer and will apply the directions given by medical officer or medical subordinate.

Subordinate officers as gate keeper is also the officer of the prison and he can examine anything carried in or out of the prison, search or stop any person to ascertain, what is going into or coming out of prison and has to give immediate notice to the jailor on finding any prohibited article or property. Officers subordinate to the jailer shall not be absent from the prison without leave from the Superintendent or from the jailer. Prisoners who have been appointed as officers of prisons shall be deemed to be public servants within the meaning of Indian Penal Code, 1860.⁴⁵

No officer of a jail shall sell or let, nor shall any person in trust for or employed by him sell or let, or derive any benefit from selling or letting, any article to any prisoner or have any money or other business dealings, directly or indirectly, with any prisoner. No officer of a prison shall, nor shall any person in trust for or employed by him, have any interest, direct or indirect, in any contract for the supply of the prison; nor shall he derive any benefit, directly or indirectly, from the sale or purchase of any article on behalf of the prison or belonging to prisoners.⁴⁶ Prison officers are obligated to treat prisoners sympathetically. They are obligated to listen inmates are to sort out the problems of prisoners as well as not to irritate with them.⁴⁷

In the present age, the society seems to have a variety of objectives in regard to control of crime and it considers imprisonment of the means for attaining each of them. First, as is implied by the relatively recent emphasis on reform, rehabilitation and treatment of criminals, society wants criminal changed, so that they will commit no more crimes.⁴⁸ The prison is expected to

³⁶ Section 13 of the Prisons Act, 1894

³⁷ Section 14 of the Prisons Act, 1894

³⁸ Section 15 of the Prisons Act, 1894

³⁹ Medical subordinate referred to in section 6 of the Prison Act, 1894 (IX of 1894), in this Manual described as Assistant Medical Officer.

⁴⁰ UP Jail Manual, 1894, Rule 20

⁴¹ Section 16 of the Prisons Act, 1894

⁴² section 17 of the Prisons Act, 1894

⁴³ section 18 of the Prisons Act, 1894

⁴⁴ section 19 of the Prisons Act, 1894

⁴⁵ Section 21, 22, 23 of The Prisons Act, 1894

⁴⁶ Section 10 of Prisons Act, 1894

⁴⁷ upprison.gov.in/pdf/admin_rpt_2010_final.pdf.

⁴⁸ Sutherland and Cressey, "Principles of Criminology", Sixth Edition, Surjeet Publications, p. 460-461

Prison Administration in context with Prisoner's rights in India

reform or rehabilitate criminals. Society wants protection from criminals. The prison keeps exclude offenders from society so that they cannot cause harm by commission of crimes during certain periods of time. Society wants retribution also. The prison is expected to cause suffering in routine life of criminals as they have made other's life intolerable. It is in the benefit of the society to minimise crime rate not only by reforming criminals but also by deterring the general public from behaviour which is punishable by imprisonment.⁴⁹ Since the prison has been assigned the task of working toward each of society's goals, the attainment of goals may be considered the objective of punishment.⁵⁰ Within the prison, the attempt to perform the duties and for achieving the goals of incarceration various theories of punishment are made applicable to the penal structure.

SUGGESTION AND CONCLUSION

Effective prison administration is essential for the betterment of criminal jurisprudence. It will not only give strength to the system but will also helpful in making the policies of government transparent as well as the ultimate goal of penal system will become easy to achieve by reformation of prisoners. In the absence of proper administration of prisons prisoners' right will become futile. Vacant seats of prison staff must be filled without undue delay as the staff in jails are very less in comparison of required. Problems of sanitation, congestion are very serious issues of jails which must be resolved.⁵¹ Implementation of reformation schemes in an effective way will make the administration effective and proper in prisons. The provisions relating to arrest and their rights during detention cannot be by-passed by alleging that that there was no arrest in real but that was only informal detention.⁵² Informal detention or restraint of any kind by the police is not authorised by law.⁵³ Jailors are bound by rule of law and cannot defeat the primary purpose of improvement. Prison staff is the backbone of prison administration. Smooth function of prison administration, enforcement of rights in effective way is possible by the sufficient prison staff. Their needs and requirement must be taken into the consideration. The Court has power and responsibility to intervene and protect the prisoner against the mayhem, crude or subtle and may use habeas corpus for enforcing imprison humanism and forbiddance of harsher restraints. Sense and sympathy are not enemies of penal asylums. The aim of incarceration is not only punitive but restorative to be an offender a non-offender. Rehabilitation is a prized purpose of prison hospitalization. A criminal must be cured and cruelty is not curative even as poking a bleeding wound is not healing.

Law has been playing an important role in all the modern societies. It has become a norm of organizing all the societies because of its promise to be universal, uniform and equal. The prisoners whether they are convicted or under trials cannot be deprived of their human rights except the right to liberty. Dignity of a prisoner is not diminished on being convicted for the crime. Prisons are for reform and rehabilitation. Human rights are an essential component in any measure of penal reform. The humanitarian approach should be considered in a penal administration. Prison houses are made within the geographical boundaries of the nation and when Part IIIrd, Constitution of India is invoked by a prisoner it cannot be said at bay by the courts of law. The right guaranteed under the Constitution spread the humanity. The non-compliance of the related provisions and failure to inform the accused about his rights would nullify the trial.⁵⁴

REFERENCES

- 1) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.
- 2) Quoted, Report of All India Jail Manual Committee, 1957-59, para. 3.
- 3) Charles Sobhraj vs. Superintendent Central Tihar Jail, Tihar New Delhi, AIR 1978 SC 1514.
- 4) http://upprison.gov.in/pdf/admin_rpt_2010_final.pdf last visited on 25/7/21
- 5) Sunil Batra vs. Delhi Administration (II), AIR 1980 SC 1579.
- 6) P. C. Harigovind, "The Indian Jurisprudence on Prison Administration and the Legislative Concerns", IOSR Journal of Humanities and Social Science (IOSR-JHSS) Volume 9, Issue 5 (Mar. - Apr. 2013), PP 24-29 e-ISSN: 2279-0837, p-ISSN: 2279-0845. www.iosrjournals.Org
- 7) section 3(1) of The Prisons Act, 1894.
- 8) Section 53 of Indian Penal Code, 1860 (Act no. 45 of 1860)
- 9) John Lewis Gillin, "Criminology & Penology", rev. ed., 1935, pp.203-204

⁴⁹ ibid.

⁵⁰ Louis N Robinson, "Contradictory Purposes in Prisons", Journal of Criminal Law and Criminology, 37:449-457, March-April, 1947.

⁵¹ In Re 1382 Prisons case (2018)

⁵² R. V. Kelkar's, *Criminal Procedure*, Fifth Edition 2008, Eastern Book Company, page 88.

⁵³ *Empress vs. Madar*, 1885 AWN 59

⁵⁴ *Suk Das vs. Union Territory of Arunachal Pradesh*, 1986 SCC (Cri.) 166.

Prison Administration in context with Prisoner's rights in India

- 10) Manu Smriti VII, 15 quoted by P.Ishwara Bhat, in "Fundamental Rights" Eastern Law House, page 56
- 11) Indra J. Singh, Indian Prison-A sociological Enquiry, concept, New Delhi, p. 20.
- 12) Prof. N.V.Paranjape, "Criminology, Penology & Victimology", Central Law Publications, 15th Ed. Reprint 2012, page 428.
- 13) Mohammad Hamid Khuraishi, Rajgir, revised by A. G. Ghose, Director General of Archaeology, New Delhi, 1958, p.27-28
- 14) Gairola, Vachaspati: Arthasastra of Kautilya, Chaukhamba Vidyabhawan, Varanasi, 2003, pp.95-96.
- 15) A.L. Srivastava, "The History of India: 1000A.D. 1707 A.D", 1st Edn.1964, p.522
- 16) C.S.Malliah, op. cit., p. 36.
- 17) Jadunath Sarkar, Mughal Administration, M.C. Sarkar Sons Calcutta 1952, pp. 103-107.
- 18) Zubair Ahmed, "Jail reforms in India: A study of Indian jail Reform Committees", published in International Journal of Multidisciplinary Education and Research ISSN: 2455-4588; Volume 1; Issue 3; May 2016; Page No. 01-04(page 1)
- 19) Reforms of Indian Jail Committee, 1864
- 20) The Imperial Gazetteer of India, The Indian Empire, Vol. IV-Administrative, p. 399.
- 21) R.N. Datir, op. cit., p. 58.
- 22) supra noted at 15.
- 23) N.V. Paranjape, Criminology & Penology with Victimology, Central Law Publications; Sixteenth Edition; 2014, p 479
- 24) Govt. of India: Ministry of Home Affairs, Report of All India Committee on Jail Reforms, 1980-83, p.1. (Referred also in Article Rights of the Prisoners: Behind the Bars, published in Criminal Law Journal, 2010 Journal 179p.)
- 25) Prof. N. V. Paranjape, "Criminology & Penology with Victimology", Central Law Publications, Reprint 2012, page 431.
- 26) Justice Mulla submitted its' Report on Jail Reforms to Home Ministry on 31st March, 1983.
- 27) State of Gujarat vs. Hon'ble High Court of Gujarat, AIR 1998 SC 3164.
- 28) State of Gujarat vs. Hon'ble High Court of Gujarat, AIR 1998 SC 3164, referred in an article by Apoorva Goyal, "Victim's Right to Access to Justice", Criminal Law Journal 2012 Journal 196 p.
- 29) supra noted as 19, page 432
- 30) Section 5 of the Prisons Act, 1894.
- 31) Section 6 of the Prisons Act, 1894
- 32) Section 11 of the Prisons Act, 1894
- 33) UP Jail Manual, 1894, Rule 22.
- 34) Damal H Walcott v. Superintendent, Nagpur Central Prison, 1971 Bom LR 436
- 35) Section 13 of the Prisons Act, 1894
- 36) Section 14 of the Prisons Act, 1894
- 37) Section 15 of the Prisons Act, 1894
- 38) Medical subordinate referred to in section 6 of the Prison Act, 1894 (IX of 1894), in this Manual described as Assistant Medical Officer.
- 39) UP Jail Manual, 1894, Rule 20
- 40) Section 16 of the Prisons Act, 1894
- 41) section 17 of the Prisons Act, 1894
- 42) section 18 of the Prisons Act, 1894
- 43) section 19 of the Prisons Act, 1894
- 44) Section 21, 22, 23 of The Prisons Act, 1894
- 45) Section 10 of Prisons Act, 1894
- 46) upprison.gov.in/pdf/admin_rpt_2010_final.pdf.
- 47) Sutherland and Cressey, "Principles of Criminology", Sixth Edition, Surjeet Publications, p. 460-461
- 48) Louis N Robinson, "Contradictory Purposes in Prisons", Journal of Criminal Law and Criminology, 37:449-457, March-April, 1947.
- 49) In Re 1382 Prisons case (2018)
- 50) R. V. Kelkar's, Criminal Procedure, Fifth Edition 2008, Eastern Book Company, page 88.
- 51) Empress vs. Madar, 1885 A.W.N. 59
- 52) Suk Das vs. Union Territory of Arunachal Pradesh, 1986 SCC (Cri.) 166.



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.