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# REFORMATIVE PRISON IN INDIA: A SOCIO-LEGAL STUDY

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## ABSTRACT

There is no society that is not confronted with the problems of criminality. So the institution of prison is indispensable for every country. The institution of prison may serve as to deter the offender or may be used as a method of retribution or it may also serve as an institution for changing the lives of the offenders as a better citizen. It is true that criminal is not born, but is made up by social and environmental factors. If we look at jail in our country there are many people from lower socio-economic classes languishing in jail. Their living condition outside, prior to their staying in jail is also pathetic. Representing the tail end of the criminal justice system but on the whole it plays the most important role and almost the whole trust on bringing reformation, rehabilitation and reintegration of the prisoners lies with it. No doubt the administration of criminal justice is State subject and the subject of Prison is covered by Entry 4 of List II of the 7<sup>th</sup> Schedule of the Constitution, the management and administration falls exclusively within the domain of the State. This article tries to attempt the need for developing the Indian prison system with a view to achieve reformation, rehabilitation and integration of the prisoners.

**Keywords:** Prison, criminal justice system, reformation, rehabilitation, reintegration, prisoners.

## **1.1 INTRODUCTION**

Emile Durkheim in his Division of Social Labour opined that crime is inevitable in every society; there is no society that is not confronted with the problems of criminality and theoretically crime could disappear altogether only when all member of society have the same value and such a standardization of individual is neither possible nor desirable. He opined that some crime is in fact necessary if society is to progress. All most all the States enacted the statutes imposing punishment for the wrong-doers. There may be differences in imposing punishment depending upon the circumstances of that country. Prison in India and their administration is State subject covered by item 4 under the State List in the 7<sup>th</sup> Scheduled of the Constitution of India. The management and administration of prisons falls exclusively in the domain of the State Government and is governed by the Prison Manuals of the respective State governments. Thus State has the primary role, responsibility and authority to change the current prison laws, rules and regulation. Though, the administration and management of prison is State subject, Article 355 of Indian Constitution imposes duty on the Central Government to protect the State government against external aggression, internal disturbances and to ensure that the State Government is carried on in accordance with provisions of the Constitution. Therefore, by virtue of such provision the Ministry of Home Affairs provides guidance, advice and instruction to the States on various issues relating to prison management and treatment of prisoners. The subject matter of prison reforms, Correctional Administration, Prisons/Prisoners legislation, Identification of Prisoners/Convicted and Suspected persons legislation, Repatriation of Prisoners Act, 2003, Transfer of Sentenced Persons agreements and matters related thereto are under Woman Safety Division, Ministry of Home Affairs, Government of India.<sup>1</sup>

## **1.2 PRISON SYSTEM IN INDIA: AN OVERVIEW**

In primitive societies punishment was mainly retribution, the principle of an eye for an eye, a tooth for a tooth, a nail for a nail, a limb for limb was the basis of criminal administration. The forms of punishment that has been used historically in reaction to those who violate the laws and mores of society may seem cruel and unusual. But it must be remembered that in the past the world was less populated, police protection was non-existence and capital punishment and torture were quick method in incapacitating the offender. Therefore in the past the society acted

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<sup>1</sup> <https://www.mha.gov.in/en/divisionofmha/women-safety-division> dated 22.8.23

on the principle that the delinquents and those who did not behave decently towards their fellow citizens be banished. They believe more in severity of punishment to disable the criminals permanently from repeating the offence. The social opinion and general believe had not contemplated the idea of rehabilitation of the delinquent. However, time has changed, laws have changed, society has changed from the phase of developing to developed and ultimately State has transformed itself into modern-State, so also the function of Criminal justice system to a considerable extend has also change. The human society has progressed from the age old theory of retaliation – an eye for an eye; a tooth for a tooth, with the advancement of civilization crime is no longer considered as an offense against the individual but against the whole society and state took upon itself to punish the offenders<sup>2</sup>. Now a days the existence of prison is not only sufficient the present day penology center around imprisonment as measure rehabilitation of offenders, the prison are no more mere detention houses for the offender but they seek to reform them for future life.

### 1.2.1 DEFINITION OF PRISON:

There have been prisons and dungeons for thousands of years, but prior to the eighteenth century they were seldom used to incarcerate convicted felons<sup>3</sup>. Today we used the term ‘prison’ to denote all places of restraint or detention of those either suspected or convicted of offences contrary to law.

The Oxford English Dictionary define Prison as *“A place properly arranged and equipped for the reception of persons who by legal process are committed to it for safe custody while awaiting trial for punishment”*.<sup>4</sup>

Section 3 (1) of the Prisoner act 1894 defines prison “Prison means any jail or place used permanently or temporarily under the general or special orders 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 police.

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<sup>2</sup> Ashish Jain and Akanksha Singh, “Victim-oriented Criminal Justice System: Need of the hour” 44 (3) *Indian Bar Review* 126 (2017).

<sup>3</sup> Barnes and Teeters, *New Horizons in Criminology* Prentice 329 (Hall of India Private Ltd, New Delhi, 3<sup>rd</sup> Edition.,1966)

<sup>4</sup> Compact Oxford Dictionary, Indian Edition p-703.

(b) Any place specially appointed by the State Government under section 417 of the Code of Criminal Procedure, 1973 (Act No 2 of 1974) or

(c) Any place which has been declared by the State Government by general or special order to be a subsidiary jail.

Section 2(a) of the Prisoners (Attendance in Courts) Act 1955 defines Prison includes –

(i) any place which has been declared by the State Government by the general or special order, to be a subsidiary jail and

(ii) any reformatory, borstal institution or other institution of a like nature.

### **1.2.2 CLASSIFICATIONS OF PRISONS:**

Prison can be classified in terms of the types of prisoners and the purpose of detention. Prison in India may broadly be divided as under:

1. Central Jail: It differs from State to State as what constitute Central Jail. Prisoners sentence to imprisonment for longer term generally more than two years are confined.
2. District Jail: They are located at the District headquarters where there is no Central Jail. It is usually occupied by all types of prisoners including convicts serving longer or shorter sentences, under-trial etc.
3. Sub-Jail: These types of Jail situated at Sub-divisional level housing local prisoners sentence for a very short period of time. They are also used to house civil prisoners and person arrested under Preventive detention laws.
4. Woman Jail: It is meant exclusively for women prisoners.
5. Open Jail: They are minimum security jails. Prisoners with good conduct qualifying certain norms prescribe by the Jail authorities are housed in Open Jail.
6. Borstal School : It was established after the recommendation of All India Jail Committee 1919. It was established exclusively for housing minor/juvenile prisoners and aim to ensure the care, welfare and rehabilitation of young offenders.

7. Special Jail/ Subsidiary Jail: It was established as per the order of Government by virtue of the rules made under Prison Act in order to cater the need of special nature. It is a high security jails design for detaining prisoners convicted of terrorism, insurgency or the like nature. The statistical view of Prisons in India may be highlighted as under:

Sl. No	Type	Number of Jail	Sanction Capacity	Number of inmates	Occupancy rate
1.	Central Jail	148	193536	239311	123.7
1.	District Jail	424	163606	254214	155.4
2.	Sub-Jail	564	45436	46736	102.9
3.	Women Jail	32	6767	3808	56.3
4.	Open Jail	88	5953	2178	36.6
5.	Borstal School	19	1775	745	42.0
6.	Special Jail	41	7473	6582	88.1
7.	Other Jails	3	1063	460	43.3
<b>Total</b>		<b>1319</b>	<b>4,25,609</b>	<b>5,54,034</b>	<b>130.2%</b>

Source: Prison Statistics, 2021<sup>5</sup>

<sup>5</sup> available at: <https://ncrb.gov.in/en/prison-statistics-india> ( last visited June 18, 2023).

### **1.2.3 TYPES AND CLASSIFICATION OF PRISONERS:**

The fundamental object of prison is to deter the offenders from committing the offence they committed and so as not to repeat the same the same in the future. The word prisoner means any person who is kept under custody in jail or prison because he/she committed an act prohibited by law of the land.<sup>6</sup> Among the prisoners there may be different types which may be identified as under :

1. Habitual offender
2. Casual prisoners
3. Convicted prisoners
4. Under-trial prisoners
5. Detenue
6. Women prisoners.
7. Young offender
8. High Security offenders
9. Civil prisoners

Based on the types of prisoners, classification for the purpose of prisoners may be done to ensure availability of correctional treatment to every prisoner as per their needs. The object of treatment of individual prisoners can be possible only through the process of classification. Classification refers to the process by which prisoners are assigned to institutions, housing units and treatment programmes based on their needs and characteristics. The separation of prisoners is contained in section 27-30, chapter-V of the Prisoners Act 1894 which deals with discipline of prisoners. The classification of prisoners is necessary for maintaining discipline in the prison. The separation or prisoners may broadly be divided into: separation on the basis

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<sup>6</sup> available at <https://www.legalserviceindia.com/legal/article-75-rights-of-prisoners.html> (last visited August 22, 2023).

of sex, age, conviction, civil prisoners from criminal prisoners, sentence of death and special classes of prisoners. The type of classification found in the Indian prison:

1. Classification on the basis of security.
2. Classification for the purpose of segregation.
3. Classification based on social status, economic status, recidivism, character and criminality.
4. Classification based on social status and education.

Proper classification and keeping them separate for giving individual treatment for correction is the need of the hour. This will surely help in managing the prisoners efficiently and for efficient administration of prison.

### **1.3 PROBLEM FACED BY PRISON SYSTEM:**

i. Overcrowding: This is the major defect faced by Prison throughout the country. Due to overcrowding the living conditions of prisoners inside jail is deplorable. Most of the Indian Prison are overcrowded they are holding more prisoners than they were designed for and can hold in safe and secure conditions.

ii. Financial support: Prison is the state subject, government is more involve in welfare of the people. Most of the State may be reluctant towards spending huge amount of money for the welfare of the prisoners when it is even difficult to provide the basis needs of the people.

iii. Poor hygiene and medical facilities: Due to overcrowding inmates have to live in extremely unhygienic conditions with little concern for health or privacy. The quality and quantity of drinking water is inadequate, inadequate toilet facilities, medical facilities are the major problems face by prisoners. Jail environment leads to mental ailments in many prisoners. A total of 2080 Medical staff was actually posted in Indian jails against sanctioned strength of 3,497 at the end of the year 2021 (NCRB 2021).

iv. Inadequate and untrained staff: As on 31<sup>st</sup> December, 2021 the sanction strength of Jail staffs all over India is 89479 posts and the actual strength are 64449 posts, there were 25030 vacant

posts (NCRB 2021). Most of the Jail staffs are appointed without any proper training in Jail administration. They were ignorant of reforming and rehabilitating the prisoners.

v. Lack of Proper Classification of prisoners: No proper classification of different categories of prisoners depending on the nature and type of criminals is made.

vi. Lack of proper care and treatment of prisoners

vii. No uniformity in law relating to prison administration across various states.

viii. Low priority to prison reforms.

ix. No proper functioning of Legal Aid services.

x. Lack of rehabilitation, reintegration and aftercare programme.

#### **1.4 LEGAL STATUS OF PRISONERS:**

The Ministry of Home Affairs (MHA) has prepared the 'Model Prisons Act 2023' that will replace a British-era law to overhaul the prison administration that will focus on the reformation and rehabilitation of inmates<sup>7</sup>. At present day to day administration of prisoners rests on principles incorporated in the following legislative enactments:

1. The Prison Act, 1894
2. The Prisoners Act, 1900
3. The Prisoners (Attendance in Court) Act, 1955
4. The Transfer of Prisoners Act, 1950
5. The Repatriation of Prisoners Act, 2003
6. The Repratriation of Prisoners Rules, 2004

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<sup>7</sup>Available at <https://www.thehindu.com/news/national/home-ministry-prepares-model-prisons-act-2023-to-replace-british-era-law/article66843951.ece> ( last visited August 23, 2023)



## 7. The Criminal Procedure (Identification) Act, 2022

## 8. The Criminal Procedure (Identification) Rules, 2022

Although there are statutory rights which are available to the prisoners, most of the progress in the field of prison management and prisoner's rights is due the active intervention by the Judiciary. There is no specific provision in the Constitutions that provides for the rights of prisoners, but extended interpretation of Article 21 of the Constitution given by the Judiciary has evolved a number of prisoner's rights. Prior to Maneka Gandhi's case<sup>8</sup> Article 21 guaranteed the right to life and personal liberty to citizens only against the arbitrary action of the executive and not from legislative action<sup>9</sup>. No doubt the administration of criminal justice is State subject, however to fill the lacunae and improve the system from the governmental inaction the Judiciary plays pro-active role. The key to this judicial activism is the ruling in Maneka Gandhi that the phrase "procedure established by law" in Article 21 does not mean "any procedure" laid down in a statute but "just, fair and reasonable" procedure, and that the term "law" in Article 21 envisages not any law but a law which is "right, just and fair, and not arbitrary, fanciful or oppressive"<sup>10</sup>. The Judicial intervention in the field of prisoner's right may be sum up as follows :

In *Francis Coralie v. Delhi*<sup>11</sup> it was held that the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The prisoner or detenu has all the fundamental rights and other legal rights available to a free person, save those which are incapable of enjoyment by reason of incarceration. A prisoner or detenu is not stripped of his fundamental or other legal rights, save those which are inconsistent with his incarceration, and if any of these rights are violated, the Court will immediately spring into action and run to his rescue. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.

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<sup>8</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

<sup>9</sup> J.N Pandey, *Constitutional Law of India* 224 ( Central Law Agency, 45<sup>th</sup> Edition., 2008).

<sup>10</sup> M.P Jain, *Indian Constitutional Law* 1197 (Lexis Nexis Butterworths Wadha Nagpur, 6<sup>th</sup> Edition., 2010)

<sup>11</sup> AIR 1981 SC 746.

In *Hussainara Khatoon v. State of Bihar*<sup>12</sup> the SC held that the State is under a Constitution mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the state.

In *Prem Shankar Shukla v. Delhi Administration*<sup>13</sup> observed that 'handcuffing is prima facie inhuman and therefore unreasonable and harsh and at the first flush arbitrary. Absent fair procedure and objective monitoring to inflict irons is resort to zoological strategies repugnant to Article 21....'. The court pointed out that where in extreme cases the accused is to be handcuff, the escorting authority must inform the court and record reasons for doing so. It is only after getting judicial approval that handcuffing should be resorted to. Handcuffing should be resorted to only when there is '*clear and present danger of escape*' breaking out the police control and for this there must be clear material not merely an assumption.

In *Sunil Batra (I) v. Delhi Administration*<sup>14</sup> the court ruled that continuously keeping a prisoner in fetters day and night reduce the prisoner from a human being to an animal and that this treatment was cruel and unusual that the use of bar fetters was against the spirit of the constitution.

In *D.K Basu v. State of West Bengal*<sup>15</sup> the Supreme Court while concentrating on the custodial torture and maltreatment by Police stated that Police are under legal and legitimate duty to arrest and interrogate the accused but law does not permit use of third degree method with a view to extracting information from the accused. The action of the State, however must be "right, just and fair". Using any form of torture for extracting any kind of information would neither be 'right nor just nor fair' and, therefore, would be impermissible, being offensive to Article 21 of the Constitution.

The Supreme Court in *R.D. Updhyay v. State of AP & Ors*<sup>16</sup> issued the following guidelines relating to women prisoners:

1. Children inside jail with mother shall not be treated as under-trial /convict. Such child is entitled to food, shelter, medical care, clothing, education and recreational facilities

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<sup>12</sup> AIR 1979 SC 1369

<sup>13</sup> AIR 1980 SC 1535

<sup>14</sup> AIR 1978 SC 1675

<sup>15</sup> AIR 1997 SC 619

<sup>16</sup> AIR 2006 SC 1946.

as a matter of right.

2. Jail should have basic minimum facilities for child delivery.
3. A women prisoner found pregnant, the lady Medical Officer shall report to the Superintendent and arrangement shall be made to get medically examine at Hospital.
4. Gynaecological examination of female prisoners shall be performed in the District Government Hospital. Proper pre-natal and post-natal care shall be provided to the prisoner as per medical advice.
5. As far as possible arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases constituting high security risk or cases of equivalent grave descriptions can be denied this facility.
6. Female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years.
7. On attaining the age of 6 years, the child shall be handed over to suitable surrogate as agreed by the prisoner mother or send to suitable institution run by Social Welfare Department. As far as possible, the child shall not be transferred to an institution outside the town or city where the prison is located in order to minimize undue hardships on both mother and child due to physical distance.
8. When a female prisoner dies and leaves behind a child, the Superintendent shall inform the District Magistrate concerned and he shall arrange for the proper care of the child. Should the concerned relative(s) be unwilling to support the child, the District Magistrate shall either place the child in an approved institution/home run by the State Social Welfare Department or hand the child over to a responsible person for care and maintenance.
9. There shall be a crèche and a nursery attached to the prison for women where the children of women prisoners will be looked after. Children below three years of age shall be allowed in the crèche and those between three and six years shall be looked

after in the nursery. The prison authorities shall preferably run the said crèche and nursery outside the prison premises.

10. The State Legal Services Authorities shall take necessary measures to periodically inspect jails to monitor that the directions regarding children and mother are complied with in letter and spirit.

11. The Courts dealing with cases of women prisoners whose children are in prison with their mothers are directed to give priority to such cases and decide their cases expeditiously.

### **1.5 TOWARDS REFORMATION, REHABILITATION AND RE-INTERGATION:**

Representing the tail end of the criminal justice system but on the whole it plays the most important role and almost the whole trust on bringing reformation, rehabilitation and re-integration of the offenders lies with it, as the offenders interaction first begin with the prison official after he is found guilty by the Court. Both the Government and the society have to change their basic attitudes towards crime, criminal and crime manager. Some suggestion for reformatory, rehabilitative and re-integration approach:

1. At present, prison is the State subject and most of the States were reluctant to invest money on prison improvement. This largely effects the development of prison system in India. Therefore, an amendment to the Constitution is necessary to include the subject of prison in the Concurrent List of the seventh scheduled. This will enable the Union Government to come out with model legislation which the States may adopt with necessary modification.

2. Codification of all rights relating to prisoner's right. In absence of legislation these rights find place only on the paper with hardly any prison authority following them. All rights of prisoners should be codified for the awareness in the States.

3. The prison legislation should also make provisions for remedy of compensation to prisoners who are wrongfully detained or suffer injuries due to negligent acts of the prison personnel or new offences carrying severe punishment should also be incorporated in prison legislation when prison official unnecessarily cause harm to the inmates.

4. The prison personnel need to be more efficient in their job. The status, emoluments,

security and other service conditions of prison personnel should be proportionate with their job requirements and responsibilities.

5. As prison forms part of the criminal justice system and the functioning of other branches of the system – the police, the prosecution and the judiciary have a bearing on the working of prisons, it is necessary to effect proper coordination among these branches.

6. Building of more prison in order to reduced overcrowding in jail also required. Unnecessary and indiscriminate arrest should be avoided by police personnel.

7. Living conditions in every prison and allied institution should be compatible with human rights in all aspects such as accommodation, hygiene, sanitation, food, clothing, medical care, treatment and rehabilitation of offenders etc. Adequate infrastructural health care facilities like well-equipped ambulances, stretchers, dispensaries, hospital beds etc should be made available to the prison administration.

8. Existing laws and arrangement should be made so that the prisoners could exercise the right to vote like any other citizen. Due to lack of political will the prisoners did not constitute an important constituency for the politicians as they have no right to vote.

9. Proper classification of prisoners based on the nature of crime committed, age, sex, character and propensities of the offender including his educational level and likely to response to prison treatment. Separation of trans-gender prisoners from others is very much needed. An under trials, recidivist and first offender should be kept separated from each other.

10. Vocational training should be imparted practically to the prisoners. This will make them economically self-sufficient and capable of functioning independently in society after being released. Recreational facilities such as book and reading materials etc should be provided to the prisoners in all jails and they should be encouraged to use them. This would include the use of religious books of the prisoners' choice.

11. Social reformation and social attitudes towards prisoners/ex-convicts needs to be develop to enhance normal life of prisoners. Social reformation is necessary to create a right climate in society to accept the released prisoners with sympathy and benevolence without and hatred or distrust for them. Encouraging the society through voluntary participation in prison

programme and in non-institutional treatment of offenders on an extensive and systematic basis is one of the most effective methods.

12. Change in nomenclature – Jail/Prison should be change into Correctional Institution.

## **1.6 CONCLUSION:**

Crime and criminals are present in every society since the advent of mankind and no such millennium can be envisaged in which criminality becomes a history of the past. So long as we are in a society one cannot expect that crimes as such will be eliminated from modern society. Crime will be there, but the task of those who are concern with the well-being of the society is to see that human resources of the nation are not wasted away i.e. a man sent to jail for having gone astray on some occasion shall not be considered either by himself or by other members of the society to be lost to the society for ever. Criminal impulse in a man should be considered to be a disease which is curable. Jails should be organized as hospitals for reclaiming social delinquents and rehabilitate them in healthy social life through scientific, psychological and therapeutic treatment. Jail Officers should consider themselves as doctors of the diseased mind. The attitudes of the public towards prisoner needed to be change, to cure society from criminal the need is to help and co-operate them to adjust with society. After all prison reform is a matter of social rehabilitation and individual correction. The society and the family are the primary institutions which should not only share but ultimately accept the major responsibility of improving the criminal, the deviant or the delinquent.