

Antecedents of Prisoner's Law in India

Rubi Srivastava¹

Dr. Prashant Srivastava²

Abstract-

During Vedic Period Management of Justice was not part of state duties. Crime like Murder, Rape, and Theft were increased day by day but there's no relief from Crime, which shows Judiciary, Authorized Officer either Civil or Criminal cases passed any Judicial Judgement. Generally it happened with an aggrieved party which could redress him. It has been also seen that in 'Shastras' rarely words come like 'Put in prison' or 'Prison'.

In old stage Penal Institution was called Put in prison but at present time it functioned as place for detaining prisoner's awaiting trial, and execution of sentence. There has been slow start in 16th century imprisonment like small imprisonment became major form of punishment of 19th century. From 19th century to 20th century offender's measures are into prison sentences.

The effect of imprisonment's progressive weakening of mental powers, and declining character in way which serves prisoner's life happily for social life. Our enormous investment of time, money for rehabilitative prison model has been successful in controlling crime among prisoner's.

The present state Management almost ignored possibility of changes in prisoner's.

Case- Sunil Batra V/S Delhi Administration³

In this case Supreme Court observed Tihar prison's surrounded by tension, trauma,, and crime of violence, vulgarity, and corruption. Accused are habitual, and injurious prisoner's of international gangs. There are large number of criminals, drug, alcoholism, smuggling, theft, illegal punishment of solitary cellular life, and transfers to other put in prisons.

In Ancient time, in India prison was only place where detention of offenders was detained till at time of judgment, and trial. At that time ancient society was seen on principle committed by Manu, and described by Kautilya, Yagyavalkya. Higher level of punishment like hanging, mutilation, death detention in put in prison was very mild type of penalty at that Ancient Indian

¹ Writer is a Research Scholar from Sri Ram Swaroop Memorial University, Barabanki.

² Assistant Professor in Sri Ram Swaroop Memorial University, Barabanki.

³AIR 1980 SC 1579 at 1586

Penology. Prison's very common, and slow base punishment was suggested in Hindu trends. main point of imprisonment was to keep away from wrongful Act, so that it could not say that they describe to society⁴. Detention in prison was totally damp, unlighted, and unharmed. There was not proper arrangement, and facilities for human being.

Introduction-

At time of Ancient Period prison's were governed by Manu, Kautilya, and Yagyavalkya. This punishment which has been given to them has been totally different. It was done by clipping off head, garlanding shoes on neck, and riding on donkeys etc. These are dependent on embarrassment of accused, and there's proper record regarding maintenance of prison's. changes which are going on at present time were done by Lord Macaulay. He was member of prison discipline committee which acted as catalyst. This committee was followed by constitutions of various others like Mysore Put in prisons Committee (1941), Kerala put in prisons committee (1957) etc all these shows better prison management.

After independence of India Central, and State Legislation drawn down several rules in front of Judiciary, some these are-

- (1) Transfer of Act of Prison, 1950⁵- This Act deals with transfer of prisoner's from State to Another State.
- (2) Prisoner's (Attendance in Court) Act, 1955⁶- Here court has power to summon prisoner's to come in court, and give evidence or give comments on criminal charges.
- (3) Delhi Prison's Act, 2000⁷- This prescribes power, duties of put in prison authorities, and establishes Tihar Put in prison.

Ancient Period-

Indian Modern Prison started in 1835 by T.B.Macaulay. Prison Discipline Committee was appointed, which submitted their report in 1838. In 1864 Second Commission of inquiry into put in prison management made comparable suggestions as 1836 committee. This Commission just

⁴,” study of hindu criminology” by Vasudev Upadhyay

⁵ Act no. 29 of 1950.

⁶ Act no. 2 of 2002.

⁷ Act no.32 of 1955.

like that makes some proposal for changes to eat less carbs, bedding care etc. In 1877 there was an expert conference for asking into put in prison organization. In 1888 Fourth Put in prison Commission was established. For consideration some points are mention here-

(1) Act of Prison, 1894-

Act of Prison, 1894 based on present correctional facilities in Indian administration. This act's very liberal for any changes. After this act issues which have been done in put in prison are done. Government of India Act, 1935 plays an important role to subsequently additionally decrease likelihood of uniform usage of put in prison approach at national level⁸. Act of Prison, 1894's first legislation regarding prison regulation in India. Dr. Amerendra Mohanty observed that this Act's based on different principles reflected mainly British policy on subject. legislators took little pains to look into other side of problem. They were concerned more with prison working than with treatment of prisoner's. This Act remained unchanged for last more than one hundred years except very minor change.

Under Act of Prison, 1894 there are some following Sections.-

- (1) Accommodation, and Sanitary Conditions for Prisoner's⁹ (The Act of Prison 1894, Sec. 4)
- (2) Provision of Shelter, and Safe custody of excess number of prisoner's who cannot be safely kept in any prison¹⁰.
- (3) Provisions relating to mental, and physical state of prisoner's¹¹.
- (4) Provisions relating to examination of prisoner's by qualified medical officers¹².
- (5) Provisions relating to separation of prisoner's, containing male, and female prisoner's, civil, and criminal prisoner's¹³.

This Act's oldest Act related to legislation in India that deals with laws enacted in relation to Prison's in India. This Act defined that how Prison inclusively maintained by state government for detaining prisoner's. This Act enacted on 22nd March 1894, and enforced on 1st July, 1894.

⁸ Legislations Frameworks of Prison Administration,, and Prison Legislations by Pathan Dabeer Fardeen, Student at Reva University Bangalore, India.

⁹ Id,at p.16.

¹⁰ Id sec.7.

¹¹ Id,sec.14.

¹² Id,sec.24(2).

¹³ Id, sec.27

In this Act there are 62 Sections, and 12 chapters. This Act's for containing law relating to functioning of prison's.

(1) The Prisoner's Act, 1990-

For purpose of Prison Reformation following sections are relevant here to mention-

- 1- That all reference to prison's or imprisonment shall be construed as referring also to reformatory schools to detention therein¹⁴.
- 2- It's duty of government for removal of any prisoner detained under any order, any court which's unsound mind to lunatic asylum where he will be given proper treatment.
- 3- Any court which's high court in which it has recommended to government granting of free pardon to any prisoner, permit him to be at liberty on his own cognizance

Problem of Prison of India's-

At time of East India Company prisoner's condition was very terrible. committee that's First Put in prison Committee was propounded by government in 1836. It has been establish for giving report on condition of put in prison, and for suggestion of steps for future Management in prison's. This committee ruled out in their report any reformatory point of that committee's that problem of prisoner's take seriously 1864 suggest some important points for improving prison's condition to help prisoner's like better clothing, food regular medical checkup of prisoner's¹⁵.

The Third Put in prison Committee 1877 was proved useless in reformation of prisoner's. After that Put in prison Committee was appointed in 1889, and 1892 then Prison's Act, 1894 has done. real progressive approach of prison Management was shown in Indian Put in prison Committee report, 1919. After this report first time principle of reformation of convicts was accepted. committee shows-

“The Prison of India Management has lagged behind on reformatory side of prison work. It has failed so far to regard prisoner as an individual convicted him rather as unit in put in prison

¹⁴ Prisoner's Act 1990,sec.28

¹⁵Id,sec.33

¹⁵ Report of Indian Put in prison Committee,1919,P.42.

administrative machinery. It has lost sight of effect which humanizing, and civilizing influences might have on mind of individual prisoner.”

Committees On Put in prison Reform-

(1)The Mulla Committee-

In 1980 Put in prison Reform Committee was established. chairman of this committee's A.N. Mulla. aim to establish this committee's to control, and restore wrongdoers. This committee presented their report in 1983.

Case- Hussainara Khatoon V/S Home Secretary, State Of Bihar¹⁶

In this case Supreme Court has passed judgement regarding free legal aid, when court deal with under trial who had suffered long incarceration held that procedure which keeps such large number of people behind bars without trial so long cannot possibly be regarded as reasonable just or fair so as to be in conformity with requirement of Article 21.

Recommendations-

There were following recommendations of Mulla Committee, that was-

- 1- Formulation of part- 4th that's directive principle of national policy on prison's of Indian constitution.
- 2- Enlisting subject of prison's under concurrent list of seventh schedule of India constitutions.
- 3- Proper improvement regarding food, clothing etc. for prisoner's.
- 4- Better training of prison staff, and their organization.
- 5- Proper budget planning provisions for prison reforms.
- 6- Development of schemes regarding prison visit by media as part of open healing.

This committee basically recommended for-

- 1- Rules of national policies for Indian Women Prisoner's.

¹⁶ 1979 AIR 1369, 1979 SCR (3) 532

- 2- Follow new rules, and regulations for punishment, and conduct of women prisoner's.
- 3- Rules regarding free legal aid, and women prisoner's.
- 4- Rules for separate prison's for women prisoner's.
- 5- Rules for medical help, and diet for child born women prison in put in prison.

(1) Model Prison Manual-

This Committee presents modern prison manual in 1960 before government of India for implementation. Modern prison manual in 1960 guide lines principle on basis of modern India prison management's governed. On modern prison manual ministry of home affairs appointed working group on prison's in 1972. On this report it has mentioned that need for national policy on prison. There was also recommendation with classification, and treatment of accused, and held down principles.

(2) Krishna Iyer Committee-

The Government of India in 1987 appointed Justice Krishna Iyer committee to understand condition of women prisoner in India. It has recommended induction of move women in police force in view of special role in tackling women, and child accused.

Justice V.R. Krishna Iyer was judge, and minister. He was reformed India criminal justice system. He was doing work for poor, and remained human right champions, and experienced of civil liberties, his whole life. He was awarded with Padma Vibhusan in 1999. In 1968 he was appointed as judge in Kerala High Court from 1971-1973, he was member of law commission. He was associated with national or international organizations.

He was also appointed as judge in Supreme Court of India in 1973. He was played great role in area of Judicial Activism, Public Interest Letigation, and Judicial Review for which Indian judiciary hailed in whole world today.

In case of Maneka Gandhi he confirmed word of Right to Life, and personal liberty to get understand human right thus expanding Article 21 of Constitution. Even this judgment started to focus of courts, societies, government on respecting freedom of individuals.

He also saw gender bias inequality not only in society but also in government at highest legal of employment. In case of Muthamma, his judgments was removed discrimination regarding women officers. Thus he breaks rules regarding gender inequality.

Medieval Period –

This period was favor to ancient India, attempted to clamor with Management of justice. Mughal period sources of law, and characters were same. That time crime are divided in to three categories that is-

- Crime against God.
- Crime against State.
- Crime against private persons.

For above offences there were punishment also that is-

- Hadd.
- Tazir.
- Quisas.
- Tasir.

Punishment of imprisonment has not been held in case of Petty Offences. It was held as form of detention in ancient period. That time many typical situation has been done in our country in which accused has to suffer trial processor for long period¹⁷. In prison some rooms were known as Bhandhi-Khanas or Adab-Khanas reserved for those prisoner's who has done serious offences. In this period imprisonment's such method of punishment this's part of legal system. main punishment was capital punishment, distortion, flogging, transportation, and imprisonment¹⁸. In case of punishment of imprisonment then there's no any time limit for imprisonment time Quazi or Magistrate both have right to punish accuse for his offence, and accuse had to show reprieve to secure freedom¹⁹. Nicoloan manucci records as,"when prisoner's were taken to prison, they were usually loaded with Iron fetters on their feet, and shackles on their necks." For imprisonment there were Chabutra in Kotwali, police lockups.

During period of Maratha imprisonment was not very common. Punishment like fine, and death were very common. form of punishment was similar like ancient, and Mughal period. main points of prison system in India before British period is-

- There prison's were not in modern sense at that time.

¹⁷ Jadunathsarkaar."Mughal administration,"Quoted in V.Bhusan,prison administration in India.

¹⁸ Dr.Satya Prakash Sangar Administration of justice in Mughal India.

¹⁹ R.N.Datir.prison as social system Bombay:popular prakashan 1968 at 42-43

- There were not any rules regarding internal Management of prison's.
- There were no any separate prison services present.
- There were no any rules regarding maintenance of prison's.

It was used in detention mostly. There were some rules which are used in different part of country in which those criminals, whose trial's pending, were detained. In Mughal period there were three Noble prison's-

- Gwalior.
- Ranathambore.
- Rohtas.

During that era, prisoner's were occasionally granted release under specific circumstances. In 1638 A.D., Sahajahan issued an order for release of prisoner's to celebrate recovery of Princess Begum Sahib from illness. Reserved rooms were set aside for individuals convicted of serious offenses, and these rooms were known as 'Bandhikhanas' or 'Adab Khanas.

Prison System of Pre Independence-

In 1835, T.B. Macaulay played a significant role in establishing current put in prison system in India. Following this development, in 1836, a prison discipline committee was formed, and by 1838, committee had submitted its report. This marked a crucial step in management of offenders, especially when they failed to meet humanitarian requirements.

Between 1836, and 1838, a central prison was constructed, marking a significant development in establishment of current put in prison system in India under British control. The India Put in prison Reform Committee was established during years 1919-1920, and it was chaired by Sir Alexander, focusing on prison reform. committee recommended various reforms, including changes in prison structure, as part of their efforts to improve prison system.²⁰.

Sir Alexander Cardew served as chairman of Indian Put in prison Reform Commission. recommendations of this Commission in 1919-1920 called for significant changes in prison system.

After conducting a comprehensive examination of prison's worldwide, Commission concluded that institutions should not only focus on theory but also adopt rehabilitative strategies.

²⁰ PRISON, OBJECT,, and REFORMS- RPS Teji Additional District & Sessions Judge

Committee strongly advocated for reform of convictions, and reduction in use of physical punishment within prison's. It was proposed that prisoner's should be engaged in productive activities with aim of their rehabilitation. Additionally, Committee emphasized importance of prioritizing rehabilitation programs for discharged prisoner's

Modern Period –

In recent times, prison system in India has evolved significantly from days of British rule. creation of prison system during that era marked a significant shift in management of law, and justice, aiming to be "a terror to wrongdoers."

In 1784, there were notable efforts to introduce effective management of law, and justice. During this period, there were 143 Civil Put in prisons, 75 Criminal Put in prisons, and 68 Mixed Put in prisons in operation, all under management of East India Company.

This period saw emergence of prison system as a product of British rule, gradually replacing older, more barbaric forms of punishment. It represented a more humane approach to justice, offering a better solution to harsh punishments of past.²¹.

In 1784, British Parliament granted East India Company authority to govern India. This period marked a need for improvements in management of law, and justice. East India Company introduced rules to ensure safety of prisoner's, as they aimed to generate revenue for government through fines, and imprisonment.

In 1835, Lord Macaulay brought condition of prison's in India to attention of Legislative Council. He called for a plan to reform prison discipline, and make prison's models for others. As a response to Lord Macaulay's proposal, Legislative Council appointed "The Prison Discipline Committee." Honorable H. Shakespeare chaired committee, with Lord Macaulay as a member. committee submitted its report in 1838, resulting in a significant transformation of prison conditions, primarily focused on punitive measures.

This committee was first to capture attention of English rulers in India. report, however, faced criticism for issues of corruption, and lax discipline among extra-rural laborers, and on public roads. committee rejected any reforms that emphasized moral education. According to committee, purpose of prison's was to create an environment of fear through harsh processes, hard labor, silence, and segregation.

²¹ Prison Reforms in India by Anubhav Bijalwan

In 1884, an Inspector General of Prison's was appointed on an experimental basis, and in 1850, post was made permanent within prison system. In 1862, a civil surgeon served as Superintendent of District Put in prisons.

In 1870, Government of India passed Prison Act, which mandated appointment of a Superintendent, Medical Officer, Put in prisoner, or other necessary officers. This act introduced separation of Child Offenders from Adult Offenders, Male offenders from Female Offenders, and Criminal Offenders from Civil Offenders.

In 1889, a fourth committee made significant changes to concept of put in prisons. It introduced provisions for offenders under 29 years of age to receive adult education, and libraries were established in put in prisons. quality of food improved, and two sets of clothing were provided to prisoner's.

The main objective of this committee was to reform prisoner's, and consider imprisonment as a social necessity. This shift was further solidified by Government of India Act of 1919, which transferred control of prison department to Government of India. After gaining independence, there were further positive changes in reformation of prisoner's in India.

Prison system of Post Independence-

The Pakwasa Committee in 1949 proposed a system that aimed to utilize prisoner's as labor for road work without need for intensive supervision. Subsequently, wages were paid to prisoner's for their labor. Additionally, there were provisions in prison system that rewarded well-behaved inmates with a reduction in their sentence duration. primary objective of this committee was to protect society from criminals while also working to reform offenders.

Several guidelines were established for rehabilitation, and reformation of prisoner's, which were accepted by government²²-

Reformation measures, such as probation, and parole, should be utilized to reduce burden of overpopulation in prison's.

Regarding well-being of undertrial prisoner's, Union Minister pointed out that prison's fall under jurisdiction of state governments, as per 7th schedule of Indian Constitution. Therefore, management, and responsibility for prison's rest with respective State Governments. He also mentioned that Ministry of Home Affairs has taken various steps to address issues related to

²² Prison Reforms in India By Adv Hemant More In Law,, and Society, May 10, 2023

undertrial prisoner's, including Section 436 of Code of Criminal Procedure. rule for release of undertrial prisoner's on bail after imprisonment for a period extending up to one-half of maximum period of imprisonment specified for an offense under law is provided by Section 436 of Code of Criminal Procedure. This section empowers court to release undertrial prisoner's on bail if they have been detained for a duration equivalent to one-half of maximum sentence prescribed for offense they are charged with.²³

The Minister further noted that State Legal Service Authorities have established Legal Service Clinics with paralegal volunteers at police stations, and prison facilities to provide free legal assistance to individuals in need.

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- Writer is a Research Scholar from Sri Ram Swaroop Memorial University, Barabanki.
Mail I.D- rubi.nigam110@gmail.com.
- Assistant Professor in Sri Ram Swaroop Memorial University, Barabanki.
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²³ NW/RK /RR/1665 Ministry of Home Affairs, azadi ka amrit mahotsav, Prison Reforms,Posted On: 21 DEC 2022 5:51PM by PIB Delhi

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