



**PRISON LAWS IN INDIA- A SOCIO LEGAL ANALYSIS**

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**ARTICLE INFO**

**Article History:**

Received 17<sup>th</sup> August, 2017

Received in revised form 21<sup>st</sup>

September, 2017

Accepted 05<sup>th</sup>, October 2017

Published online 28<sup>th</sup> November, 2017

**Key words:**

Prison Laws, Prisoner, Reformation, Health, Socio legal analysis

**ABSTRACT**

The Prisons law of India is amongst the forgotten laws of this country which has lost its existence so significantly that neither the law makers of this country nor the mighty political system gives it any value in order to get reformed within today age and time. There is lacuna of stringent legislation for prisoners who also deserve life to be led with the basic human respect which we all are entitled to being citizens of this country despite the wrongdoings they have committed. The prisoners kept in jails are kept in inhuman conditions and are deprived of even basic human amenities like reformation, healthy sanitary conditions and lack of proper food, bedding and clothing facilities. The real pragmatic change in criminals kept in prisoners and solitary confinements can be brought by using reformatory measures in prisons rather than trying to tame them by authoritative means like animals kept in zoo. This paper makes a socio legal analysis of prison laws in India.

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**INTRODUCTION**

The arrangement of prison organization in our nation is over 100 years of age. On the off chance that one thinks back one can't however be inspired with the immense change made amid this period. The development, while as yet ending and utilized just in a few and not in every one of the prisons of the nation, in any case give guarantee of the arrangement of treating guilty parties. Gone are presently a considerable lot of the fierce strategies for treatment yielding spot to a few new techniques including open air work, offices for advanced education, recreational and redress designs, aggregate work and installment of wages. Endeavors are presently being made to treat the prisoners under less harsh teach and with more noteworthy freedom. Organization of prisons and reorganization of prisoners has involved serious verbal confrontation and sharp feedback at different open fora. Hon'ble Supreme Court of India in the current years has descended vigorously on the brutal and debasing conditions in prisons. In many states, the issues of haggard prison structure, congestion and clog, expanding extent of undertrial prisoners, insufficiency of prison staff, absence of legitimate care and treatment of prisoners, and so forth., have been drawing in the consideration of the press and social activists. With a developing backing for the security of human rights in the different strolls of lives, the situation of prisoners has risen as a basic issue of public policy.

**Objectives**

- To study about the concept of prison and its historical perspective.
- To analyze the International scenario on prison reformation.
- To make a socio legal analysis of prison system in India.

**International Conventions**

There are different essential International reports on prison organization however not specifically identified with transformation of prisoners but rather especially worried about prison equity and by implication called for acknowledgment of the intrinsic nature of prisoners as human family and assurance from oppression and abuse. Some of those universal reports are as under:

**Universal declaration of human rights<sup>1</sup>**

In 1948 a movement was started in the United Nations in the form of Universal Declaration of Human Rights which was adopted in the General Assembly of the United Nations. This organic document is also called as Human Rights Declaration. This important document provides some basic principles of administration of justice. Among the important provisions in the document following are as follows: No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Everyone has the right to life, liberty and security of person. No one shall be subjected to arbitrary arrest, detention or exile. Every one charged with a penal offence has the right to be presumed innocent until proved

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<sup>1</sup> <https://www.un.org/en/universal-declaration-human-rights/>

guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

***The International Covenant on Civil and Political Rights, 1966***<sup>2</sup>

The International Covenant on Civil and Political Rights remains the core international treaty on the protection of the rights of prisoners. Following relevant provisions of the covenant are as No one shall be subject to cruel, inhuman or degrading treatment or punishment. Everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention.

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. No one shall be imprisoned merely on a ground of inability to fulfill a contractual obligation.

***Declaration on Protection from Torture, 1975***

On 9<sup>th</sup> December, 1975 United Nations General Assembly by consensus adopted a Declaration on Protection from Torture. Various important provisions relevant herein are as under: Any act of torture or other cruel inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the universal declaration of human rights. No state may permit or tolerate torture or other cruel, inhuman, degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, human or degrading treatment or punishment.

***The European Convention on Human Rights (1953-69)***<sup>3</sup>

Another important International document is European Convention on Human Rights. This Convention has its own history in the importance of human rights. Some of the important provisions of this convention are as under: Every one's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by the law. No one shall be subject to torture or to inhuman treatment or degrading treatment or punishment.

***Standard Minimum Rules for the Treatment of Prisoners***

Amnesty International in 1955 formulated certain standard rules for the treatment of prisoners. These rules form certain basic principles of law in most of the democratic countries of the world. Some important relevant rules are as under: One of the important rules embodied is the principle of equality, that there shall be no discrimination on grounds of race, sex, colour, religion, political or other opinion, national or social origin, property, birth or other status among prisoners. Men and women shall so far as possible and practicable be detained in separate institution, in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separated. There must be complete separation between civil prisoners detained for the debt etc. and persons imprisoned by reason of criminal offence; young

prisoners should be kept separate from the adult prisoners. Corporal punishment, punishment by placing in dark cells, and all cruel, inhuman degrading punishments shall be completely prohibited. There shall be available the services of at least one qualified Medical Officer who shall also have some knowledge of psychiatry. Young untried prisoners should be kept separate from adults and shall in principle be detained in separate institutions.

***Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment***<sup>4</sup>

United Nations General Assembly adopted and opened for signature and ratification, a document called Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Various important provisions of the convention are as under: Each state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. No state party shall expel, return or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture. Each state party shall ensure that all acts of torture are offences under its criminal law. Each state party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction with a view to preventing any cases of torture. Each state party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. As per above provisions, it seems Convention is a solid organic document with full teeth to prevent the acts of torture or inhuman treatment. But, unfortunately, India till now has not ratified this organic document. Thus, it can be said that the basic requirements of human dignity and conditions necessary for prisoners to return to normal life are common in all above mentioned International documents.

***National Documents on Prison Administration***

At the national there are number of legislations touching directly or indirectly administration of the prisons and reformation of prisoners. Some of the important legislations are as under:

***Constitutional Provisions***<sup>5</sup>

Constitution of India nowhere expressly provides any provision for the protection of prisoners or prison justice, but certain basic rights have been guaranteed in part III of Indian Constitution which are available to the prisoners as well because a prisoner is treated as a 'person' in the prison. Article 14 of Constitution of India says: "The state shall not deny to any person equality before law or the equal protection of laws within the territory of India." Thus, Article 14 contemplated that like should be treated alike, and also provided the concept of reasonable classification. This article is very useful guide and basis for the prison authorities to determine various categories of prisoners and their classifications with the object of reformation. Indian Constitution guarantees six freedoms to

<sup>2</sup> <https://treaties.un.org/doc/publication/unts/volume-999-i-14668-english.pdf>

<sup>3</sup> [https://en.wikipedia.org/wiki/European\\_Convention\\_on\\_Human\\_Rights](https://en.wikipedia.org/wiki/European_Convention_on_Human_Rights)

<sup>4</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-9...](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9...)

<sup>5</sup> <https://www.yourarticlelibrary.com/constitution/12...constitutional-provisions...india/45230/>

all the citizens of India. Among these freedoms there are certain freedoms which the prisoners cannot enjoy because of the very nature of these freedoms, such as, "freedom of movement", "freedom to residence and to Settle" and "freedom of profession". But there are other freedoms under this article which a prisoner can enjoy even behind bars, viz., "freedom of speech and expression" & "freedom to become member of an association". Moreover, constitution of India provides various other provisions though cannot directly be called as prisoner's rights but may be relevant. Among them are Article 20 (1&2), Article 21, and Article 22 (4-7).

#### ***The Prisons Act, 1894<sup>6</sup>***

Prisons Act, of 1894 is the first legislation regarding prison regulation in India. Commenting upon the Prisons Act, of 1894, Dr. Amarendra Mohanty in her book Prison system in India observed the following: "This Act was largely based on deterrent principles reflected mainly the British policy on the subject. The legislators took little pains to look into the other side of the problem. They were concerned more with the prison working than with treatment of the prisoners. This Prisons Act remained unchanged for last more than one hundred years except very minor change." Among the various other provisions under the Prisons Act, 1894, the following sections are related with the reformation of prisoners in one-way or the other.

Accommodation and sanitary conditions for prisoners. Provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison. Provisions relating mental and physical state of prisoners. Provisions relating to the examination of prisoners by qualified Medical Officer. Provisions relating to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and undertrial prisoners. Provisions relating to treatment of undertrials, civil prisoners, parole and temporary release of prisoners.

#### ***The Prisoners Act, 1990<sup>7</sup>***

For the purpose of prison reformation and prison justice under this Act, following sections are relevant here to mention: That all reference to prisons or the imprisonment or confinement shall be construed as referring also to reformatory schools to detention therein. That it is the duty of Government for the removal of any prisoner detained under any order or sentence of any court, which is of unsound mind to a lunatic asylum and other place where he will be given proper treatment. That any court which is a High Court may in case in which it has recommended to Government the granting of a free pardon to any prisoner, permit him to be at liberty on his own cognizance

#### ***The Transfer of Prisoners Act, 1950***

This act was enacted for the transfer of prisoners from one state to another for rehabilitation or vocational training. This Act is also helpful for transfer of prisoners from over-populated jails to less congested jails within the state.

#### ***The Prisoners (Attendance in Courts) Act, 1955<sup>8</sup>***

This Act contains provisions authorizing the removal of prisoners to a civil or criminal court for giving evidence or for

answering to the charge of an offence. Thus, apart from the substantive prison laws, the Government of India appointed a National Expert Committee on women prisoners (1968- under the chairmanship of Justice Krishna Iyer to examine the conditions of women prisoners. The committee among other things recommended the following suggestions particularly towards reformation and rehabilitation of women prisoners. In women's rehabilitation, employment training has a pivotal role. Consequently, work in prison has to be given such potential economic worth and utility that all women in custody are willing to engage in work programmes. Training of women prisoners in an area of great relevance to correctional work and to the process of restoration of dignity of the women offender. Probation, Parole and other non-institutional modalities of corrective treatment shall be widely used in case of women offenders. Moreover, at National Conference on Human Rights of Prisoners on 14th Nov. 1995, consensus was emerged to work out the draft law on prisons. A Core Group has prepared a Draft Bill namely, the Indian Prisons Act, 1995 which was circulated to State Governments for their consideration and observation and also to Ministry of law. But unfortunately Bill is still pending under consideration of the Government of India.

### **PROBLEMS OF INDIAN PRISONS**

Jail administration in India being an important part of the criminal justice system has suffered neglect and lack of recognition. A lot has been talked about the police, a little less about the courts and almost nothing about prisons and prisoners. The problem of prison administration needs to be highlighted to focus public attention on this very vital sphere of social concern. It is nearly 30 years since the submission of the report of the All India Committee on Jail Reforms (1980-83) headed by Justice A.N. Mulla<sup>9</sup>. One may ask why the recommendations of the committee have not been followed and implemented in letter and spirit. There is little significant improvement on an all India basis. The main reason often cited by the centre not being able to implement the recommendations of the Mulla Committee is that prison is a state subject. This only shows that if there is political will, there shall be no difficulty at the centre taking an active and direct interest in prison administration. After analyzing different dimensions of prison laws and prison administration, one can lay down the following major problem areas, which afflict the prison system and need priority attention. Delay in trials in the courts has assumed very serious proportions. Even though problem has been highlighted by the Mulla Committee, National Police Commission and through Public Interest Litigation (in the Hussainara Khatun's case) there has been no relief at all. Delays commences at the investigation stage itself. In many cases, charge sheets are filed by the police very late leading to a long chain reaction. On the other hand courts are also not without blame. Even though law requires that trials should be conducted from day to day till completed, in practice this rarely happens. Cases are adjourned for a couple of months at a time, which further aggravates delay. Overcrowding itself leads to unsatisfactory living conditions. Although several jail reforms outlined earlier have focused on issues like diet, clothing and cleanliness, unsatisfactory living conditions continue in many prisons around the country. A

<sup>6</sup><http://www.lawsonline.com/bareacts/prisons-act/prisons-act.html>

<sup>7</sup><https://www.irishstatutebook.ie/eli/1990/act/16/enacted/en/print.html>

<sup>8</sup> <https://lawyerslaw.org/the-prisoners-attendance-in-courts-act-1955/>

<sup>9</sup> [http://www.thehinducentre.com/multimedia/archive/.../Mulla\\_Committee\\_i\\_3191900a.pdf](http://www.thehinducentre.com/multimedia/archive/.../Mulla_Committee_i_3191900a.pdf)

special commission of inquiry, appointed after the 1995 death of a prominent businessman in India is high-security Tihar Central Jail, reported in 1997 that 10,000 inmates held in that institution endured serious health hazards, including overcrowding, “appalling” sanitary facilities and a shortage of medical staff. The National Police Commission pointed out that 60% of all are predictable, but the low salaries that guards are generally paid severely aggravate them. In exchange for contraband or some special treatment inmates supplement guard salaries with bribes. The arrangement for facilitating communication between prisoners and their relatives, friends and legal advisors require attention. Many of these aspects have been drafted within the Mulla Committee Report and deserve immediate implementation. Inadequate rehabilitative programmes and vocational training facilities is another problem of Indian prisons. Even if there are few rehabilitative programmes they are just outdated. Apart from above mentioned problems of Indian prisons there are other problems also which include lack of legal aid, health problem, homosexual abuses, drug abuse, and prison violence.

## CONCLUSION

In the current years all the world over prison law created with a specific end goal to ensure intrinsic privileges of prisoners and for the best possible administration of prisons. In this way, to begin with, the current lawful structure of the prisons administration must be changed, Criminal law ought to be corrected, another Prisons Act ought to be authorized and all Jail Manuals should be reconsidered. In particular Indian Judiciary must keep on playing its helpful and dynamic part in prison equity.

In conclusion it must be failing to be overlooked that the issue of prison equity and restoration of prisoners is just a piece of the bigger issue of social recovery. The prison administration alone can't effectively restore the prisoners. It can just attempt its unassuming endeavors to set right the prisoners, however endeavors will succeed just if our financial matters, our training and our social organizations and qualities are legitimately incorporated into an intelligible and agreeable entire in view of the learning of the human foundation.

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### How to cite this article:

Janani.G.S (2017) 'Prison Laws in India- A Socio Legal Analysis', *International Journal of Current Advanced Research*, 06(11), pp. 7123-7126. DOI: <http://dx.doi.org/10.24327/ijcar.2017.7126.1084>

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