



History of Indian Prison System: An overview

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Abstract

The history of prisons is not of recent origin but it is very old and oldest penal institutions were called the 'Jail' or 'Prison'. Prisons constitute the largest area of social defence by shielding and cutting prisoners completely from the outer world. The purpose of imprisonment was to protect the society against crime.

Prison system in India, has a long history which can be traced in Rig-Veda, Ramayana, Mahabharata and ManavDharamshastra. In ancient India prison were constructed for the custody of war prisoners and enemies of the king. The prison system in medieval India resembled that of ancient India. During Mughal and Maratha period the prison houses were made for barbaric torture and vindictive agony. In the beginning the British ruler inherited and practiced the cruel and primitive methods of medieval period but later on due to effort of Lord Macaulay prison reforms begin.

With the awareness in the society and changing perception towards prisoners, prisons in India are no longer regarded as a place for punishment. Prisons are now being considered as reformatories and greater attention is being given to ameliorate the conditions in jails.

Keywords: Penal institutions, imprisonment, barbaric torture, vindictive agony, reformatories

Introduction:

Prison as a system:

The history of prisons and its use as a place of detention for the condemned persons is not of recent origin but it is very old. The oldest penal institutions were called the 'Jail' or 'Prison' in many lands. In the early stage prison functioned as a place for detaining prisoners awaiting trial and execution of sentence. It is said that prisons constitute the oldest and the largest area of social defence. The prisons during the last three centuries or so have evolved to the status of an institution of social control by shielding and cutting prisoners completely from the outer world. Prison system reflects the reaction of society to crime which has undergone progressive changes from time to time. Prison has been defined 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 on for punishment" (BhusanVidhya, 1970). "Originally the prisons were based on the principles of retribution, and deterrence and these were, therefore, punitive in character" (Tiwari Arvind, 2000).

Imprisonment in the prison was one of the methods used to handle the convicts in such a way to protect and prevent them to commit further crimes for a specific period of time and also to prevent others from committing crime on them out of vengeance. The purpose and justification of a sentence of imprisonment or a similar measures depravity of liberty is ultimately to protect the society against crime. This end can only be achieved if the period of imprisonment is to ensure so far as possible, that upon his return to society, the offender is not willing but able to live in law abiding society and self-supporting life. "Traditionally, prisons and prisoners have been considered as somewhat violent, mysterious and frightful entities by the society" (*BhusanVidhya, 1970*).

The prison at the first instance for any offenders creates a break between his personal life in the free community and the life to start in imprisonment. Prison is closed to the public therefore no one knows what is happening inside it. According to the society, prison did not have any direct impact on the personality of the offenders and the length of stay did not bring a significant change in his attitude except that a person when he entered the jails he felt nervous and insecure which later disappeared as he got assimilated in the prison culture.

The outlawed inmate of prison, till the beginning of the century, was never considered fit to claim any right enjoyed by law-abiding persons of the society. He was put in jail only to realize his folly and to pay for it through his sufferings. Presently with the changing perception towards prisoners, prisons are no longer regarded as a place for punishment. Prisons are now being considered as reformatories and greater attention is being given to ameliorate the conditions in jails so that they have a healthy impact on prisoners in developing a positive attitude towards life and society.

Prison system in Ancient India:

Prison system in India, has a long history as old as the hoary past. Broadly speaking, the existence of prisons in our society is an ancient phenomenon since Vedic period where the anti-social elements were kept in a place identified by the rulers to protect the society against crime. "The origins of criminal jurisprudence in India can be traced back to 4000 BC, in inscriptions and scriptures such as Rig-Veda, Ramayana, Mahabharata and ManavDharamshastraetc" (*Tiwari Arvind, 2000*). The crimes against person, property, administration were regarded very heinous. The punishments for these crimes usually inflicted were mutilation, death and penance. Expiation was recognized as a form of punishment, but imprisonment was not so recognized.

In India too, the early prisons were only places of detention where an offender was detained until trial and judgment and the execution of the latter. The structure of society in ancient India was founded on the principles enunciated by Manu and explained by yajnavalkya, Kautilya and others. Some references to prisons are found in the Hindu scriptures. Kautilya in his Arthshastra has spoken of a well-organized system of prisons, and give a long list of offences and penalties.

Prisons, of course, are very ancient Institutions in India. We find references to prisons and prisoners in the Ramayana and the Mahabharata. Among various types of corporal punishments brandings hanging, mutilation and death, the imprisonment was the mildest kind of penalty known in ancient Indian penology. However, imprisonment as a mode of punishment was hardly practiced in ancient India. Imprisonment occupied an

ordinary place among the penal treatment and this type of corporal punishment was suggested in the Hindu scriptures. The evildoer was put into prison to segregate him from the society. The main aim of imprisonment was to keep away the wrong doers, so that they might not defile the members of social order. These prisons were totally dark dens, cool and damp, unlighted and unwarmed. There was no proper arrangement for the sanitation and no means of facility for human dwelling.

In the Codes of Manu, Yajnavalkya and Vishnu imprisonment was rarely mentioned as a mode of punishment for criminal offences. Yajnavalkya had narrated that a person who was instrumental for the escape of a prisoner had to undergo capital punishment, whereas Manu's code mentions Nirodha (imprisonment) as punishment for one particular offence only (theft of gold belonging to a Brahmin). Vishnu suggested the penalty of imprisonment to a person who hurted the eyes of a man.

In Kautilya's Arthshastra there exist elaborate references relating to construction of prisons and prison management. He prescribed that prison should be constructed in a capital for the custody of war prisoners and enemies of the king. He also discussed the problems of prisoner's life and their welfare as well as suggested to provide separate accommodation for men and women. In the early years of Ashoka, there was an unreformed prison in which most of the traditional unpleasant tortures were inflicted and from which no prisoner came out alive. In the post Ashokan age the jatakas give a picture of the society and supply information regarding crime and imprisonment. From Harshacharita it appears that the condition of the prisoners was far from satisfactory. The life of Hiuen-Tsang records that prisoners generally received harsh and cruel treatment.

The early places of imprisonment ranged from large wood frame houses in the cities, from which escapes were frequent. The sole objective of those places of confinement was detention. Imprisonment was its own end, and no efforts were made for rehabilitation. Indeed, long-term confinement was itself considered a progressive, humane improvement over the old system of whipping and execution.

Prison system in Medieval India:

The prison system in medieval India resembled that of ancient India. During the medieval times, prison inside the fortresses situated in different parts of the country in which the criminals were detained pending trial and judgment. Imprisonment was not resorted to as a form of punishment in the case of ordinary criminals; it was used mostly as a means of detention only. The prison houses were regarded as primitive place of barbaric torture and vindictive agony. The deterrence theory associated terror with the contemplation of crime, justified exemplary punishments and expected the prison inmates to lead a poorer quality of life than the one obtained in society. The individual, who enters into the world of crime, must foresee fear, contempt and pain while undergoing the sentence.

During Mughal period sources of law and its character essentially remained quranic, and Islamic tenets of criminal law were in force. "Crimes were divided into three groups, namely (a) Offences against god, (b) Offences against the state, (c) Offences against private persons. The punishments are classified under four heads as (a) *Hadd*; (b) *Qisas*; (c) *Diya*; and (d) *Tazir*" (Bhushan Vidhya 1970). The penalties prescribed for these crimes are

liquidation, death, fines and confiscation, forfeiture of rank and title, subjecting to humiliations, banishment, whipping, and mutilation of offending limbs, execution and other corporal punishments. Thus, Imprisonment was not the most often sought form of punishment in the case of ordinary criminals. It was used mostly as a means of detention of under trials or nobles and political offenders only. Occasionally, the prisoners were transferred from one place to another. When the prisoners were taken to the prison, they were usually loaded with iron fetters on their feet and shackles on their necks, but imprisonment as method of punishment not being the normal feature of the legal system these fortified prisons did not present any problem for the administrators.

During Maratha period also, imprisonment as a form of punishment was not very common. Death, mutilation, fine were common forms of punishments. The form of punishments, as during Ancient and Mughal period, continued in Maratha period also. "Some rooms in forts popularly known as the *bandhi-khanas* or *adab-khanas* were reserved for prisoners, and the culprits who had committed serious crimes, were sent to such forts from different places" (*BhusanVidhya, 1970*). They were treated according to their station in life, and the nature of crime they had committed. Persons of lower castes were compelled to do hard labour on building fortress. The ranks of prisoners determined their quantity and quality of ration. They were given leave for visiting their homes for attending religious rites like *sradha*. State also provides money to perform rites and rituals inside the jail and prisoners were released on health ground. The political prisoners, however, were well treated. Their communication with outside world and even with their relatives was prohibited

Prison system in British India:

The ancient and medieval systems of prison punishment institutionalize the socio-political tendencies of the Hindu and Mughal periods of Indian history. The English ruler inherited a criminal justice system which practiced very cruel and primitive methods of medieval punishment. During the colonial period of our history and in the early years of the nation, long-term imprisonment was not a common form of punishment. Execution was the prescribed penalty for a wide range of offenses, while the less serious offenders faced public punishment, such as pillorying, whipping, and even maiming. Obviously, the jails were places of terror and torture and the prison administrators were expected to be hard and rigorous implementing the sentences. The post mutiny era witnessed the enactment of penological books and consequently, there followed the prison reorganization. The criminal procedure code of India and the Indian penal code defined the offences and prescribed jail term for respective violations. The Indian penal code and the criminal procedure code which had long been in preparation were enacted in 1859 and 1860 respectively. The Indian Prison Act, 1894 improvised for the establishing and maintenance of jails at various levels and jail manuals were prepared to govern the internal administration of these prisons in the districts as well as in the states. The power and functions of jail officials were outlined in details and the prison administration was dovetailed to the overall frame of criminal justice system envisaged for the country under the colonial power of the British. A poor and problematic system of jail in England shaped the prison philosophy of India and the same reflected in the rules and regulation drafted during that period. Commonly called the age of enlightenment, the 18th century was one of dramatic challenge to traditional thought and customs, including concepts of punishment. The contemporary prison administration in India is a legacy of the British Rule. With the advent of the British the administrative structure

in the country began to assume a new form. The imprisonment as a form of punishment (or the modern prison system) which was just applied in India in 1773 came to be applied on uniform basis throughout India in 1860. "Under East India company Rule, 143 civil jails, 75 criminal jails and 68 mixed jails with a total accommodation for 75,100 has been built in Bengal, North-Western provinces, Madras and Bombay" (Bhusan Vidhya, 1970).

Lord Macaulay was credited for the evolution of modern prison system in India. It was Macaulay's plan of setting up large central prisons and smaller district jails, which is put forward as the beginning of modern prison system in India. The Macaulay committee was the first committee on jails in India in 1838 recommended to the government of India that central jails should be built to accommodate prisoners sentenced to one year and should not accommodate more than 1000 prisoners each. In pursuance of the recommendations of committee the first Central prison in India was constructed at Agra in 1846.

Prison system in Independent India:

Prisons in India were generally no better than dungeons. Many of the prisons in India and elsewhere are located in antiquated dilapidated nineteenth century buildings which even lack functional system of plumbing. Till today the prisons in India continue to be governed by a law enacted by the British in 1894, with the clear objective of giving the natives the treatment they deserved. Thousands of undertrials (men and women) have been waiting for years for the courts to decide their fate, one way or the other. The pending cases in the courts are so huge that even petty crimes cannot be disposed of quickly and the result is that hundreds are spending their years inside in the company of hardened criminals because there is none to bail them out. Many of them have been languishing because of the mulish judicial process.

Prison Institutions are one of the three main constituents of the Criminal Justice System. The present law enforcement system and the justice system order the criminals to be kept in the prison for a specific period depending on the crime. With the growth of knowledge about criminal behaviour in modern times, the ideas of retribution have been replaced by the reformation and social rehabilitation of offenders. This change in penological thought implies a radical change in the philosophy of prisons. This has brought in its wake of development of correctional services whose main emphasis is re-education of offenders and his aftercare within the limitations of disciplinary control and the deprivation of civic liberty by the fact of his/her conviction. The prison instead of being a place of punishment it should become a Correctional setting. It should bring the Criminal into a more harmonious and or sympathetic attitude towards society. Radical outlook about prisons and prisoners has, however, become part of the past. The idea of retributive justice is no longer prevalent in any modern State. As against old idea of isolation of the offender from society, expert penologists now-a-days have been advocating better communication between the prisoners and the outsiders. It is believed that the seclusion from the society altogether eliminates from the mind of the offender natural respect for the society itself and he, therefore, tends to get hostile to it. In place of the old idea of deterring the criminal by creating in his mind a horror of punishment, the modern penologists suggest humane behaviour and the avoidance of harshness to the prisoners as far as may be practicable. Here also the idea is that excessive harshness makes offenders adamant and hardens his criminal propensity. On the other hand, by following carefully administered humane behaviour

the criminal intent may be totally eliminated from his mind. The goal, now, is to infuse in the mind of the offender a respect for himself and respect for the society. It aims at creating an eagerness for securing a place in the society and passing rest of his life with at least some respect and with the black-mark of his previous lapse having totally eliminated from his persona.

Despite this overall view, the condition of Indian prison system is not very pleasing. Prisons are badly overcrowded; prisoners are given better or worse treatment not according to the nature of their crime, but according to their class status; sanitary conditions are poor, and punishments for misbehavior while incarcerated have been known to be particularly onerous. Prison system and administration is in state list therefore prison conditions in India vary from state to state. The more prosperous states have better facilities and attempt rehabilitation programs; the poorer ones can afford only the most bare and primitive accommodations. Conditions for holding prisoners also vary according to classification. India retains a system set up during the colonial period that mandates different treatment for different categories of prisoners. Under this system, foreigners, individuals held for political reasons, and prisoners of high caste and class are segregated from lower-class prisoners are given better treatment.

Conclusion:

Prison system in India has a very long past which can be traced in Rig-Veda, Ramayana, Mahabharata and Manav-Dharamshastra. In ancient India prison were there to destroy the enemies of king and to custody the war prisoners. During Mughal and Maratha period also the prison system was very barbaric. The outlawed inmate of prison, till the beginning of the century, was never considered fit to claim any right enjoyed by law-abiding persons of the society. He was put in jail only to realize his folly and to pay for it through his sufferings. In British period due to effort of Lord Macaulay prison reforms begin.

Presently with the changing perception towards prisoners, prisons are no longer regarded as a place for punishment. Prisons are now being considered as reformatories and greater attention is being given to ameliorate the conditions in jails so that they have a healthy impact on prisoners in developing a positive attitude towards life and society.

In reality till today the condition of Indian prison system is not very pleasing due to various reasons i.e. overcrowding of prisons; poor sanitary conditions; vindictive and harsh treatment by prison staff; ignorance of rehabilitation; lack of educational, legal, occupational, medical and health facilities to prisoners etc.

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