



# The Role Of Prisons In India : Under The Criminal Justice System

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## **Abstract :**

Prisons are the integral part of the criminal justice system the concept of world prison begins with ancient period in the name of Karagurha the same subject was mentioned in the state list . Recently the Department of prison was renamed as Reformatory Institution . Prisonisation symbolizes a system of punishment and also a sort of institutional placement of convicts , under trial prisoners . this article is mainly emphasized on Historical Background Of Prisons , The Plight Of The Prisons In The Present Scenario And Also Contribute A Related Apex Court Verdicts , Constitutional Provisions Relating To Prisoners , Evolution Of Prison Reform , Prisoners Rights Were also Wildly Discussed in detailed manner .

**Key words :** Prisons , Convicts , Plight

## **Introduction :**

Punishment in Civilized Societies must not degrade human dignity of flesh and spirit. The rule of law has recognized in a number of instances on poor under trial prisoner's right that they must be treated like human beings and their treatment must conform to the basic standards of humanity and fairness. Recognition of the inherent dignity, of the equal, and in alienation right of all members of the society is the Foundation Of Freedom, Justice And Peace in the world. The utility of prisons as an institution for Rehabilitation of offenders and preparing them for normal life . The Government of India has initiated several measure to bring prison reforms for the purpose of humanization of prison the inmates and to bring them back to the main stream of the society as good citizen . Apart form this , the role of the judiciary in the past few years in introducing jail reform in India has

been commendable . In the post-Maneka era , in catena of cases , the supreme court exposed the cruelty of the system of prison Administration in India , and has sought to humanize it . The court has taken keen interest in improving the system that is cruel and insensitive to human pain and suffering . In the process , the scope of personal life and Liberty guaranteed under Art .21 of the constitution of India . Prisoners are also Human Being they are already exploited their rights they need to legal aid and they enjoy the fundamental rights like other human beings subject to certain condition . The plight of the prisoners are not in good condition lack of adequate facilities to reduce the over crowd of the prisons in India to speed up the bail system by the courts . We need to urgent reform the prison system by way of adopting Rehabilitative Methods and also to improve and strengthened the Indian criminal justice system <sup>1</sup> . There were three types prisons in India till two decades ago maximum security of prison , medium security prison and minimum security prisons . The medium security prisons were called modal jails of two such prisons in India one was located at Luck now and the other at Ajmer but both have now been converted in central jail . The three important characteristics of modal jail which distinguished them from the maximum security prisons were Panchayati – Raj system [ in which the management of the jail is vested in the inmates] , the wage system [in which the inmates were paid wages for the work assigned to them] and the canteen system [in which the jail canteen – run by the inmates on no profit no loss basis – provided essential things of daily use like tea , oil , soap , etc to the inmates within the jail itself] .

### **Evolution Of Law On Prison Reform :**

#### **A] development at international level :-**

The international penal and penitentiary commission made an Endeavour in 1929 to work out standard minimum rules for the treatment of prisons which could be uniformly applicable through out the world , but its attempts failed because of the variation in geographical , physical and political condition of different countries . Thereafter , in 1949 the united Nations convened a meeting of a group of experts to consider the problem of crime prevention and to frame standard minimum rules to purpose<sup>2</sup> . Consequently , a draft of standard minimum rules for the treatment of prisons was submitted by the first congress on prevention of crime and treatment offenders , U.N.O Geneva in 1955 . The rules sought to eliminate under torture and suffering to prisons and narrowing down the gap between the prison

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<sup>2</sup> ADM Jabalpur VS Shiva Kantha Shukla case

life and the free-life . There was a greater emphasis on rehabilitation of the prison and training him for his return to normal life on society

The General Assembly of The United Nations Passed a resolution in Geneva Congress in 1955 providing for convening every five years , a world Congress on Prevention of crime and treatment of offenders . Consequently the congresses are held every five years at different place . The objective of the congress on methodologies for correctional services and treatment of offenders . Various recommendations of these congresses regarding mitigating the rigours of prison life , reforming of the delinquents and preventing their relapse into crime , engaging the prisoners in suitable work and their wages , prevention of humiliation etc have been adopted by many member nation of the united nations

### **B] Development in India :-**

The British colonial rule in India marked the beginning of penal reforms<sup>3</sup> . The British prison authorities made strenuous efforts to improve the condition of Indian prison and prisoners . The prison enquiry committee was appointed in 1836 , which recommended for the abolition of the practice of prisoners working on roads . Inspector General of prisons was appointed for the first time in 1855 . In the year 1862 , the second jail Enquiry committee expressed its concern for the insanitary condition of Indian prisons . It emphasized the need for proper food and clothing for the prison inmates and medical treatment of ailing prisoners . Thereafter , the third jail enquiry committee also made certain recommendation in 1877 followed by further suggestions in 1889 and 1892

As a result of these recommendation , the prison Act , 1894 was enacted to bring about uniformity in the working of prison in India and also introduced several reforms in the prison system . The Indian jail reform committee 1919-20 under the chairmanship of sir Alexander Cardew , the All India jail manual committee 1957-59 , the all India jail reform committee 1980 under the chairmanship of justice A.N Mulla and the expert committee on the women prisons 1986-87 under the chairmanship of justice V.R Krishna Iyer were appointed to suggest suitable measure and accordingly these committee have made far reaching recommendation for jail reforms in India

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<sup>3</sup> The Constitution Of India

**Prisoners Rights:-**

Prisoners are entitled to the following rights namely

1. Right to freedom of speech
2. Right to protection
3. Right to health
4. Right to education
5. Right to security
6. Right to food
7. Right to free legal aid
8. Right to speedy trial
9. Right to expeditious justice
10. Right to protection from the exploitation
11. Right to movement

All the rights are enjoyed by the prisoners

**the prison reforms : Land Mark judgments**

The role of the supreme Court and High courts introducing jail reform in India has been commendable . An analysis of the judicial contribution to the reformation of prison system is made by classifying

**A] Concern for under trials:-**

The quest for prison justice is probably a result<sup>4</sup> of the attempt of apex court to revive liberty after extinguishing it in the **Habeas corpus case** . In fact , the supreme court has commented in that case during the emergency that the treatment meted out to the detainees was almost maternal . The supreme Court carried the ratio of the *Habeas corpus case* that article 21 is the sole repository of life and liberty

The ratio laid down in *Maneka Gandhi's case* was a landmark in Indian jurisprudence . The Maneka principal was extended to prison condition and particularly to the plight of under-trials . Series of news items appeared in “The Indian Express” about the continued incarceration of under-trials in Bihar Jails .some of them were never produced before the courts . Some others had spent more time in jails as under-trials than the maximum penalty that could be imposed upon them if they were convicted of the offences they were charged with . The supreme court in the *Writs of Habeas Corpus* for under-trials stated that :

<sup>4</sup> *Maneka Gandhi's case*



“The information contained I these news paper cutting and it is sufficient to stir the conscience and disturb the equanimity of any socially motivated lawyer or judge . Some of the under trials prisoners whose names are given in the newspaper cuttings have been in jail for as many a 5,7 or 9 years and a few of them for even more than 10 years without their being begun . What faith can these lost souls have in a judicial system which denies them a bare trial for so many years , and keep them besides bars , not because they are guilty , but because they are too poor to afford bail and the courts have no time to try them there can be little doubt after the dynamic interpretation placed by this court on **Article 21 in Maneka Gandhi v/s Union of India** that a 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 conflict with the requirement of the article”

It was with these observation that the supreme court directed the Bihar Government and the Patna High court to furnish to the supreme court details of criminal cases pending in Bihar and their year wise breakup . The supreme court thereafter directed the release of such under-trials who were in detention for an unduly long period

In **Hussinara Khatoon v Home secretary** , state of Bihar , the supreme court observed that a producer which does not make legal service available to a poor under trial person cannot be regarded as just fair , and reasonable and therefore violative of right to legal aid of the poor accused as contemplated by Art.21 of the constitution . The court in this case ordered release of those under trial that were

### **B] Bar against Handcuffing and solitary confinement :-**

The prisoners are quite often handcuffed while being brought from prison to the court and vice <sup>5</sup> verse for the sake of security and discipline . Even suspects and under trial are also subjected to this humiliating treatment . In **prem Shankar Shukul v Delhi Administration** The Supreme Court added yet another projectile in its armory to be used against the war of prison reform and prisoners rights . In the case the validity of certain clauses of Punjab Police rules were challenged as violation of Arts 14,19 and 21 of the constitution . Krishna Iyer J delivering the majority judgment held that provision in Para 22 , 26 that every under-trial who was accused of a non-bail able offence punishable with three years jail term would be hand cuffed , were Infringement of Article 14,19 and 21 of the constitution . Handcuffing should be resorted to only when there is ‘clear and present danger of

<sup>5</sup> Sunil Batra – I v Delhi Administration

escape' breaking out the police control and for this there must be clear material , not merely an assumption . In special circumstances application of iron not ruled out . The court pointed out that where in extreme cases the accused is to be handcuffed , the escorting authority must inform the court and record reason for doing so . It is only after getting judicial approval that handcuffing should be resorted to Krishna Iyer J further observed

“Handcuffing is prima facie inhuman and therefore , unreasonable and harsh and at the first arbitrary...to inflict ‘irons’ is to resort to zoological strategies repugnant to Article 21....”

The court also held in this case that in the absence of the escorting authority recording reasons for the prisoner being put under handcuff , the procedure of hand cuffing is a violation of Article 21.

The supreme court have given a new dimension to writ of *Habeas Corpus* its judgment in *Sunil Batra-II v Delhi Administration* . while the decision of the constitution Bench of the supreme court in *Sunil Batra – I v Delhi Administration* . had crystallized the legally enforceable rights of a prisoner , the later decision in *Sunil Batra-II* has radicalized the procedure for the enforcement of the rights of the prisoner

The *Habeas Corpus* writ was traditionally used to securing the release of a person detained illegally . It is a favored remedy because of its simplicity , non-technicality and the priority which is given to its hearing by courts . *Sunil Batra II* lays the importance principal of law that a writ of *habeas corpus* is available not only to secure the release the release of a prisoner illegally detained but also to regulate the condition and manner of detention of a person whose detention is lawful . Thus a speedy and simple remedy is available to prisoner to seek redress of their grievances about the manner of their detention

In ***Kishore Singh Ravinder Dev v state of Rajasthan*** the supreme court again exposed the injustice being perpetrated on the prison and how the guidelines laid down by the court in the Sunil Batra case were being ignored and flouted the prison administration . The court accordingly directed the state Government to convert the court ruling on prison administration into rules and instruction forthwith so that violation of the prisoner freedom could be avoided . Further the court has laid down the parameter of solitary confinement and held no solitary confinement and position of the bar fetters should take place , “save in rarest of rare cases and with strict adherence to procedural safeguards . Article 14,19 and 21 operate within the prison”. Human dignity is not to be ignored even in prison

The prison now have an important forum for the enforcement of their rights . As all the grievance could formerly be aired only through the prison-hierarchy very few prisoners voiced any complaints for fear of retaliation . The very existence of the remedy of a writ of habeas corpus would be a deterrent to jail authority and could prevent arbitrary and capricious action

### **C] Directions On Jails Visits And Prisoners Interviews:-**

In other recent landmark judgment in the case of ***Francis Cora lie v Union of territory of Delhi & others*** , the Supreme court explained the ingredients of personal liberty under Article 21 . The case arose out of the right of a detainee under COFEPOSA to have a interview with his family members and lawyers . The meeting with family members was restricted to one month and the lawyer could only met only in the presence of an officer in customs department . The supreme court ruled that the right to life and liberty included his right to live with human dignity and therefore a detainee would be entitled to have interview with family members , friends and lawyer without these severe restriction

In ***Prabha Dutta v Union of India*** , the petitioner , a newspaper correspondent filed a petition to interview two condemned prisoner Ranga and Billa for which Tihar jail authorities refused permission to her . The supreme court allowed the interview upholding right of press to have access to prison inmates

### **PRISONS AND PRISON LAWS IN INDIA:-**

Prison is a State subject under List-II of the Seventh Schedule in the Constitution. The management and administration of Prisons falls 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 power to change the current prison laws, rules and regulations. Important statutes which have a bearing on the regulation and management of prisons in the country are:

- The Indian Penal Code, 1860.
- The Prisons Act, 1894.
- The Prisoners Act, 1900.
- The Identification of Prisoners Act, 1920.
- Constitution of India, 1950
- The Transfer of Prisoners Act, 1950.
- The Representation of People Act, 1951.
- The Prisoners (Attendance in Courts) Act, 1955.

- The Probation of Offenders Act, 1958.
- The Code of Criminal Procedure, 1973.
- The Mental Health Act, 1987.
- The Juvenile Justice (Care & Protection) Act, 2000.
- The Repatriation of Prisoners Act, 2003.
- Model Prison Manual (2016).

In *Suni Batra [no.2] v Delhi Administration*, It was held that integrity of physical person and his mental personality is an important right of a prisoner and must be protected from all kinds of atrocities. In this case the petitioner sought protection from inhuman and barbarous treatment inflicted upon him in jail. The petitioner was subjected to physical torture by a warden of the Tihar Jail as means to extract money from the petitioner. Batra, a convict came to know this act and brought a letter. The court converted the letter into a *habeas corpus* petition and approved and reiterated the specific guidelines laid down by this court in *Sunil Batra's case [no-1]*. The Court gave following direction to the central and state Government and the jail authorities

- The petitioner's torture was illegal and he shall not be subjected to any such torture until fair procedure is complied with ;
- No corporal punishment or personal violence on the petitioner shall be inflicted
- Lawyer nominated by the DM Session Judge, High Court and the supreme court will be given all facilities to interview, right to confidential communication with prisoner, subject to discipline and security to discipline and security consideration
- Grievance deposit boxes shall be maintained in jails, which shall be opened by D.M and the Sessions Judges frequently. Prisoner shall have access to such boxes ;
- D.M and sessions Judges shall inspect jails once every week, shall make enquiry into grievances remedial and take suitable actions
- No solitary or punitive cell, no hard labour or dilatory charge, denial of privilege and amenities, no transfer to other prison as punishment shall be imposed without judicial approval of the sessions judge

In ***Sheela Barse v State of Maharashtra***, the supreme court on a compliant custodial violence to women prisoner in jail, directed that to those helpless victims of prison injustice should be provided legal assistance at the state cost



and protected against torture and maltreatment . Further , In Sanjaya Suri's case . The apex court held the prison authorities should change their attitudes towards prison inmates and protect their Human Rights for the sake of humanity

### **Conclusion:-**

Jails are the integral part of the criminal justice system in the 21<sup>st</sup> century prison system was completely correctional administration and also considered as rehabilitation centre's Indian prison system is very systematic compare to the other prison reform system in India . In the present scenario prison reforms were significantly changed like all the facility were provided by the prison department and also the jail system is changed in the name video conferring system , Jammer System Health Faculties , Higher Education Facilities , Library Facilities , meditation facilities and some of the other advanced technical system were also adopted by the jail system according to the jail manual legal aid facilities were provided timely visited by the Higher Authority In Jail Department , National Human Rights commission state Human Right Commission Authorities were also visited the prisons totally present jail system was very well organized and maintained in A Disciplinary Manner