

ORIGIN AND EVOLUTION OF THE HUMAN RIGHTS IN PRISON SYSTEM

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Abstract

The basic tenets of human rights are Life, Liberty, Equality and Dignity. In the concept of the judiciary in our country has a major role to play in enforcing the human rights of the prisoners. The main objectives of this article is to sensitize the prison administration to human rights issues; suggest mechanisms to effectively monitor prison conditions and ensure accountability in respect to violations of human rights; and discussion of prison system in India and the ways to motivate and develop prison human rights. This article mainly makes remarks of careful scrutiny and examination to study the evolutionary stages of prison system in India will be dealt with to ascertain how far the societal environment and societal development have helped to shape the correctional institutions by the Indian judiciary to ensure the protection of Human Rights of the prisoners.

Keywords: Prison system, Ancient India, Mughal Period, Modern prison system, The Indian Jails Committee

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SCOPE AND LIMITATION OF STUDY

The scope of the study is aimed at the origin and evolution of the human rights in prison system. It must make it clear that the ignition of Prison system in India in different periods in ancient times. The meaning and perspective of prison system is identified throughout the past years in India.

OBJECTIVES OF THE STUDY

The following are the specific objectives of the present study,

- i. Historical perspective of prison system related to India,
- ii. The view of Prison System concerning to Ancient India,
- iii. The details of Prison System during the Mughal Period and
- iv. Modern prison system in India and development with a view to just icing the human rights

EVOLUTION OF PRISON SYSTEM IN INDIA

Historical perspective

The word 'Prison' conveys the meaning, a place for detention. It is a place where the persons awaiting their trial are detained, and also a place wherein offenders are confined to bring about reformation.¹

Before giving an introduction to the Indian Prison System, It will be relevant to state that the prisons were inexistence as long as in 1597, but the conditions of those prisons were miserable and horrible, where "recidivism was rampant, men and women and children were hurled together like rats in hamper and pigs in - sty". These prisons are as an author observes 'afford opportunities for graduation to a life of crime.'² They were not as we find it today. The miserable condition of prisons in ancient times was described by one of the authors as follows:

¹ J.M.L. Sethan Society and Criminal-4th Edn. Ch.IX "The prison system in India and elsewhere end the need for and made of prison reform", p.251

² Ibid

“Totally unlighted and unwermed damp and vermin infasted, devoid of sanitation and quits baron of furniture, they were veritable ante-chambers of the grava”.³

Cellular system came into existence in the 18th century, and substantial prison reforms took places during the middle of 19th century. Owing to the strenuous efforts of the prisoners like John Howards of England and Elizebethan Fry, who took the lead in the sphaera of prison reforms Cellular prisons were built at many places in England.⁴ During the latter part of the 18th century America also undertook the task of prison reforms. The mode of confinement was that in each cell single prisoner was confined, the justification therefore was that *“prevention of unhealthy influences end contamination by fellow prisoners.”*⁵ But having regard to the severe consequences experienced by the said solitary confinement experienced by the said solitary confinement which resulted in mental disorders, the congregate confinement was substituted for the solitary confinement. A compromise between the cellular and congregate confinement was offeated by allowing the prisoner during day time, in the company of fellow prisoners. But during night the prisoner was sent back to the solitude of his own cell.⁶ Reformatories for juveniles also were set up during this are of prison reforms, first reformatory of such type was established in America at Rendalls Iland in Newyork. In Ireland, ‘the marks System’ was introduced by the Director of Irish convict persons Sir Walter Crafton, according to which marks will be awarded to the convict according to behaviour, work and thereafter, grades will be assigned. This system was subsequently followed by danish prisons.⁷

PRISON SYSTEM: ANCIENT INDIA

Many writers consistently hold the view that the prisons of the Pre-Buddhist period were appalling and horrible infect. The Prisoners were mercilessly and inhumanly subjected to all sorts of savers and barbarous afflictions like whipping, keeping under chain and heavy loads. The whipping as a principal punishment continued in jails until the medieval times.

While 19th century witnessed remarkable prison reforms in other countries, the Indian Prisons remained untouched. These prisons were notorious places for torture and ill health.

³ Dr. FCJ Hearnshaw cited in Society and Criminal by J.M.L.Saths at p.251

⁴ Goult R.N.Criminology, p.310 referred to by Sethna in society and the Criminal at p. 251

⁵ J.M.L.sethna-Sociaty and the Criminal p. 252

⁶ Sethna-society and the Criminal at p.252

⁷ Pillai K.S.Principles of Criminology referred to by J.M.L.Sethna in *Society and the Criminal* p.252.

The death rate was very high in these prisons. The implementations of the disciplinary measures were too harsh and barbarous to bear.⁸ The Prisoners were being paid subsistence allowance and this was mostly abused by the jailors. We learn that an Inspector General was appointed in the year 1855 and in each presidency town a civil surgeon was appointed 10 years later. The work of Central Jails was commenced in the year 1857 and fixed diet scales and the system of remission of sentence were introduced in the year 1867.⁹

The change in the Indian prison system also is attributable mostly to one or more incidents namely, the incarceration undergone by the most of the Indian leader during the pre-independence are, and their personal bitter experiences of such intramural life land a support to the prison reforms in India.¹⁰

Administration of Justices in India during the Vedic period (a period of 1000 years earlier than the ages of Manu) was not a part of the State function as it is so today, although references to murders, theft and adultery offences were made, it was nowhere mentioned that king was authorized to act as a judge either to settle a civil dispute or punish a criminal. Sabhapati was said to have acted as Judge, during the later Vedic period, though the veracity of this is uncertain it is evident that he acted as a Governor, Instead of approaching the king it was said that the aggrieved party had mostly to resort to self-help. *“Distrain of the defendant or the accused by the plaintiff, his sitting before the latter’s house, and not allowing him to move on, until his claim was satisfied or wrong righted as a well-established practice in Vedic period”*.

During the Rigveda Period, the idea of a divine cosmic order was prevalent. Riti, the regularity of the Universal process was the main basis of law. ‘Sabha’ a village Assembly used to settle the disputes by arbitration when it was found feasible to do so, From all this, aforesaid account, it is quite evident that during Vedic period there was no prison in India; however, it should be borne in mind that “the house of the accused served the purpose for

⁸ Macleana Manual of the Administration of India Vol. 1 Ch.II cited in Cambridge history of India Vol. VI. p.56 referred to in Society and the Criminal at P.253 by J.M.L.Sathna

⁹ Ibid P.57 cited by J.M.L.Sethna in *Society and the Criminal*

¹⁰ A.L.Basham, *The wonder that was India* 1959, 113 Macmillan, Newyork cited by Indra J.singh in Indian Prison p.17

jails and he was practically imprisoned in his own house till he managed to compensate the plaintiff'.¹¹

Reference to 'Prison', Jail or Jailor also can be found having made in sutras and Shastras. In Arthashastra, the word Bandhanagaradhyaksha' is used for jailor¹² Although the writings of the foreign visitors like Magasthenesa reveal that the Indians were mostly law abiding people, it cannot be completely ruled out the existence of crime in India as can be understood from the writings of Hieuntsang, it is quite evident that though crime was a problem in ancient India, Kings were able to quell it. Fine, imprisonment, banishment, mutilation and Capital punishment were in bogus. During the emperor Harsha period, prisoners were not put to death, but were left to suffer in dungeons.¹³ Frequent reference to the description of prisoners and imprisonment can be found in Arthashastra of Kautilya. One of the modes of imprisonment was forced labour in the State mines, or at some other place and this was considered to be the most serious type of imprisonment. Thus the existence of rigorous imprisonment can be found during Msuyyan's Rule However, no systematic description of the construction of Prison is available.

Abandoned and small fortresses were supposed to have served the purpose of prisons.¹⁴ In a pamphlet entitled 'Rajgir' published by the Department, Archaeology, India, the Jail of Bimbisara was described as " Proceeding southwards along the main road and travelling about three quarters of a mile from Manigar Math, the visitor will find in area, about 200 Sq. feet enclosed by a stone wall about 6 feet thick with circular bastions at the corners. The structure has been identified with prison in which Bimbisara was confined by his son Ajatasathru. It is said, from this prison. Bimbisara was able to see Budha on the Gridrakuta partial clearance of the site brought to life, stone cells in one of which were found from rings with loop at one extremity which might possibly have served the manacled prisoners".¹⁵

The officials of the jail were called bandhanagaradhyaksha and karka. The former was the Superintendent and the latter was one of his assistants¹⁶, and the Jail Department was placed

¹¹ Indra J. Singh- Indian prison, p.17

¹² ibid at 18

¹³ A. L. Basham f.N.11 (Supra) cited by Indra. J.Singh in Indian Prison at p.19

¹⁴ Indian prison p.20

¹⁵ V. Ramachandra Dikshitar 'The Mauryan Policy', Madras University Historical Series No 21 1953 at pp.172-173 cited by Indra J.Singh in Indian Prison at p.20

¹⁶ Mohd. Hamid KaraishiRajgir –revised by A.G.Ghose Director Gen. of archeology, New Delhi, 1958 - Referred to in Indian Prison Indra J.Singh at p.20

under the charge of Sannidata and he was responsible to select the sites for construction of the Jails (B.K.11 4) During king Asoka's rule, it was said, there was an unreformed prison wherein prisoners were subjected to all sorts of fiendish and traditional tortures, and it was said that no prisoner from that jail returned alive¹⁷ From the writing of Prof. V. R. Ramachandran¹⁸ it is manifest that Asoka has introduced certain prison reforms like officials' visit to the prison, once a day, or once in five days to make inquiries about the prisoners' conditions such as health, specific work and sometimes granting money for their upkeep as evident from the below cited verse "Divasa Panearatrava Bandhanistan Visodaya" Karmanakayadandenethranyagrahana Ch. II (D.K.III Ch.36)". The Officials of the Jail were expected to follow any violation of those rules. Some of the offence likes ill-treatment of the prisoners in the matter of ration and bedding, transfer of prisoners to another jail without proper reasons and illicit intercourse with female prisoners were meted with the infliction of punishment more new then what was due.¹⁹ References can be found of amnesty given to prisoners-young, old, disabled and destitute prisoners used to be set from on birth-day of the king and on the full moon days. From Asokan inscription, it is manifest that prisoners used to be released on certain occasions like the birth of a prince, acquisition of new territory which can be found especially from fifth Rock Edict.²⁰

THE PRISON SYSTEM DURING THE MUGHAL PERIOD

Hardly means it made any emphasis that during Maghul Rule in India, the administration of Justice was according to the tenets of the Holy Quran. It is the sole and Principal source of the law of the day, Jurisprudence of Mohamadanie classified offences into the three types nearly offence against God, offence against the State, and offence against the personal property for which there prescribed four kinds of punishments, namely Head, Taxir, Quisas and Hegat (Lockup)²¹ A diligent study of the Qukeer and hagat Muslim penology discloses that imprisonment was not encouraged under the mughal laws though it remained a form of a punishment²² The Mughal state never cared to ameliorate the living conditions of the prisons,

¹⁷ Theragathna 522-4 quoted by A.L.Basham p.118 referred by Indra J. Singh in Indian Prison p.20

¹⁸ V.R.Ramachandradikshitar- Madra University History Service No. 21

¹⁹ Indra. J. Singh Indian Prison, p.21

²⁰ Corpus p.75 alen p.32 kalsivarsi cited by Indure J.Singh in Indian Prison p.21

²¹ Indra 3, Singh-Indian Prison p.32

²² Ibid

and they were neglected institutions and the prisoners had to suffer in the cell ‘ so that their crime may be washed off for peace in heaven.’²³

The Prison system during the British Rule:

Ever since East Indian Company was empowered by the British Parliament in 1784 to rule, some attempts were made to bring about some reforms in the spheres of administration of Justice. At the time when the East India Company assumed the power in India, there were 143 Civil Jails, 75 Criminal Jails and 68 Mixed Jails.²⁴ An author comments that these jails were an extension of Moghal rule which were being managed by the personnel of the East India Company in their efforts to maintain peace and establish their trade”²⁵ But the plight of prisoners inside those jails was very miserable. and debasing, indeed prisoners “ were just slave labourers”. These inmates were used to be engaged in extra-mural works such as construction of the roads, and exemption was being given to such prisoners from other work inside the prison, there are some references from which it can be learnt that in two jails carpets were being manufactured, The company in the year 1856 has appointed a jail Enquiry Committees with Lord Macaulay as one of the members. After its two years problem into prison conditions of the day, it has recommended for many radical changes in the prison administration. The appointment of this Enquiry Committee can be considered as a landmark in the history of Indian penology.²⁶ The significant outcome of this Enquiry Committee is that the Prison was given differential treatment, the nature and character of the institution assumed a changed meaning, though it remained punitive basically.²⁷

The Enquiry Committee has decried the unsanitary conditions in the prisons, and ill-health of the inmates. These jails were described as ‘halls’, by many visitors which were abode of contagious diseases, and wherein the death rate was extremely high. Recommendation for good food, and clothing was made by the above enquiry committee. In order to look after sanitary conditions, health of the prisoners, and to secure efficient prison administration. I.C.S. and I.R.S. Officer were posted as Jail Superintendents. The corruption which was rampant among the Jail authorities was also severally decried by the Enquiry Committee. Having understood that the employment of prisoners in extramural labour was cause of high

²³ ibid

²⁴ Indra J.Sing- Indian prison p.23

²⁵ Ibid

²⁶ Ibid

²⁷ Ibid

death rate and had health of the prisoners, it prohibited the employment of prisoners in construction of roads, and other extramural labour.²⁸ Another significant recommendation made by the Enquiry Committee, though not with a scientific aim related to the classification of the prisoners. The Enquiry Committees suggested that a distinction has to be made between the prisoners who were imprisoned to do hard labour, from those sentenced to simply imprisonment, and it further recommended that the latter should not be compelled to work in the prisons.²⁹ A glaring lacuna in this classification was that no suggestion was made to separate Juveniles from adults and habitual offenders. The Enquiry Committee did not advert to the classification system existing in Bombay and Bengal being upon the ground of costs, further; it did not give any thought to bring in reformatory measures, like religious and moral instructions, education, or any system of awards for good conduct. It also recommended that the lifers, and those convicted for longer periods should be confined in Central Prison.³⁰ Those convicts confined in the Central Prison were to be engaged in dull, monotonous and uninteresting tasks. The rationales behind this commendation seems to have been “ based upon the conception of engaging a convict of heinous crime into a trade means providing him excuses for passing time and learned skill.”³¹ As regards the administration of the prisons in India, the entire prison administration was under the sole control of the District Collector, and there was no Superintendent, but only ‘Darogah’ (Police Inspector) used to be incharge of the prison. Subsequently as there was a proliferation in Collector’s functions, Collectors could not bestow their whole attention to the matters of the Prison administration, in order to cope-up with this. Superintendents were appointed.³² During those days, some jails started factories also. It was stated that the living conditions of the prisoners in those jails were “really led to despair, ruination of mind, enervation of body, spiritual negation and even death.”³³ They were in fact, abode of misery, sorrow and terror. The death rate of the prisoners also was extremely and unusually high.

The Government of India intending to bring in ameliorative conditions in the prisons has appointed another enquiry committee consisting of some experts, in the year 1864.³⁴ A third commission, after three years was appointed, consisting of only the jail officers to inquire

²⁸ Ibid

²⁹ Ibid

³⁰ Ibid

³¹ Ibid

³² Ibid

³³ B.S. Haikarwal-A Comparative Study of Penology Chap. VI Imprisonment, p. 29

³⁴ Ibid

into the existing prison administration³⁵, and this commission assembled to ponder over the problems pertaining to the administration of the Prisons. The fourth enquiry Commission with Dr. Walker and Lith Bridge, as members, was set up to evaluate the contemporary prison administration and the significant contribution of this commission is that it has brought out the prison Act of 1894³⁶ which is surviving seven today.

Under the Chairmanship of Sir Alexeder Cardiff, in the year 1919-20 Indian Jails Committee,³⁷ was set up. The Principal reason in appointment of this committees was that the then Indian Government felt the need to overhaul the present Jail administration as it was found lagging behind in the reformatory aspect and that it remained unchanged for the past thirty year³⁸ it has been said by one of the authors in this context that “ it had failed till than to regard the prisoner as an individual, on the other hand, he was condemned as a unit in the Jail administrative machinery”³⁹ Besides this, the Indian Jails Committee was appointed to obtain recommendations to implement reformatory measures replacing, the existing unfair, indecent and harsh treatment in the prisons.⁴⁰

The Indian Jails Committee, after touring all over India, Burma, Andaman, England and America, has made the infra said significant recommendations,

1. The Jails should be run by specially trained men,
2. The Superintendent of the Jails should alter be appointed from amongst the ranks or from the educational or the Police Department, who had special aptitude or training in this kind of work, or they should be drawn from the assistant surgeon's grade, preferably. Military Assistant Surgeons Grade,
3. The Medical Officers of the Jail should be under the control of the Jail Department,
4. The Warden class should be an educated one,
5. Classification of Prisoners should be done like habitual and casuals,
6. The number of convict officers should be reduced,
7. Prisoners should not be kept separately altogether in barracks,
8. Machinery should be installed in jails,

³⁵ Indra. J. Sing. Indian Prison p.25

³⁶ Ibid

³⁷ B.S.Haikarwal-A Comparative Study of Penology-Chap.VI Imprisonment P.30

³⁸ Ibid

³⁹ Ibid

⁴⁰ Ibid

9. Flogging should only be restored to in cases or rioting or an attack,
10. Whatever work is taken out of the prisoners in jail, the underlying idea always should be to reform them,
11. No fetters for the sake of protection should be put on the prisoners inside the jail,
12. Prisoners with more than six months sentence should get remission,
13. Prisoners should be allowed to write and receive letters, and should also be entitled to interviews their relations,
14. Solitary confinement should be abolished,
15. Prisoners below the age of 25 should be made to read and write,
16. Libraries should be opened inside the jails,
17. Food should be more varied and less monotonous,
18. Food should be served hot,
19. Prisoners should be provided with two sets of clothing,
20. Prisoners should get some sort of help at the time of their release,
21. The system of probation should be introduced for adults and child offenders and probation officers should be appointed,
22. Juveniles should be kept separate or Borstal jails should be opened for them,
23. Prison Officers should be released on parole and parole Officers should be appointed,
24. Under trials should be kept separate and should not be made to work,
25. Non Officials visitors should be appointed to visit jails,
26. The buildings of the jails should be made and lastly it recommended that no prisoners should be sent to Andamans only the most dangerous should be allowed to stay over there.

After the Montague Chastmsford Scheme of 1821, the prison was placed under the charge of an Executive Officers, notes Minister, although, it became a provincial subject. Improvements in light of the recommendations made by the Indian Jail Committee of 1920, were made according to the needs in the respective provinces and the practice of sending prisoners to Andemans was given a go-by for some time, however, it was revised in 1932 in respect of political prisoners, ultimately owing to the widespread countrywide agitation it was abolished.⁴¹ Confinement of Prisoners in solitary cells was prohibited in the Bombay State.⁴² however, it was permitted in case of violent and turbulent prisoners with the sanction of the

⁴¹ J.M.Sethna Society and the Criminal Chap.IX The Prison System

⁴² Ibid at 269

highest authority of the prison⁴³ such a measure for the batter as one of the author remarked would indeed produce very good result on the character of the offender, and could prevent the impious crushing of the offender's spirit.⁴⁴

The Indian Jails Committee 1919-20 referred to herein before, but recommended that all the prisoners should be assigned good and ameliorating work, so as to make them self-sufficient after their release. It has also recommended the teaching of up to-date methods and techniques to prisoners. This committee has recommended to put an end to the employing of prisoners in extramural labour such as road constructions and canal constructions.⁴⁵ It was said that the Bombay State had prohibited the use of fetters except in extremely dangerous cases by the end of 1948 (47) J. M. Sethna, comments that such a wholesome consequence of such a change is welcome to all right thinking and benavolent persons.⁴⁶

M.L.Sethna, suggests, that there should be a provision enabling the Superintendent to send a reasonable portion of the prisoners' wages in the prison to his dependants. It will be pertinent to State in this context that the then Bombay State government laid down that the prisoners should be paid at the current rate of the market for his work, and the government is permitted to retain 4/5 thereof towards the food, and clothing inprison, and the remainder should be paid to the prisoners: and they were allowed to send a part of their earnings in prison to their families.⁴⁷

According to Powell J⁴⁸, significant steps were taken to ameliorate the prison conditions during 1907-27, and Borstal institutions were established, so as to separate the youthful offenders. Star classification⁴⁹ was introduced in all Indian prisons, whereby the first offenders are separated from the habitual offenders and professional offenders of serious crimes. Special Jails were also set up to confine the habitual offenders who were hitherto being confined in ordinary prisons. Advisory Boards also were constituted for the purpose of considering the prisoners sentences, and to grant release prior to the expiry of the term of imprisonment imposed. Many prisoners were as released on the recommendations of the Advisory Board.

⁴³ Ibid

⁴⁴ Ibid at 269-270

⁴⁵ Ibid

⁴⁶ Ibid at 149, 270

⁴⁷ Ibid

⁴⁸ Indian Prisons p.15 cited by J.M.L.Sethna in *Society and the Criminal* p.372

⁴⁹ Ibid

MODERN PRISON SYSTEM IN INDIA

Prisonisation symbolizes a system of punishment and also a sort of institutional placement of under trials and suspects during the period of trial. Since there cannot be a society without crime and criminals, the institution of prison is indispensable for every country.⁵⁰

The history of prisons in India and elsewhere clearly reflects the changes in society's reaction to crime from time to time. The system of imprisonment represents a curious combination of different objectives of punishment. Thus, prison may serve to deter the offender or it may be used as a method of retribution or vengeance by making the life of the offender miserable and difficult.

The isolated life in prison and incapacity of inmates to repeat crime while in the prison fulfills the preventive purpose of punishment. It also helps in keeping crime under control by elimination of criminals from the society. That apart, prison may also serve as an institution for the reformation and rehabilitation of offenders, it is therefore, follows that whatever be the object of punishment, the prison serves to keep offenders under custody and control. The attitude of society towards prisoners may vary according to the object of punishment and social reaction to crime in a given community. If the prisons are meant for retribution or deterrence, the condition inside them shall be punitive in nature inflicting greater pain and suffering and imposing severe restrictions on inmates. On the other hand, if the prison is used as an institution to treat the criminal as a deviant, there would be lesser restrictions and control over him inside the institution.

CONCLUSION

Human rights developed systematically in India by the date knowingly day to date. In all circumstances of the different periods recognized the values and authentic importance of Human rights. The implementation of human rights of prisoners are given importance considering the administration and government policies, even though we should expect some more changes in current system of human rights to prisoners in India.

⁵⁰ wikipedia