

PRISON ADMINISTRATION: POST-INDEPENDENT INDIA

K. RAGHU, *Research Scholar*

PG. Dept. of Legal Studies & Research, Acharya Nagarjuna University, Nagarjuna Nagar, Guntur.

E-mail: katariraghu@gmail.com

Dr. K. SRI GOURI, *Research Guide, Assistant Professor,*

PG Dept. of Legal Studies & Research, Acharya Nagarjuna University, Guntur(A.P)

ABSTRACT

Evolution of reforms in any subject will lead to the betterment of society. Similarly from the day of independence to till date i.e., from 1947 to 2023 i.e., almost 76 years India has seen so many changes in prison administration. From Colonial Prisons Act, 1894 to 2023 there is a lot of shift from deterrence to reformation. In the colonial rule there is deterrence so that prisoners will live in inhuman conditions, have insufficient food, bare clothing etc. as the government is interested not to spend any amount on prisoners. Now after independence, there is paradigm shift from the thinking i.e., from deterrence to reformation so that the prisoner who came out of the prison will become a good citizen and useful for the society and for his family and will not go again into commission of another offence.

KEY WORDS: *Prisoner, independence, paradigm, society.*

India got freedom on 15 August 1947 and became a republic on 26 January 1950. Till date we are having Indian Penal Code of 1860, Criminal Procedure Code of 1890 (subsequently altered in 1973) and Evidence Act of 1872. After obtaining the independence a separate written constitution was presented to the people of India in 1949 in which jails is placed in the state list¹. By this the jail administration (prison administration) is left to the states and the union government has got no responsibility in the matter of jails. After independence for the development of country 5 year plans are initiated and these 5 year plans gave minimum priority to prison administration.

Over the period many problems came to light in prisons such as overcrowding, undue detention of under trial prisoners, bad living conditions, no medical facilities, inhuman treatment of prisoners by prison staff etc. Reformatory steps are started in prison

¹Constitution of India 7th Schedule List II entry 4.

administration which resulted in model jail at Lucknow with some jail industries. Due to the industries in the prison, prisoners got meaningful work experience and after care treatment after their release from prisons. The first women jail was established in Yerawada of Maharashtra.

Prisoners were given relief in the form of Furlough² and Paroles³ to lessen the overcrowding of prisons. Open prisons were established in different states. Reduction of sentences⁴ was also initiated. In spite of this the practices of British period continued.

Mahatma Gandhi the father of the nation wrote in Young India that "Prison environment hardens the criminal tendency and in the case of innocent prisoners they learn how to commit crimes without being detected. I hold that humanitarian effort cannot cope with evil, wrought in jails⁵."

Basing on Prisoners Act, 1894 all state governments prepared their prison rules and they are different for each state which lead to no coordination in the working of the penal system. Further Prisoners Act⁶ is primarily retributive, deterrent and having only minimal reformatory provisions. It also felt difficult to transfer prisoners who committed offences in many states and arrested by one state to be transferred to another state where he also committed offences to face the trial. To give a relief to this Transfer of Prisoners Act-1950⁷ is enacted by the Government of India for removal of prisoners from one state to the other.

The CrPC was created for the first time ever in 1882 and then amended in 1898, then according to the 41st Law Commission report in 1973.

Chapter XXII of Criminal Procedure Code, 1973 deals with attendance of persons confined or detained in courts. Section 266 deals with definitions of "detained" and (b) of the same section defines "prison". Section 267 speaks about the court may make an order requiring the officer in charge of the prison to produce a person confined or detained in a prison should be brought before the court for answering the charge or for the purpose of such proceeding or as the case may be, for giving evidence.

²A set period of time when a prisoner is allowed to leave a prison.

³Permission given to a prisoner to leave prison early on the condition that he / she behaves well.

⁴Kathleen J Smith, A Cure for Crime (1964), p.153.

⁵ Young India, February 19, 1926.

⁶Prisoners Act 1894

⁷Transfer of Prisoners Act 1950

In 1955, an act is promulgated by the Government of India to provide for attendance of courts of persons confined in prison for the above reasons which is called as Prisoners (attendance) in courts Act 1955. Section 4 of the Act⁸ empowers the state Government to exempt certain persons from not removing from prison. Section 6⁹ empowers the officer in charge of prison to abstain from producing certain persons before court in certain circumstances. Section 7¹⁰ empowers the Court to issue Commissions for examination of prisoners in prisons.

Government of India sought opinion of Dr. Walter C. Reckless¹¹ a UN expert on correctional work to suggest ways and means for prison reforms in India. He visited India between 1951 and 1952 and studied the prison administration and gave his report "Jail Administration in India" which is a landmark report in the history of prison reforms. He favoured reformatory theory and advocated establishment of new prisons for juvenile delinquents. He suggested revision of prison manuals.

Following his guidelines, in 1952 the 8th conference of the Inspectors General of Prisons was held (the earlier one was in 1935). In pursuance of Dr. W.G. Reckless and 8th conference of the Inspectors General of Prisons, Government of India appointed All India Jail Manual Committee.

After World War-II (1939 – 1945) the United Nations developed a penal policy with a purpose to give international leadership in advising and formulating policies and programs for its members. Thus standard Minimum Rules for Treatment of Prisoners were adopted and forwarded to all members in the first UN congress on Prevention of Crime and treatment of offenders held at Geneva in 1955.

All India Jail Manual Committee 1957-59

As part of the implementation of Standard Minimum Rules of United Nations and as suggested by Dr. Reckless, Government set up all India Jail Manual Committee to prepare Model Prison Rules for the guidance of State Government.

The Committee was appointed for (i) preparing All India jail Manual (ii) examining prison Act and other Central laws (iii) suggesting necessary Central Legislation and (iv) for making proposals for prison reforms to be adopted uniformly throughout the country.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Jail Administration in India (1951-52). Prepared for the Government of India by Dr. W.C. Reckless, etc

The committee consisted of Inspector Generals of Prisons of most of the States. It made a large number of progressive recommendations. It felt that prisons to be transformed into correctional institutions.

“The primary objective of punishment is reclamation and rehabilitation of the offender and this objective will faithfully implement in correctional institutions”¹².The committee gave its report in 1959. The Model Prison Manual was framed in 1960 it provided a broad guideline for the states to revise their out-dated prison manual, but on the basis of that, only very few states like Maharashtra and Kerala had revised the jail manual.

Model Prison Manual of 1960

The main features of The Model Prison Manual is classification of inmates by a committee basing on the age, length of sentence, criminal behaviour, urban rural back ground, the prospects for the rehabilitation of the prisoner after his/her release. It deals with institutional training and treatment programme, rights of the prisoners and minimum facilities to the prisons i.e., bedding, clothing, legal facilities, hygiene, sanitation, work wages, medical facilities, diet, filing appeals, remission, leave and emergency release.

Central Bureau of Correctional Services 1961

In 1961 Central Bureau of Correctional Services which will be a technical advisory body on the subject of correctional matters is established. Later it is reconstituted as National Institute of Social Defence(NISD) to advise on welfare of prisoners, prison reforms administration, probation etc. Evolving modern policies and programs in the field of social defence, collection of factual data and statistics, exchange of information, professional training, empirical research studies and publications, are to be subjects to be dealt by this. In 1972 Government of India appointed a Working Group on prisons to study prison administration, problems existing in prisons.

At international level, the general apathy of the member countries in implementing “the Standard Minimum Rules for Treatment of Prisoners” made by the U.N congress on Prevention of Crime and Treatment of Offenders held at Geneva in 1955 was reviewed by the fourth Congress held at Kyoto in 1970. The Congress lamented that the vast majority of penal systems are still rooted in the theories of the 18th and 19th centuries.

Working Group – 1972Its report emphasized the need for a National policy on prison and correctional administration. It also advocated co-ordination among the three organs of

¹²Report of All India Manual Committee 1957-59, para. 20.

criminal justice system, for prevention of crime and treatment of offenders. The major recommendation of the working group included

- (i) improvement of existing buildings, construction of new ones for special categories such as under trials, habitual etc.,
- (ii) modernization of industry and agriculture, and refresher courses and specialized training to prison personnel.
- (iii) The group recommended that prison reform should form part of a national plan. Hence, according to the group, it must have had a place in the formulation of the fifth five year plan.
- (iv) The group also made suggestions regarding the elements of national policy and its impact on prison and correctional administration.
- (v) employment of all resources to provide scientific treatment, non-institutional and semi—institutional treatment to every offender, various alternatives to imprisonment should be resorted to as far as possible.
- (vi) Abolition of simple imprisonment, scientific classification of prisoners diversification of institutions for treatment of prisoners, separate institutions for juveniles and offenders, free legal aid to indigent prisoners, premature release and parole etc., were recommended¹³.
- (vii) The working group recommended that highest priority should be given to the adoption of the National policy on prison. It also advocated amendment of the constitution to include the subject of prison in the concurrent list.¹⁴

In spite of the fact that the report of the working group was gathering dust, the Government of India requested the Seventh finance Commission¹⁵ to take up the matter of upgrading the standards of jail administration. The Commission submitted its report in 1978 after detailed study, the Commission admitted that jails had been a neglected area and there had been practically no improvement in their environment and in the treatment of inmates.

¹³ Ibid

¹⁴ Ibid pp143-144

¹⁵The Seventh Finance Commission of India was incorporated in 1978 consisting of Shri J. M. Shelar as the chairman.

The Commission recommended for construction of additional jail capacity, and recommended allocation of Rs. 48.3 crores for states. The planning and monitoring of the schemes, as recommended, were assigned to National Institute of Social Defence.

In the Fifth U.N. Congress held at Geneva in 1975, a review was done. The conference of state chief Secretaries held in 1979 to review the prison policy and laid down certain guidelines for the administration of prisons in the country. It was found that India was lagging far behind in implementing standard Minimum Rules. Government realized it's inaction and appointed another committee in July 1980 to study the prison problems. This committee was headed by Justice Anand NarainMulla, a retired judge of the Allahabad High Court.

All India Committee on Jail Reforms 1980-83 (Mulla Committee)¹⁶

The Committee has suggested measures for effecting reforms in the criminal justice administration¹⁷. According to the Committee; the reason for the deterioration in prison administration was the lack of national commitment on the goals and objectives of prison administration and modalities of achieving them. The committee formulated the draft National Policy on Prisons and recommended for its adoption by the Government of India.

It also recommended the creation of a permanent national body by the Ministry of Home Affairs under the name – National commission of Prisons'. The objective was to bring about uniformity in various states and Union territories, regarding the management of prisons, treatment of offenders and to provide a "National Policy" on prisons. The committee suggested that there should be a Department of Prisons and Correctional Services dealing with adult and young offenders.

- The institutional care, treatment, after care, etc., of the prisoners, will be its function.
- It has also to deal with probation and other non-institutional services.
- The state should evolve proper mechanism to avoid unnecessary detention of under trials.
- This can be achieved by speeding up of trials, simplification of bail procedures, and periodic review of cases of under trial prisoners.
- It was also suggested that under trial prisoners shall as far as possible be confined in separate institutions.

¹⁶ All India Committee on Jail Reforms 1980-83(Mulla Committee)

¹⁷ Justice Mulla committee submitted its report on Jail Reforms to Home Ministry on 31st March 1983.

Government should make legal provisions for alternatives to imprisonment such as (i) community service¹⁸, (ii) forfeiture of property, (iii) payment of compensation to victims, (iv) public censure, etc. similarly, the probation of Offenders Act 1958 should be implemented effectively and widely.

The Committee put forth a novel idea. Prisons should be opened to positive and constructive public discernment. Selected eminent public men shall be authorized to visit prisons and give independent report on them, to appropriate authorities.

The Committee advocated a permanent monitoring system. The progress of implementation of such plan should be continuously monitored and periodically evaluated. The committee appealed to the Central and State Governments to provide adequate resources for the development of prisons.

After asserting that rehabilitation should be part of the socialization of the prisoners, the committee noted its limitations thus: “Unless a large section of the society believes in the reformatory and rehabilitative approaches, a progressive modern system of prisons cannot become a reality,”¹⁹

It has to be mentioned that, based on the recommendation of the Mulla committee, a legislation was badly enacted for the security and protective care of juvenile delinquents.²⁰

Human Rights Commission

The National Human Rights Commission (NHRC) was established in October 1993. It considers that one of the glaring defects of the prison laws is that there is no uniformity in the matter as the subject of “prison” is under the state list.

Model Prison Manual, 2003

The Model Prison Manual as drafted by the Committee constituted by the BPR&D has dealt with various issues in details. It contains 28 chapters on following subject matters i.e., institutional framework, Custodial Management, Maintenance of Prisoners, Medical Care, Contacts with the Out Side World, Transfer of Prisoners, Execution of Sentences,

¹⁸On 11-08-2023 a bill was introduced in Lok Sabha replacing the Indian Penal Code which has community service as punishment. The Bharatiya NyayaSanhita, 2023.

¹⁹ Supra n.24 pp.25-26

²⁰ The Juvenile Justice Act, 1986. it has since been repealed and the new nAct was passed in the year 2000 and further amended in 2015

Prisoners Sentenced to Death, Emergencies, Education of Prisoners, Vocational Training and Work Programmes, Welfare of Prisoners, Remission, Leave an Special Leave, Premature Release, Prison Discipline, After Care and Rehabilitation, Open Institutions, Under-trial Prisoners, High Security Prisoners, Women Prisoners, Young Offenders, Board of Visitors Rights and Duties of Prisoners etc.

Model Prison Manual 2016

Ministry of Home Affairs had constituted an expert committee on 11-12-2014 to revamp and update the Model Prison Manual and prepared in 2003. The Committee was constituted in a manner so as to ensure representation from across States and to gain a holistic perspective of the issues faced in prison administration. Thereafter the committee was reconstituted including the members from National Legal Services Authority (NALS), National Human Rights Commission (NHRC) and civil society groups on 27-8-2015 on the directives of Hon'ble Supreme Court in the matter²¹

Bureau of Police Research and development was entrusted with the task of revising the Prisons Act 1894 ,by Ministry of Home Affairs and after having a wide range of discussions with Experts, State prison authorities, it prepared a draft assimilating 3 Acts Viz., Prisons Act, 1894, The Prisoners Act.1900 and The transfer of Prisoners Act, 1950.

Model Prison Act, 2023

The Union Government has announced that it has prepared a Model Prison Act to replace the 1894 Prisons Act which is 130 years old and retributive. In its place a new Act which will be reformative and rehabilitation oriented is being brought. The existing act is colonial and focuses on keeping the criminals in custody and enforcement of strict discipline and order in the Prisons, without any measures to reform the Prisoner. Prisons today are looked as reformative which can send a Prisoner into society after his sentence is over as a useful citizen. Prison is the state subject, however the Government of India attaches high degree of importance and support to the States and UTs as in the criminal justice system. Efficient Prison management plays a very critical role.

²¹SuoMoto Writ Petition (Civil) No.406/2013 titled Re: Inhuman Conditions prevailing in 1382 prisoners in India.

Provisions of New Model Prisons Act are given below:

i. Provision for security assessment and segregation of prisoners ii. Individual sentence planning iii. Grievance redressal iv. prison development board, v. attitudinal change towards prisoners, vi. Provision of separate accommodation for women prisoners, transgender, vii. Provision for use of technology in prison administration with a view to bring transparency, viii. Provision for video conferencing with courts, scientific and technological interventions in prisons, ix. Provision of punishment for prisoners and jail staff for use of prohibited items like mobile phones etc. in jails, x. Provision regarding establishment and management of high security jail, open jail (open and semi open), xi. Provision for protecting the society from the criminal activities of hardened criminals and habitual offenders, xii. Provision for legal aid to prisoners, provision of parole, furlough and premature release etc. to incentivize good conduct, xiii. Focus on vocational training and skill development of prisoners and their reintegration into the society.

Conclusion

Thus the subject of prisons and prisoners under the light of United Nations declaration of Human Rights and various other resolutions that were adopted by the Government of India and the efforts made by the Government of India to implement the same is materialising in the form of Modern Prison Manual, 2016 and Modern Prisons Act, 2023. If they got approval of the appropriate authorities under the close scrutiny of the judiciary it will go a long way in reformating the prisoners and in making the prisoners reformed into good citizens.

* * *