



## **Amend Prison Laws: To Advance Utility and Efficacy of Penal System.**

**\*Mr.F.S.Patil, \*\* Dr.Maheshwari S.Kachapur**

*\* Research scholar, Department of Criminology and Criminal Justice, Rani Channamma University, Belagavi, Karnataka.*

*\*\*Assistant Professor, Department of Criminology and Criminal Justice, Rani Channamma University, Belagavi, Karnataka.*

### **INTRODUCTION:**

**Key words:** theories, prison problems, archaic laws, changes.

Society and the instrumentalities of law are interdependent and interchanging. As times change, perception and notions towards Criminological science; in their fold, occurrence of crime, personality of the criminal, society-community neighbourhood he/she hails from, penological instruments and institutional administration, methods and modalities all ought to change. Welfare State ideology has dithered away the Retribution, only Deterrence, Reformative and Preventive theories are prevailing. The archaic Colonial hangover penal laws in Prisons Act, 1894, Prisoners Act, 1900 and other allied laws, including the judicial sentencing have been ineffective to arrest the rate of crime, in treating and moulding the offender, failing in lessening the recidivism.

Thus, calling for more scientific, analytical, applied penal reforms, innovating with indigenous methods of Corrections, based on Geo-Socio-Cultural-Psychological aspects. How in the current Indian scenario, Utilitarian hedonism by its proportionate punishment to get the desired effect, can be calculated? What radical changes can be brought by Psychological, Medical Model, Spiritual methods in the administration of administration? How the judicial process in sentencing can be rationalised for Correction inclusive punishment with use of Social Investigation Report, Probation Officers Report, and Individual Care Plan? Why not Management Information System be evolved for continuous vigil on Ethics, Governance and imposition of Human Rights of the convicted and arrested. These are some of the areas this study wants to peep in.

### **RELEVANCE**

The study is timely relevant, because;

1. Due to technological and other advancement, nature of both crime and criminal is fast changing, hence penal system cannot lack the radical and swift changes required in countering the problems it is best with.

2. Out dated laws since 1860 AD are not yielding desired results, especially in penal corrections, so need to amend with suggestions of interdisciplinary approaches.
3. Geo, Social, Psychological, Spirituality, Faith, Belief system considerations are equally important in the frame-work of lawful schemes, which existing laws lack.

## **OBJECTIVES**

1. To check and verify the lacunas in existing laws and their schemes.
2. To verify the limitations of Corrections and Reformatations.
3. To know the recent developments in applications of Psychological-therapeutic models, Spiritual-Yogasan-Meditation and Medical Model by examples.
4. To understand the prison problems, judicial sentencing policy, social complexities and application of theories into practices.

## **METHODOLOGY**

This study is rudimentary, qualitative and doctrinal based on legal principles, basics of theories, texts, commentaries, case laws and published articles, researcher wants initiation into prison problems to find way for possible solutions.

## **THEORITICAL INSIGHTS**

The basic idea of Utilitarianism that, Highest happiness of the greatest in number is not new to our native nation-society, as WE THE PEOPLE say it in “Bahu Jana Hitaya: Bahu Sukhay” also a step further ‘Sarve Jana Sukhino Bhavantu’, but crime is not happiness of the society at large, but a harm against its harmony, individual criminal is never bigger than society, his own wronged pleasure invites pains by way of infliction of punishment by State Authority. A criminal cannot be left ‘Sukhi, How to and how much- Ratio Proportion pains (punishment) to inflict? Depends on the gravity and heinousness of crime. Though ‘Prayschitta’-Penitence was called, but regulation and calculation of it was introspective reformation by individual-criminal turning to humanitarian. But all offenders may not remorse, may penitence, hardened continue to be recidivist. Further the consequentialism of punishment is needed, only degree and treating modalities by classifying the offenders and designing suitable correction

techniques may vary. Thus said J.Bentham '*and as diseases vary, aids must vary; a thousand kinds of ill, a thousand cures*'.

### I. PRISON LAWS; OBJECTS: DEFINITIONS: MEANINGS

Constitutional basis for Prison and Prisoners lies in List-II (State subjects) of the Seventh Schedule, thus management and administration falling exclusively within the domain of State Governments. Many States have their own Act or Rules or both. Karnatak has 1963 Act. Prison Manuals are also important part of their administration, mainly TWO Acts chosen for study, one; The Prisoners Act, 1900- includes rights of prisoners and two: The Prisons Act, 1894- more speaks for administration and definitions.

The PRISONERS Act, 1900	The PRISONS Act, 1894
<p>a. An Act to consolidate law relating to prisoner's confine by order of a Court.</p> <p>b. Merely to consolidate several Acts, which were found in different parts (Statutes)</p> <p>c. To replace a number of separate enactments by single Act.</p> <p>d. Expressed more simply and intelligibly.</p>	<p>a. An Act to amend law relating to prisons</p> <p>b. Except the territories comprised in Part B States before 1<sup>st</sup> November, 1956.</p> <p>c. And to provide Rules and Regulations to such prisons.</p>

1900 AD Prisoners Act in its skeleton has VIII PARTS divided in 33 Sections, providing only **DEFINITIONS** of (a) **COURT**: includes a **CORONER** [ancient officers of Common law, deal with pleas of Crown, inquire into the manner in which prisoners have to come to their deaths] and any officer lawfully exercising civil, criminal, revenue jurisdiction, and (b) Prison' includes any place which has been declared by the State Government, by general or special order, to be a subsidiary jail. And in operative machinations the Act, speaks for Prisoners in the Presidency Towns, Prisoners outside the Presidency Towns, Persons under sentence of Penal Servitude, Removal of Prisoners, Persons under the sentence of Transportation and lastly Discharge of prisoners. The cursory reading of the whole

of Act only implies the governance operation, only Ss.14 and 28 say References etc to be construed as referring also to Reformatory Schools. And only S.30 refers to medical care or treatment of Lunatic prisoners. However Ss.31-A, B, made provisions for parole system, S.31-C for release of prisoners for special reasons.

Whereas, 1894 AD Prisons Act is wider, having XII Chapters divided in 60 sections, giving more references to Medical treatment, Classification of Prisoners, Safety, Labour, Employment of Prisoners etc. Important definitions being; S.3 (1) **PRISON** means any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto, (excluding some). S.3 (5) **REMISSION SYSTEM** means rules for time being in force regulating the award of marks to, and the consequent shortening of sentences of, prisoners in jail, S.3(6) **HISTORY TICKET** means the ticket exhibiting such information as is required in respect of each prisoner by this Act or the rule thereunder. Further Medical Subordinate, Assistant surgeon, Apothecary [prescribing medicine] or qualified Hospital Assistant and some States have included “**FURLOUGH**” system [releasing prisoner to family or to his society for short period]. Other important aspects being, a medical officer also be a Superintendent S.6, and power of such officer in MANAGING discipline, labour, expenditure, punishment and control S.11, Keeping of Records, Ss.13 & 14 Duties of Medical Officer and Reporting – *Reasons To Believe That Mind Of The Prisoner Is Or Is Likely To Be Injurious Affected By The Discipline Or Treatment To Which He Is Subjected.,,, Together With Such Observation.,,, Forthwith Be Sent To IG.* – A big ground and scope for investigation on conduct of the prisoner, use of psychological tools, his orientation and designing treatment accordingly. S.27 speaks for separation of prisoners, Ss.34, 35 on employment of the prisoners, and the Act in other parts takes care of Health of Prisoners, and regulation on visits to prisoners.

Though the two laws anticipated some of prisoner’s corrections, but in administration, growth was slow, as advent of Human rights were not documented and enforced in then times. Therefore both have limited scope for deterrence, reformation and prevention, though there have been Prison Manuals, yet **Model Prison Manual 2016** having 32 chapters dealing with “ Custodial Management, Medical Care, Education in prisons, Vocational training and Skill development programmes, legal aid, visitors, prison computerisation” needs to be launched.



## II. PRISON PROBLEMS IN INDIA.

Across India, prison administration suffer from;

- a. Overcrowding
- b. Prolonged detention of under trials.
- c. Unsatisfactory living conditions.
- d. Staff shortage and poor training, no experts.
- e. Corruption and extortion.
- f. Inadequate social reintegration programmes.
- g. Poor spending on healthcare and welfare.
- h. Lack of legal aid. Indifferent and inhuman approach of prison staff.

## III. JUDICIAL DELINEATIONS: Answering the Relevance and Objectives of this Study.

### 1. 1981 Cr.LJ, 17 (SC)

This country has no totalitarian territory even within the walled world we can call prison. **‘Injustice Anywhere Is Threat to Justice Everywhere’** we are caught in an escapable network of mutuality, tied in a single garment of destiny, whatever affects one directly affects all indirectly. Human dignity is dear to value of our Constitution not to be bartered away for mere apprehensions entertained by all jail officials.

### 2. AIR 1978 SC 1675 ( JJV.R.KrishnaIyer)

“The province of prison justice, the conception of freedom behind bars and the role of judicial power as constitutional sentinel in a prison setting, are of the gravest moment in a world of escalating torture by the minions of State, ***And In India, Where This Virgin Area Of Jurisprudence Is Becoming Painfully Relevant.....***

Does a prison setting, ***Ipsa Facto, Out-Law The Rule Of Law, Lock Out The Judicial Process From Jail Gates And Declare A Long Holiday For Human Rights Of Convicts In Confinement***, and (to change the metaphor) if there is no total eclipse, ***what luscent segment is open for judicial justice? Three inter-related problems project themselves (i) a jurisdictional dilemma between ‘hands off prisons’ and (ii) take over jail administration, (iii) a constitutional conflict between detentional securities.***

### 3. **Ramamurthy V. State of Karnataka (1997) 2 SCC 642**

The experiment carried out in the Tihar Jail in 1993-94 when *Vipasana meditation* was introduced in a big way, brought about a big change in the living conditions and thinking of the prisoners.

Some penologist have advocated yoga and meditations to bring changes, Justice Ram Pal Singh, former judge of the HC of Madhya Pradesh has published 'Yoga and Indian Penology' in Central India Law Quarterly Journal Vol.1 (1987) pp.92-93 as cited in Prof. N.V.Paranjape 'Criminology, Penology Victimolgy' CLP, Allahabad, 2017, at pg,536.

#### IV. CONCLUSIONS

1. No penal theory is perfect, unless its instrumentalities (Acts) are validated with results.
2. The existing laws are insufficient, lack the rigour to bring the deterrent, preventative, reformatory results.
3. Prisoners plight is not put into light in practice, systemic failure, and deficient administration have plagued prison justice.
4. The laws and allied systems need the overhaul.
5. Indigenous methods of Correctional sciences, based on Geo-Socio-Psychological, Spiritual aspects need to be included, framed in scheme of instruments, inculcated and be practiced to desired results.

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