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Legislation Frameworks of Prison Administration and Prison Legislations

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ABSTRACT

The Author through article has elucidated about under trial prisoners, its approaches with aid of existing provisions and case laws provided in the respective Acts for the well-being of an undertrial prisoners in India. The author has also made a detailed analysis on existing laws which provides protection for the undertrial prisoners. These prisoners are kept in the prison for a long period and this is due to lack of speedy trial of their cases. This article also made an attempt to explain vital sections of the Prison Act, 1894 to which the Prison authorities and Government should follow. In India prison gives major importance to the criminal justice system.

I. INTRODUCTION

Prison means “Any jail or place used permanently or temporality under the direction provided by general or special orders of a Government for the detention of prisoners”.² In other words, a prison is a place where different types of criminals are kept behind bars in that some prisoners are under trial prisoners who are languishing in jails for years. Prison is a concept which relates to the punishment and a sort of institutional placement of under-trial prisoners and suspects. In the olden days and also in present days prison is recognized as punishment which is used to reduce crimes. To control the crimes which are escalating day by day, there are legislations which is to curb the crimes and for the protection of the under trial prisoners. The legislation as follows:

1. The Prison Act, 1894
2. The Prisoners Act, 1900
3. The Identification of Prisoners Act, 1920
4. The Prisoners (Attendance in Courts) Act, 1955
5. The Reformatory School Act, 1897

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² Dr. S.R. Myneni, Prison Administration, New Era Law Publication, First Edition 2019, Page No 40

II. PRISON LEGISLATION IN INDIA

The Prison Act 1894 deals with the smooth functioning of prisoners rather than the reformation and rehabilitation of prisoners kept in jail. This act has a colonial approach that deflects with the modern era philosophy of reformation of prisoners on humanitarian grounds in order to change their heart and mind to be a responsible citizen rather than behaving in disciplinary measures of taming them in prisoners like animals or servants. Most of the prisoners in Indian should not be left on their own in prison, just to languish and suffer like dead creatures but should be treated with the respect of a human being.

The Prisons Act 1894 is one of the oldest pieces of legislation in India dealing with laws enacted in relation to prisons. This Act was enacted on 22nd March 1894 and enforced on 1st July 1894. This act contains 62 sections and XII Chapters and it is an exhaustive act that contains law relating to the smooth functioning of prisons³.

Prison is an area where the Criminal Justice System gives importance to the whole society at large. In some states of India such as Maharashtra, Uttar Pradesh, Chhattisgarh and Delhi have more trial prisoners compare to other states of India. The solution to this problem is a correctional mechanism for the welfare of the prisoners and if it fails it will make the entire criminal procedure unproductive. The doctrine behind the punishment for a crime has been changing from time to time as it is the evolution of human rights jurisprudence. The concept of reformation has been entitled to prison administration.

The prison in new sense could have already been developed in Latin and not been recorded but was waited up to 12 century to see it, the sense captivity being added in the same century to observe as well as in old French period. The view of 'Place of Imprisonment' is recorded shortly afterward in a text copied down before 1225, but perhaps actually written in the Old English period before the Norman Conquest⁴.

Different reports, recommendations, and reforms from the Governments have touched upon the aspects of protecting under trial prisoner who is languishing in jail for years. Post-independence, India included explicit provisions for judicial review that was necessary to give the effect to the individual and group rights guaranteed in the text of the Constitution. Dr. B.R. Ambedkar had described some provisions related to the same as the 'heart of the constitution'. As Article 13 (2) of the Constitution of India described that the Union of the States shall not

³Priyadarshi Nagda, A socio-legal study of prison system and its reforms in India, Volume 3, issue 4; International Journal of Law, Page No. 49 -56, July 2017

Dr. S.R. Myneni, Prison Administration, New Era Law Publication, First Edition 2019,

make any law that takes away or abridges any of the fundamental rights and any law made in the contravention of the aforementioned mandate shall be void⁵.

III. APPROACH TO PRISONERS IN INDIA

The father of our Nation Mahatma Gandhi has quoted that “*Hate the crime not the criminal*” as the approach of the prisoner has been changed and keeping in mind for better reformations of a prisoner in jail. In the olden times and now prisoners were sent to jail as a punishment to deprive their personal liberty and privacy. It is also essential to create the balanced environment of the prisons and to value the humanitarian needs of prisoners, so as to ensure that prisons do not create hardened criminals. The prisoners are essential to reform and educate them to be a responsible citizen of the country.

State Governments has assisted and provided from 1987 to 2002 was Rs. 125.24 crore. There were 11 Finance Commissions that had granted an amount of Rs 10 crore to the Government of Arunachal Pradesh for the construction of the jail. The Government has formed a scheme to make a change in prisons was launched in 2002 – 2003 with the objective of improving the prison requirements for the welfare of prisoners in India⁶. In prison, many requirements have been included for the construction of new jails, repair, and renovation of existing jails, construction of additional barracks, improvement in the sanitation & water supply, and construction of staff quarters for prison personnel, not only that reformation. This jail is made through the support of the Ministry of Home Affairs, Government of India Activities under the scheme have been the construction of 168 new jails, renovations, repairs and construction of 1730 new barracks, construction of new quarters of number 8965 for staff as well as improvement of water and sanitation in jails. The scheme had extended to 31st March 2009, without affecting the total outlay of Rs.1800 crore.⁷

IV. EXISTING STATUES FOR PRISON MANAGEMENT IN INDIA

The important existing statutes which have a bearing on regulation and management of prisons in the country are based on the recommendations of various Committees, Central assistance was provided to the States on a matching contribution basis to improve security in prisons, repair and renovation of old prisons, development of borstal schools, medical facilities, facilities to women offenders, vocational training, modernization of prison industries, training

⁵ By Lavanya Kaushik, The Place Of 'Judicial Review' In Indian Constitution & Its History - Government, Public Sector – India, 06/August/2020.

⁶ Priyadarshi Nagada, A Social –legal study of prison system and is reforms in India, A socio-legal study of prison system and is reforms in India (lawjournals.org), Page N.o: - 52

⁷ Ibid, at 6

to prison personnel, and for the creation of high-security enclosure⁸.

Objectives of Prison Act, 1894

1. The purpose of prison is to rehabilitate offenders and give them a good life in society.
2. By sending criminals to prison is to transform them into honest and law-abiding members of society instead of destroying it.
3. The implementation of different correctional programmers will provide the good reformation of criminals mostly first-hand offenders and under-trial prisoners.
4. The main motive of prison is not to have a retributive theory of punishment against the offender as it doesn't make a prisoner a good human being.
5. For the improvement in prison, various reformations were implemented like prison labor, education, and religious institution, motivational speech for a good change, etc.
6. The prison officials and inmates should follow the Prison Manual as prescribed by the Government.

EXISTING SECTIONS FOR THE UNDER-TRIAL PRISONERS IN INDIA

The state has been occupying the center - stage in political disclosure since the dawn of human civilization. There exists a close link between the role of the state and the legitimate exercise of rights by the people in the sociological society. The liberal school of political philosophy expanded the 'rights – oriented' dimension of people's social engagements highlighting that 'people are essential rights – bearing citizens'.⁹

Under-trial prisoners are those persons who are facing trials in the different Courts of India, in that some under trial prisoners were detained and kept in prison for main years. They cannot able to produce sufficient sureties in bailable offenses. Every person has a life to live without giving any restrictions which are prescribed by the law or binding with legal framework. In India they are much legislation on different aspects of prison administration. Mainly those are mentioned in criminal provisions as prescribed below:

Detention in bail-able cases with response to poverty

In India, there are many low-graded people detained in prisons for alleged involvement in bailable offenses primarily they are not able to provide surety. In such a case many poor people logging in jail without having the right to get bail and spending their valuable time in jails for

⁸ https://ncrb.gov.in/sites/default/files/PSI-2011_0.pdf, National Crime Record Bureau, 2011

⁹F. Kartal, "the rights bearing citizen as a problematic Actor of Liberal Politics: Communicatarian and Republican critics", the proceedings of the Twenty –First world congress of philosophy. Akara: Philosophicall Society of Turkey. Pp 159-163, 2006.

a long time.

Section 436 of the Criminal Procedure Code deals with the right to get bail in bail-able offenses was amended in 2005. It mandates the police or court to release an indigent person on a personal bond without asking for any surety. The new amendment provides a poor person or layman to execute a bond that can be he/she shall appear before the court and stand trial. This provision states that the court shall consider any person who is unable to furnish bail within 7 days from the date that person arrests as indigent. Moreover, the accused should get bail after being in jail for a maximum period of up to 7 days.

Essential details of section 436 Criminal Procedure Code, 1973

1. In Non – bailable cases a person who is arrested or detained without a warrant should be produced in front of the Court.
2. He or She as an indigent person if unable to furnish surety for bail, then discharges that person on an executive bond without surety.
3. If a person cannot get bail within a week from the day of arrest, then the Court and officer in charge should release him.

In the case of **Rasik Lal v. Kishore**¹⁰ the Supreme Court held that in case of bailable offenses, the right to get bail is absolute and if the person accused is prepared to give bail, the Court and the police officer are bound to release him.

According to the procedure, a person needs to fill Form 45 given in the First Schedule and have to apply it to the court for getting bail.

Delay in trial in certain cases

Many prisoners were charged for a different offense which is can be bailable or non – bailable offenses as it is very serious and is triable by Magistrate. Remain in prisons for long period because of the delay in the trial. The majority of under-trial was still lacking in that some of them were illiterate or semi-literate.

Section 437(6) of Criminal Procedure Code, 1973 states that in the triable case held by the Magistrate which makes it mandatory for a person to be released on bail and the trial should not be concluded within 60 days from the date of the case was listed in the police station with evidence. The Magistrate has desecration power not to release the prisoner, but only to record the evidence or reasons in writing.

As per Section 437A to provide for the Court to require accused to execute bail bonds with

¹⁰Rasik Lal v. Kishore,(2009) 4 SCC 446

sureties to appear before the higher Court as and when such Court issues notice in respect of an appeal against the judgment of the respective Court¹¹.

Hussainara Khatoon v. State of Bihar¹²

In case the Supreme Court of India dealt with the rights of the undertrial prisoners, concerning *habeas corpus* rule

In this case, a petition of habeas corpus was filed regarding the administration of jails in the State of Bihar. It was found that a large number of prisoners including men, women, and children were put behind bars for years, awaiting their trial. Many of those prisoners had committed offenses, for which they would have been given punishment not more than a few months or in some cases, two years, but they were behind jail for three to ten years and that too without any trial.

The Court also directed that on the next remand dates, when the under-trial prisoners, charged with bailable offenses, are produced before the Magistrates, the State Government should appoint a lawyer at its own cost for making an application for bail and opposing remand provided that no objection is raised to such a lawyer on their behalf and with an aim that speedy trial is executed. The State Government and High Court were required to furnish particulars as to the location of the courts of magistrates and courts of sessions in the State of Bihar along with the total cases pending in each court as of 31st December 1978. They are also required to explain why the disposal of those cases as having been pending for more than six months has not been possible¹³.

Justice P.N Bhagwati has well established that Article 21 provides that no person shall be deprived of his life or liberty except in accordance with the procedure established by law which ought to be 'reasonable, fair and just'¹⁴. A procedure that makes the poor deprived of access to legal services and has to go to trial without proper representation cannot be regarded as 'reasonable fair and just. Providing free legal services to the poor and needy is a component of any 'reasonable, fair, and just procedure'¹⁵. A layman cannot avail of the expertise elsewhere and lacks the skill and knowledge by himself.

¹¹The Code of Criminal Procedure (Amendment) Act, 2008 (ACT NO. 5 of 2009), 3rd Edition, Bare Act, Gogia Law Agency, Hyderabad

¹² Hussainara Khatoon v. State of Bihar 1979 AIR 1369, 1979 SCR (3) 532

¹³Ibid.,

¹⁴*Maneka Gandhi v. Union of India*, 1978 AIR 597.

¹⁵*M. H. Hoskot v. State of Maharashtra*, 1978 AIR 1548.

Continuing trial for a longer period

Many under trial prisoners are detained in prisons for long periods, which in some cases extend beyond the maximum period of imprisonment prescribed for the offense with which they are charged.

Section 436A Criminal Procedure Code lays down the right of an under trial should apply for bail once she/he has served one-half of the maximum term of the sentence she/he would have served had she/he been convicted. During the period of investigation, inquiry, or trial the person who completed one-half of the maximum period of imprisonment should be released from the court on personal bond with or without sureties.¹⁶.

Provided that the Court may, after hearing the public prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties.

Essential details of section 436a Criminal Procedure Code, 1973

1. Release of such person on a personal bond with or without surety; or
2. Release of such person on bail instead of personal bond.
3. The intent is to uphold the rights of imprisoned individuals who were forced to languish in jail for a long period.
4. Imprisonment of under trial prisoners was continuing for a substantial period of time against the principle; or
5. The continuing detention of such a person.

Hence a valid approach to deny the benefit under Section 436-A Criminal Procedure Code, 1973, would only occur if the accused is mischievously and purposely delaying the trial and the same is solely attributable to his/her credits.

In **Krishnakant Tamrakar Vs. State of Madhya Pradesh**¹⁷, In this case, Supreme Court did not invoke the provision contained in Section 436 –A of the Code, even though it was conscious of the fact that the petitioner therein was in custody for more than ten years, was neither granted bail nor early hearing of his appeal, nor was there an assurance to him that there was like the hood of his appeal being heard by the High Court in the near future. This would only show that the Hon’ble Apex Court has consciously chosen to not take any recourse to Section 436-A of the Code while issuing direction to initiate various measures for expeditious disposal of

¹⁶<https://devgan.in/crpc/section/436A/>, Section 436A of Code of Criminal Procedure, 1973

¹⁷Krishnakant Tamrakar Vs. State of Madhya Pradesh (2018) 17 SCC 27

criminal trials and appeals.

Section 436A gives clarifies as to know the period of detention contemplated under the section for granting bail has been calculated. Any occasion of causing of delay in a proceeding, if it has to arise, would arise only during the trial as for hearing of an appeal against conviction, unless directed and so there would be no question of the convict personally contributing to delay in appeal proceedings.

Importance of Article 21 of Indian Constitution in prison administration

Article 21 of the Indian Constitution clearly states that the right to have human dignity which belongs to human beings inside and outside the prison in India. The question is that prisoners are entitled to fundamental rights as amended in the constitution as well as in other legislations. The Court declared that when a person loses his right to personal liberty by way of detention under a valid law enacted by the competent legislature, and so long as it remains under such detention, he ceases to be entitled to enjoy his other fundamental rights.

According to the Indian Constitution, there is no such provision in Part-III that can safeguard the discretionary and sometimes harsh treatments given to the prisoners. Through interpreting Article 21 of the Indian Constitution which has developed human rights jurisprudence for the preservation and protection of prisoners' rights to human dignity.

In the case of **Charles Shobroj v. Superintendent Central Jail, Tihar, New Delhi**¹⁸, the Supreme Court held that the right to life is more than mere animal existence or vegetable substance. Even in prison, every person is required to be treated with dignity and one has to enjoy all the rights specified in Article 21. In India, prisoner's problems are very often in the country still the problems continue even after amending Prison Act, 1894. In this Prisons Act, 1894, there is rights and duties mention as amended by the Indian Jail Reform Committee (1919 – 1920) to provide reformations and rehabilitations to the prisoners.

Leading sections under Prison Act, 1894

The Prison Act is one of the oldest legislations in India addressing laws related to prisons in India. This act was introduced on 22nd March 1894 and came into existence on 1st July 1894. This Act contains 62 sections and XII Chapters as prescribed by legislation. This Act may be called Prison Act, 1894 and it is extending to the whole of Indian territories. This Act came into force on 1st July 1894 to provide Duties and Rights of Prisoners as well as officials.

Section 3 of Prison Act, 1894 defines the term prison which was maintained by State

¹⁸Charles Shobroj v. Superintendent Central Jail, Tihar, New Delhi, 1978 AIR 1514, 1979 SCR (1) 512

Government for the purpose of keeping prisoners in jail. They are various definitions which plays an essential role in prison such as prison, remission, inspector general and medical officer:

- a) **Prison** means a building or institution in which people are legally committed as a punishment for a crime or while awaiting trial and not allowed to leave. In other words, prison is a building where law-breakers are kept as punishment for a crime or while they are waiting to go to court.
- b) **A Remission** system means a system of awards and regulation given to prisoners by reducing sentences and leaving the order of conviction passed by the court such that reduction of the amount of punishment without changing its character. For example imprisonment of 1 year may be reduced to 7 months.
- c) **Inspector General** means the prison officer in relation to perform such functions as are entrusted under the rules provided by the Deputy Inspector – General of Prisons in this Act.
- d) **Medical Subordinate** means that an officer appointed by the Government who was experienced as a hospital assistant in a Government hospital.

Accommodation for prisoners

Every prisoner has the right to live and is entitled to the rights which are given in Indian Constitution such that Article 14 and Article 21. Article 19 talks about the freedoms in which some freedoms are allotted to the prisoners particularly, Freedom of speech and expression, Freedom to become a member of an association. The Accommodation for prisoners was stated in Chapter – II, Section 4, and section 7 of Prison Act 1894

Food and water should be provided to every prisoner by the administration at the usual hours because without hygienic food the prisoner won't be healthy and drinking water should be given to every prisoner whoever in need especially under trial prisoners.

As stated by this Act the State Government intended to provide the facilities to the prisoners within their jurisdiction or territory. Moreover, the State also has the power to make accommodations such as the Construction of Jails, food, and water, and other facilities as required in prison¹⁹.

In **TN Mathur V. State of Uttar Pradesh**²⁰, the Hon'ble Supreme Court has issued direction to the State that wherever such detention are stored to the persons detained must be housed in

¹⁹Section 4 from Prison Act, 1894

²⁰TN Mathur V. State of Uttar Pradesh, 1993 1 SCC 722

a lock-up which will provide at least 40 square feet per person with minimal facilities of some furniture such as a cot for each of the detained persons and supply of potable water. There must be hygienic arrangements for the toilet. The State shall ensure the satisfaction of these conditions wherever such arrests and detentions are resorted to.

According to section 7, if the Inspector General of prison detects prisoner are large in number and it is not safe to keep during any epidemic diseases which spreads from one to another prisoner. The prisoner who was suffering from the disease should be kept in safe custody and provide temporary shelter until he recovered.

Medical Officer in Prison

Chapter III of the Act deals with the duties of officers of the prison as mentioned under Section 13 to section 15 of this Act. The Medical officer shall have a duty and responsibility to keep the records of the particulars of prisoners such as health, diseases, and death of a prisoner. Those records should give to In – charge of the jailer and Superintendent of Jail.

1. The Medical Officer in charge should verify the accuracy of the prisoner records as prescribed by Assistant Civil Surgeons of the prison.
2. He should check the medicines kept in store once every 6 months and satisfy himself and enter in the stock register.
3. He should also check the medicines relating to the expiry date.
4. The Medical Officer should check the medicines which are available and reserved.
5. The medical officer in charge should examine all cases coming for release on medical grounds.
6. Assistant Surgeon should check the accommodations such as food, bed, and clothing and informs the Medical officer in – charge.
7. Medical officers should check the prisoner's condition twice a month.
8. The Medical Officer should, as soon as possible after the fortnightly weighing and to check the weight of the prisoner by picking randomly.
9. The medical officer should record in his journal any remarks he may consider necessary.

If the Medical officer has a reason to believe that the prisoner's mind is not in the current state and is likely to be injuriously affected through some treatments, in such case the medical officer should inform the Superintendent in writing and send a report to the Inspector General of prison

about that prisoner.²¹

Section 15 of Prison Act, 1894 states that on the death of any prisoner, the Medical officer able to record in a register the following as ascertained below: -

1. The day on which the deceased first reported as an ill person
2. The labor who were engaged in work on that day
3. The scale of his diet given to the prisoner has been observed on that day
4. The nature of the disease
5. The date of deceased last seen and when the prisoner died by the Medical officer.

Right to health performs a significant role in the Indian Constitution which incorporates provisions guaranteeing every individual the right to the highest attainable standards of physical and mental health of a prisoner.

The Gujarat High Court in **Rasikbhai Ramsing Rana v. the State of Gujarat**²² held that the right to medical treatment is one of the basic human rights that should be made available to every person. The Court further guided the concerned jail authorities to take proper mental and physical health care of the prisoners who were suffering from any type of disease²³.

Moreover Chapter VIII Section 37 to Section 39 of this provision deals with the health of the prisoner in which the medical officer should inform about the conditions of the prisoner without any delay as to be reported to the Jailer or officer in charge. Medical officers should give attention to every prisoner regarding their health conditions.

The Jailer and his duties

Chapter III of the Act deals with the duties of officers of the prison as mentioned under Section 16 to section 20 in this Act. Prisoner safety not only binds the medical officer but the jailer also has to perform his duty to safeguard the prisoner and will be responsible for the premises of prison and should not leave without prior intimation to the Superintendent.

The duties of the prisoner are needed in every jail: -

1. The jailer should reside in the prison unless the Superintendent permits him in writing to reside elsewhere.
2. He shall coordinate the work of other Jailors and Deputy Jailors and arrange in such a way that one officer should always be present throughout the day.

²¹Section 14 of prison Act, 1894

²²Rasikbhai Ramsing Rana v. State of Gujarat, 1999 CriLJ 1975, (1999) 1 GLR 176

²³Mahelaka Abrar, Rights of prisoners and major judgments on it, November 6, 2020, Rights of prisoners and major judgments on it - iPleaders

3. The Jailer shall not be sanction anything without the inspector – general permission in writing.
4. During the death of a prisoner, the jailer should inform immediately to the Superintendent and the Medical officer-in-charge.
5. The jailer should carry out the instruction to a medical officer with regards to sick prisoners and maintenance of sanitary and hygienic conditions in the prison.
6. The Jailer is responsible for the safe custody of the records to be kept under section 12 and all other documents confided to his care.
7. The jailer should not be absent from the prison for a night without permission in writing to the Superintendent of Jail.

According to Section 16 as stated in this Act the Jailer shall reside in the prison unless the Superintendent permits him in writing elsewhere. Without the Inspector General's sanction in writing and be concerned in any other employment. The jailer should not absent from the prison for a night without taking permission from the Superintendent. If the jailer was absent without leave for a night from unavoidable necessity in such a case the jailers should report immediately the fact and causes of it to the Superintendent. The jailer is responsible for the safe custody of the records to be kept by Superintendent, for the commitment warrants, and all other documents confined to his care from prisoners.

V. CONCLUSION

Through various legislations and Acts which were passed for improving the conditions of prisons in India, still under – trial prisoners are left behind the bars. There are various provisions enumerated in the Indian Constitution & Code of Criminal Procedure for the protection and welfare of the prisoners. By this initiative steps to be taken to improve the conditions of the prisoners especially under trial prisoners. Hence India should bring constant positive changes towards the prisoners.
