

Historical Review of Prison Reforms in India

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Abstract

Study analysis the historical review perspective of prison system in India

INTRODUCTION

In India, the early prisons were only places of detention where an offender was detained until trial and judgment and the execution of the latter. The structure of the society in ancient India was founded on the principles enunciated by Manu and explained by Yagnavalkya, Kautilya and others.³ Among various types of corporal punishments – branding, hanging, mutilation and death, the imprisonment was the most mild kind of penalty known prominently in ancient Indian penology. Imprisonment occupied an ordinary place among the penal treatment and this type of corporal punishment was suggested in Hindu scriptures, the evildoer was put into prison to segregate him from the society. The main aim of imprisonment was to keep away the wrong doers, so that they might not defile the members of social order.⁴ These prisons were totally dark dens, cool and damp, unlighted and unwarmed. There was not proper arrangement for the sanitation and no means of facility for human dwelling.⁵

ANCIENT INDIA

Fine, imprisonment, banishment, mutilation and death sentence were the punishments in vogue. Fine was the most common and condemned person who could not pay his bill to bondage until it was paid by his labour.⁶ Fines for murder of a Brahmin were 1000 cows, for killing a Kashtriya 500 cows, for a Vaishya 100 cows and for a Sudra or women of any caste.⁷ Though the Indian law gives had a little description of jail life, even then historical account gave a clear picture after the analysis of the available data. A few Smiriti writers supplied some information concerning jail. Yajnavalkya had narrated that person who was instrumental for the escape of a prisoner had undergone capital punishment. Vishnu suggested the penalty of imprisonment to a person who hurt the eyes of a man.⁸ Kautilya described the place of prison location as well as the occasions when the prisoners can be released. The officers of the jail were known as Bhandanagaradhyaksa and Karka. The former was superintendent and the latter was one of his assistants. The jail department was under the charge of Sannidhata. There are references to prisoners in Ashokan inscriptions especially the fifth Rock Edict. Kautilya has further described the

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³ KVR Aiyanger, "Some aspects of Ancient Indian Polity", Quoted in VidyaBhusan "Prison Administration in India" P.2

⁴ VasudevUpadhya, 'A study of Hindu Criminology' p.322

⁵ A Mohanty and Narayan Hazare, 'Indian Prison system' p. 19.

⁶ Basham, 'Wonder that was India' p.115, quoted in, I J Singh, 'Indian prison', p.19

⁷ I J Singh, 'Indian prison', p.19.

⁸ VasudevUpadhya, 'A study of Hindu Criminology' p.323, quoted in, A Mohanty and Narayan Hazare,

duties of the jailor who always keeps eyes on the movements of prisoners and the proper functioning of the prison.⁹ Prof. RamachandraDikhitkar in his book entitled “Mauryan Polity, has suggested that Ashoka was familiar with the Arthashastra, for Ashoka speaks of as much as twenty five jail deliveries effected by him in the course of 26 years since his appointment to the throne.¹⁰

In the post Ashokan age the jatakas gives a picture of the prisoners being released at the time of war. From Harsha Charitha, it appears that the condition of the prisoners was far from satisfactory. According to Hiuen – Tsang prisoners generally received harsh treatment. At the time of Royal coronation prisoners were released.¹¹ From the above discussion it is quite evident that regular prison system as such was not in existence in ancient India an imprisonment as a mode of punishment was not a regular feature when compared to the modern system in India.¹²

MEDIAEVAL INDIA

The legal system in the Mediaeval India resembled that of Ancient India and the contemporary Muslim rulers seldom, if at all, attempted to tamper with the day to day administration of Justice. During the Mughal period sources of law and its character essentially remained Quranic. Crimes were divided into three groups, namely, a) Offences against God, b) offences against State, c) offences against private persons. Punishment for these offences were of four classes, they were, 1) Hadd 2) tazir 3) Quisas 4) Tasir. Imprisonment was not resorted as a form of punishment in the case of ordinary criminals. It was used mostly as a means of detention only. There were fortress situated in different part of the country, in which the criminals were detained pending trial and judgement.¹³ There used to be three ‘Noble prisons or Castles’ in Mughal India. One was at Gwalior, second one at Ranathambore and the last one at Rohtas.¹⁴ The only redeeming feature of the prisoners was that orders for their release were issued on special occasions. On the occasion of the celebrations of recovery from illness of the favorite Princes Begum Sahib, Shahajahan ordered the release of prisoners in 1638 AD.¹⁵ Some rooms in forts popularly known as the Bhandhikahanas or Adab – Khanas were reserved for prisoners, and culprits who had committed serious crimes were sent to such from different places.¹⁶

MODERN INDIA

The prison system as it operates today in our country is a legacy of the British rule. It was an ingenious creation of the colonial rulers Over our indigenous penal system with the prime motive of making imprisonment “a terror to wrong doers”¹⁷ Nevertheless it was a great leap in the history of our penal reforms as it facilitated the abolition of our old fashion system of barbarous punishments and substitution of imprisonment as the chief form of punishment for crimes.

The aim of the society as expressed in its criminal law is to safeguard its own existence to maintain order and to make it possible for all citizens to lead a good life, free from molestation of others. The law enforcement agencies have been given the powers by the society to curtail the freedom of its citizens by

⁹ ‘Indian Prison system’ p. 19

¹⁰ Ibid. p.324.

¹¹ I J Singh, ‘Indian prison’, p.20.

¹² A Mohanty and Narayan Hazare, ‘Indian Prison system’ p. 21.

¹³ Ibid. p.21.

¹⁴ JadunathSarkar, ‘Mughal Administration’, Quoted in V. Bhusan, Prison Administration In India.

¹⁵ ibid.

¹⁶ SatyaPrakashSangur, ‘Crime and Punishment in Mughal India’ p.34.

¹⁷ CS Mallaiah, Development of Prison Administration in India’ Social defence. Ministry of social welfare, 1982, p.36.

taking them into custody in connection with their deviant conduct. Before the 1700's, governments seldom imprisoned criminals for punishment. Instead, people were imprisoned while awaiting trial or punishment. Common punishments at that time included branding, imposing fines, whipping, and capital punishment (execution). The authorities punished most offenders in public in order to discourage other people from breaking the law. Some criminals were punished by being made to row the oars on ships called galleys.

However, English and French rulers kept their political enemies in such prisons as the Tower of London and the Bastille in Paris. In addition, people who owed money and defaulted on payments were held in debtors prisons. In many such cases, offenders' families could stay with them and come and go as they pleased. But the debtors had to stay in prison until their debts were settled. During the 1700's, many people including British Judge Sir William Blackstone criticized use of executions and other harsh punishments. As a result, governments turned more and more to imprisonment as a form of punishment. Early prisons were dark, dirty and overcrowded. They locked all types of prisoners together, including men, women, children, dangerous criminals, debtors and the insane.

During the late 1700's, the British reformer John Howard toured Europe to observe prison conditions. His book *The State of the Prisons in England and Wales* (1777) influenced the passage of a law that led to the construction of the first British prisons designed partly for reform. These prisons attempted to make their inmates feel penitent (sorry for doing wrong) and became known as penitentiaries.

In 1784 the British Parliament empowered the East India Company to rule India and since then some attempts were made to introduce reforms in the administration of Law and Justice. At that time there were 143 civil jails, 75 criminal jails and 68 mixed jails.¹⁸ In fact these jails were an extension Mughal rule which were managed by the personnel of the East India Company in their efforts to maintain peace and establish their trade. As Dr. BK Bhattacharya has very aptly observed, "the British believed only in keeping in custody the prisoners as economically as possible and with the maximum profit to the Government".¹⁹ It was quite natural that the early British Administration had formulated its Prison Policy with

In 1787, a group of influential Philadelphians, mostly Quakers, formed the Philadelphia Society for Alleviating the Miseries of Public Prisons (now the Pennsylvania Prison Society). They believed that some criminals could be reformed through hard work and meditation. The Quakers urged that dangerous criminals be held separately from nonviolent offenders and men and women prisoners be kept apart. These ideas became known as the Pennsylvania System, and were put into practice in 1790 at Philadelphia's Walnut Street Jail. This prison is considered the first prison in the United States.

The Pennsylvania System was the first attempt to rehabilitate criminals by classifying and separating them on the basis of their crimes. As a result, the most dangerous inmates spent all their time alone in their cells. In time, however, the system failed, chiefly because overcrowding made such separation impossible. During the eighteenth century, New York prison officials developed two major systems of prison organization the Auburn System and the Elmira System. The Auburn System, introduced at Auburn Prison in 1821, became widely adopted. Under this system, prisoners stayed in solitary confinement at night and worked together during the day. The system emphasized silence. Prisoners could not speak to, or even look at one another. Prison officials hoped that this silence and isolation would cause inmates to think about their crimes and reform. They believed that the prisoners' spirit must

¹⁸ JG Roy, *Prisons and society*, p.8.

¹⁹ I J Singh, 'Indian prison', p.23.

be broken before reform could take place. However, the system failed partly because the rigid rules and isolation drove inmates insane.

The contemporary prison administration in India is a legacy of the British Rule. Lord Macaulay, while presenting a note to the Legislative Council in India on December 21, 1835, for the first time, pointed out the terrible inhumane conditions prevalent in Indian prisons and he termed it as a shocking to humanity. He recommended that a committee be appointed to suggest measures to improve discipline in prisons. Consequently, on 2nd January, 1836, a Prison Discipline Committee was constituted by Lord William Bantick for this purpose. The committee submitted their report in 1838 to Lord Auckland, the then Governor General which revealed prevalence of rampant corruption in the subordinate establishments, the laxity in discipline and the system of employing prisoners on extramural labour on public roads.

The committee recommended more rigorous treatment of prisoners and rejected all notions of reforming criminals lodged in the prison through moral and religious teaching, education or any system of rewards for good conduct. Sir John Lawrence, a renowned jurist, again examined the conditions of Indian prisons in 1864. Consequently Second Commission of Enquiry to look into prison management and discipline was appointed by Lord Dalhousie.²⁰

The commission in their report did not dwell upon, the concept of reformation and welfare of prisoners. It, instead, laid down a system of prison regimentation occasioned with physical torture in the name of prison discipline. However, the commission made some specific recommendations in respect of accommodation, diet, clothing, bedding, medical care of prisoners only to the extent that these were incidental to discipline and management of prisons and prisoners. A Conference of Experts was held in 1877 to inquire into the prison administration in detail. The conference resolved that a Prison Law should be enacted which could secure uniformity of system and to address such basic issues which were to be reckoned for deciding term of sentence.

In pursuance to the resolution passed in this conference, a draft Prison Bill was actually prepared but finally postponed due to unfavourable circumstances. The Fourth Jail Commission was appointed by Lord Dufferin in 1888 to inquire into the prison administration. This commission reiterated that the uniformity could not be achieved without the enactment of a single Prisons Act. Again, a consolidated Prisons Bill was prepared providing some rigorous prison punishments such as gunny clothings, imposition of irons on hands and feet, penal diet, solitary confinement and whipping. This Bill was circulated to all local Governments by the Home Secretary to the Government of India on 25th March, 1893 with a view to obtaining their views.

It was later presented to the Governor General in Council and ultimately Prisons Act of 1894 came into existence which is the current law governing management and administration of prisons. It has remained into force for over 112 years including 58 years after our independence. It has hardly undergone any substantial change during all these years despite lot of new thinking having emerged respecting objectives, management and administration of prisons. The process of review of prison problems in the country, continued even after the enactment of Prisons Act, 1894.

CONCLUSION

After independence, prison reform was given increased attention. Indian leaders were ready with a blue

²⁰ National Policy on Prison Reforms and Correctional Administration

print for the industrial development of the country, but the jail reform could not escape their eyes as all of them passed their prime life in the jails.²¹ Prison administration is a state subject under the constitution of India. The organization, headed by the Inspector General of Prisons consists of central prisons, sub jails or district jails. Different states have adopted different patterns of jail administration. The central Jails are intended for long term prisoners who are convicted in courts.

²¹ Report of the Indian Jail Committee, 1919