



A STUDY ON CONSTITUTIONAL VALIDITY OF PRISON AND ITS REFORMS IN INDIA

B. GOPINATH

*Ph.D (Law) Full-Time Research Scholar
The Tamil Nadu Dr.Ambedkar Law University*

Abstract: The real purpose of sending criminals to prison is to transform them into honest and law-abiding citizens by inculcating in them a distaste for crime and criminality. But in actual practice, the prison authorities try to bring out reformation of inmates by use of force and compulsive methods. Consequently, the change in the inmates is temporary and lasts only till they are in the prison and as soon as they are released, they again get attracted towards criminality. It is for this reason that the modern trend is to lay down greater emphasis on the prisoners so that they can be rehabilitated to normal life in the community. This objective can be achieved through probation and parole. The sincerity, devotion and tactfulness of the prison officials also help the in the process of offender's rehabilitation.

1. Introduction

Punishing the offenders is the primary function of all civil societies¹. Prisons are known to have existed throughout the history. Existence of prisons can be traced back to the ancient period. It was believed that rigorous isolation and custodial measures would reform the offenders. Experience, however, belied this expectation and often imprisonment had the opposite effect. With the development of behavioural sciences, it began to federalize that reformation of offenders was not possible by detention alone.

Prisons are not normal places. The prisoners are deprived of freedom and personal contacts with family and friends. The utility of prison as an institution for rehabilitation of offenders and preparing them for normal life has always been a controversial issue. There are quite a large number of offenders who are otherwise well behaved and are persons of respectable class of society but they fall prey to criminality on account of momentary impulsiveness, provocation or due to situational circumstances. There is yet another class of prisoners who are otherwise innocent but have to bear the rigours of prison life due to miscarriage of justice. Obviously, such persons find it difficult to adjust themselves to the prison surrounding and find life inside the prison most painful and disgusting.

¹ Prison reforms in India by Harpreet Kaur.



In India, prison reforms did not emerge out of the social movement but were necessarily an outcome of the worst conditions of treatment faced by the political sufferers in prisons during the period of their imprisonment. They repeatedly launched protests with the prison authorities and made all possible efforts to see that the rigours of prison life are mitigated and prisoners are humanly treated.

2. Meaning of Prison

Donald Taft commented that prisons are deliberately so planned as to provide unpleasant compulsory isolation from society. A prison according to him characterises rigid discipline, provision of bare necessities, strict security arrangements and monotonous routine life. Life inside the prison necessarily pre-supposes certain restrictions on the liberty of inmates against their free will.

3. Prisons in India

A well organised system of prisons is known to have existed in India from the earliest time. It is on record that Brahaspati laid great stress on imprisonment of convicts in closed prisons. However, Manu was against this system. It was a common practice to keep the prisoners in solitary confinement so as to afford them an opportunity of self-introspection.

The object of punishment during Hindu and Mughal period in India was to deter offenders from repeating crime. The recognised modes of punishment were death sentence, hanging, whipping, flogging, branding or starving to death. The prisoners were ill-treated, tortured and subjected to most inhuman treatment. They were kept under strict control and supervision. Thus prisons were places of terror and torture and prison authorities were expected to be tough and rigorous in implementing sentences.

The British colonial rule in India marked the beginning of penal reforms in this country. The British prison authorities made strenuous efforts to improve the condition of Indian prisons and prisoners. They introduced radical changes in the then existing prison system keeping in view the sentiments of the indigenous people. The prison administrators who were mostly British officials,



classified the prisoners into two heads namely, violent and non- violent prisoners. The Prison Enquiry Committee appointed by the Government of India in 1836 recommended for the abolition of the practice of prisoners working on roads. Adequate steps were also taken to eradicate corruption among the prisons staff. An official called Inspector General of Prisoners was appointed for the first time in 1855, who was the Chief Administrator of prison in India. His main function was to maintain discipline among the prisoners and the prison authorities.

Conditions of prisoners were harsher than animals in India and prisoners were treated with hatred. There was no uniform civil code to give punishment. The meaning of the punishment itself was to crush the prisoner. Jailors were cruel persons. But in 1835, some thought of reformation arose.

The second Jail Enquiry Committee in 1862 expressed concern for the insanitary conditions of Indian Prisoners which resulted into death of several prisoners due to illness and disease. It emphasised the need for proper food and clothing for the prison inmates and medical treatment of ailing prisoners.

Prisoners Act was enacted to bring uniformity in the working of the prisoners in India. The Act provided for classification of prisoners and the sentences of whipping was abolished. The medical facilities which were already available to prisoners in 1866 were further improved and better amenities were provided to women inmates to protect them against contagious disease. It must be stated that the freedom movement had a direct impact on prison conditions in India.

4. Need of Prison Reforms

A sentence of life imprisonment deprives a person from his right to liberty. Imprisonment affects the prisoner and also his family living in poverty. When a income generating member of the family is imprisoned the whole family has to suffer and adjust to the loss of income. The family has to suffer financial loss because they have to engage a lawyer, arrange food for the prisoner, transport to prison to visit the prison etc.

Prisons have very serious health implications. There are some prisoners who are suffering from various diseases before entering to the prison or they get effected after coming in the prison.



Hence there is no healthy atmosphere in the prison. It is overcrowded, there is no fresh air, absence of proper and nutritious food etc.

Imprisonment disrupts relationships and weakens social cohesion, since the maintenance of such cohesion is based on long-term relationships. When a member of a family is imprisoned, the disruption of the family structure affects relationships between spouses, as well as between parents and children, reshaping the family and community across generations. Mass imprisonment produces a deep social transformation in families and communities

Taking into account the above considerations, it is essential to note that, when considering the cost of imprisonment, account needs to be taken not only of the actual funds spent on the upkeep of each prisoner, which is usually significantly higher than what is spent on a person sentenced to non-custodial sanctions, but also of the indirect costs, such as the social, economic and healthcare related costs, which are difficult to measure, but which are immense and long-term.

The size of the pre-trial prisoners is higher than that of the convicted prisoner. Pre-trial detention period is the most open period for the abuse of criminal justice process. Although pre-trial detainees should be presumed innocent until found guilty by a court of law, and treated as such, conditions in pre-trial detention are often much worse than those of prisons for convicted prisoners

5. Overcrowding in Prisons and its issues

It is a known fact that prisons in India are overcrowded. As a result of this there is no separation of offenders of serious offences and minor offences. Hence hardened criminals may spread their influence over minor criminals. Persons who have committed offences for the first time come into contact with hardened criminals and hence is likely to become professional criminals. The methods to reduce the burden of overcrowding of jail are release on bail, impose fine, release on probation or parole. The system of remission, leave and premature release may also be useful in tackling the problem of overcrowding in the prison.

6. Development of thought



Custody, Care and Treatment are the three main functions of a modern prison organisation². The notion of prison discipline was to make imprisonment deterrent. Gradually, the objective of imprisonment changed from mere deterrence to deterrence and reformation. This led to the abandonment of some of the barbaric punishments and introduction of the system of awards for good work and conduct in the form of remission, review of sentences, wages for prison labour, treatment in open conditions, parole, furlough, canteen facilities etc. Revision has now been made to meet adequately the basic needs of food, clothing, medical care etc. Educational and vocational training programmes along with training in scouting etc, have been introduced in jails. Custodial requirements for individuals are now at some places determined on the basis of their antecedents, conduct and performance etc.

The earlier penological approach held imprisonment, that is, custodial measures to be the only way to curb crime. But the modern penological approach has ushered in new forms of sentencing whereby the needs of the community are balanced with the best interest of the accused. There is need to use the alternatives to imprisonment such as warning, probation, suspension of sentence, fine and release on personal bond etc. Classification of offenders on the basis of sex, age, criminal record, social background is an essential feature of modern prison system.

7. Prisoners Reforms – Before and After Indian Independence

The modern prison system in India was originated by TB Macaulay in 1835. A committee namely Prison Discipline Committee, 1836 was appointed, which submitted its report on 1838. The committee recommended increased rigorousness of treatment while rejecting all humanitarian needs and reforms for the prisoners. Following the recommendations of the Macaulay Committee between 1836-1838, Central Prisons were constructed from 1846. The contemporary Prison administration in India is thus a legacy of British rule. It is based on the notion that the best criminal code can be of little use to a community unless there is good machinery for the infliction of punishments. In 1864, the Second Commission of Inquiry into Jail Management and Discipline

² Ibid.



made similar recommendations as the 1836 Committee. In addition, this Commission made some specific suggestions regarding accommodation for prisoners, improvement in diet, clothing, bedding and medical care. Accordingly, the Government of India appointed the All-India Jail Manual Committee in 1957 to prepare a model prison manual. The committee submitted its report in 1960. In 1957, the Eighth Conference of the Inspector Generals of Prisons also supported the recommendations of Dr. Reckless regarding prison reform. The report made forceful pleas for formulating a uniform policy and latest methods relating to jail administration, probation, after-care, juvenile and remand homes, certified and reformatory school, borstals and protective homes, suppression of immoral traffic etc. The report also suggested amendments in the Prison Act, 1894 to provide a legal base for correctional work.

The Indian Jail Reforms Committee 1919-20 which was appointed to suggest measures for prison reforms was headed by Sir Alexander Cardio. It visited many prisons and came to the conclusion that prisons should have not only deterring influence but they should have a reforming effect on inmates. As a measure of prison reform, the Jail Committee further recommended that the maximum intake capacity of each jail should be fixed, depending on its shape and size³. A Jail Reform Committee, 1946 was constituted in the year 1946 for the formation of the jails. This committee gave the suggestions as:

- a) The child offenders should be treated differently
- b) Modern jails should be constructed
- c) The classification of offenders should be scientific such as; Women offenders' Habitual offenders and Handicapped offenders.

8. Prison reforms since Indian Independence

After Indian Independence, the work on the reformation of jails speeded up. It was accepted that prisoners are also human beings and have right of humanitarian. So, in 1956 the punishment of transportation (Kala-pani) was substituted by the imprisonment for life. In 1949 Pakawasha Committe gave the permission to take work from the prisoners in making the roads and for that

³ Criminology and Penology book of Dr. N. V. Paranjape. P-281



wages shall be paid. The treatment of prisoners on psychological and psychiatric basis received some attention as a measure of prison reform during 1950's. As G. B Vold rightly observed, "the rehabilitation activities of the modern prison are generally of two kinds, namely

- (1) Psychological and Psychiatric treatment and
- (2) Educational or Vocational training programmes.

The Government of India invited Dr. W. C. Reckless, a technical expert of the United Nations on Crime prevention and treatment of offenders, to make recommendations on Prison reforms in 1951. Later on, the Committee was appointed to prepare an All-India Jail Manual in 1957 on the basis of the suggestions made by the Dr. Walter Rackless.

The All-India Jails Manual Committee 1957-59 was appointed by the government to prepare a model prison manual. The committee was asked to examine the problems of prison administration and to make suggestions for improvements to be adopted uniformly throughout the India. The report was presented in 1960, that they not only enunciated principles for an efficient management of prisons, but also lay down scientific guidelines for corrective treatment of prisoners.

9. Mulla Committee

All India Committee on Jail Reforms 1980-83 was constituted by the government of India under the chairmanship of Justice Anand Narain Mulla. The committee suggested setting up of a National Prison Commission as a continuing body to bring about modernisation of prisons in India. The basic objective of the Committee was to review the laws, rules and regulations keeping in view the overall objective of protecting society and rehabilitating offenders. It recommended a total ban on the heinous practice of clubbing together juvenile offenders with hardened criminals in prisons. To constitute an All-India Service called the Indian Prisons and Correctional Service for the recruitment of Prison Officials. After-care, rehabilitation and probation should constitute an integral part of prison service. The Mulla Committee submitted its report in 1983. Some other recommendations of Mulla Jail Committee were as follows:

1. The conditions of prison should be improved by making adequate arrangements for food, clothing, sanitation and ventilation etc.
2. The prison staff should be properly trained and organised into different cadres.



3. The media and public men should be allowed to visit prison so that they may have first-hand information about the conditions inside prison and be willing to co-operate with prison officials in rehabilitation work.
4. Lodging of under trial in jails should be reduced to bare minimum and they should be kept separate from the convicted prisoners.
5. The Government should make an endeavour to provide adequate resources and funds for prison reforms.

10. Juvenile Justice Act, 1986

In the year 1986, a Juvenile Justice Act was enacted and observation homes, special homes, and juvenile homes were constituted, where the neglected children and juvenile delinquent can be admitted and the juvenile delinquent cannot be tried with the non-juvenile delinquent offenders and cannot be kept within the prison. Many provisions were made regarding the orders that could be passed against the juvenile offenders and what cannot be passed against the juvenile offenders. Under this Act juvenile means a boy below the age of 16 years and a girl below the age of 18 years.

11. Justice Krishna Iyer Committee

In 1987, the Government of India appointed the Justice Krishna Iyer Committee to undertake a study on the situation of women prisoners in India. It has recommended induction of more women in the police force in view of their special role in tackling women and child offenders

12. Supreme Court on Prison Reforms

The Supreme Court, in its landmark decision in *Ramamurthy v. State of Karnataka*⁴, has identified nine major problems which need immediate attention for implementing prison reforms. The court observed that the present prison system is affected with major problems of;

- a) Overcrowding
- b) Delay in trial
- c) Torture and ill treatment
- d) Neglect of health and hygiene
- e) Insufficient food and inadequate clothing

⁴ (1997) 2 SCC 642



- f) Prison vices
- g) Deficiency in communication
- h) Streamlining of jail visits and
- i) Management of open-air prisons.

13. Reform in Prison Labour Scheme

The objectives of 'prison labour' have varied from time to time. The Indian Jail Reforms Committee of 1919-20 recommended that the main objective of prison labour should be the prevention of further crime by the reformation of criminals, for which they were to be given instruction in up-to-date methods of work enabling them to earn a living wage on release. The other objectives were to keep the offenders use fully engaged to prevent mental damage and to enable them to contribute to the cost of their maintenance. Work was allotted to prisoners on the basis of their health, length of sentence prior knowledge of a trade, and the trade which was most likely to provide a living wage on release. After independence, punitive labour such as extraction of oil by manual labour was abolished and more useful programmes were introduced to train offenders as technicians. Some effort has also been made during the last three decades to train prisoners largely drawn from among agriculturists in modern methods of agriculture and animal husbandry but, for want of land, only limited progress could be made in this direction. Initially, payment of wages to prisoners was opposed on the ground that they were already a burden on the State. Gradually, the need for providing some motivation to prisoners was realized and it was considered that some monetary reward would develop interest in work and provide the necessary incentive, more so if the prisoner was allowed to use the earnings on himself or his family. After independence, in some of the open prisons, prisoners are paid wages at market rates out of which they pay to State their cost of maintenance. There is now a growing realization that such liberal system of wages would provide greater incentive for higher and better production. Maharashtra was the first State to introduce in 1949 a very comprehensive system of wages. The Apex Court in State of Gujarat & another, Hon'ble High Court of Gujarat (AIR 1998SC 3164) observed, "Reformation and rehabilitation is basic policy of criminal law hence compulsory manual labour from the prisoner is protected under Art. 23 of the Constitution. Minimum wages must be paid to prisoners for their labour after deducting the expenses incurred on them".



14. Reformation of Under-Trial Prisoner

The under-trial prisoners are rightly not obliged to work under the law but remaining unemployed is not only against their own interest but also a national waste. A policy of persuasion rather than coercion to engage under trial prisoners in work was thus advocated and if they chose to work, they were to be paid wages. But in practice when they opt to work, they are employed on prison services and are in lieu thereof given laboring diet and no wages. Recently, the criminal law has provided that the period of detention as under trial shall be counted towards the sentence of imprisonment. This will mitigate some hardship but will not by itself encourage under trials to volunteer for work. Quite a large number of under trial prisoners are detained in jails for long periods as they are unable to afford fees of lawyers to defend them.

In recent years the government has given some attention to this problem and efforts are being made to give free legal aid to the poor. If this facility is extended to a large number of poor persons, it would not only in the long run result in the shortening of the period of detention of under trials but might in some cases result in acquittal also.

15. Reformation of Women Prisoners

The women prisoners should be treated more generously and allowed to meet their children frequently. This will keep them mentally fit and respond favourably to the treatment methods. A liberal correctional and educational programme seems necessary in case of women delinquents. Particularly, the women, who fall prey to sex offences, should be treated with sympathy and their illegitimate children should be assured an upright life in the society. The idea of setting up separate jails for women provides the free environment for providing special treatment to them. The first women jail was established in Maharashtra at Yarwada. Conformity with strict prison discipline is no guarantee that the prisoner has really transformed into a law-abiding citizen⁵.

⁵ Jyotsna Shah: Studies in Criminology & Probation Services in India.



16. Probation

The term “Probation” is derived from the latin word ‘probare’ which means ‘to test’ or ‘to prove’. Probation offers an opportunity for the probationer to adjust himself to normal society thus avoiding an isolation and dull life in prison. Probation is a conditional release of an offender under supervision. The system of probation involves conditional suspension of punishment.

The Central Correctional Bureau observed the year 1971 as “Probation Year” all over the country. Probation seeks to socialize the criminal, by training him to take up an earning activity and thus enables him to pick up those life-habits, which are necessary for a law-abiding member of the community. This inculcates a sense of self-sufficiency, self-control and self-confidence in him, which are undoubtedly the essential attributes of a free-life. The Probation Officer would guide the offender to rehabilitate himself and also try and keep him away from such criminal tendencies. The Probation of Offenders Act, 1958 contains elaborate provisions relating to probation of offenders which are made applicable throughout the country. The Act provides four different modes of dealing with youthful and other offenders in lieu of sentence subject to certain conditions. These includes;

1. Release after admonition⁹.
2. Release on entering a bond on probation of good conduct⁶ with or without supervision, and on payment by the offender the compensation and costs to the victim if so ordered, the courts being empowered to vary the conditions of the bond and to sentence and impose a fine if he failed to observe the conditions of the bond.
3. Persons under 21 years of age are not to be sentenced imprisonment unless the court calls for a report from the probation officer or records reasons to the contrary in writing⁷.
4. The person released on probation does not suffer a disqualification attached to a conviction under any other law.⁸

Thus, it would be seen that the provisions of the Probation of Offenders Act are not confined to juveniles alone, but extends to adults also. Again, the provisions of the Act are not only applicable to the offences committed under Indian Penal Code but they extend to offences under other laws such as the Prevention of Corruption Act, 1947; the Prevention of Food Adulteration Act, 1954, etc.

⁶ Section 4 of The Probation of Offenders Act,1958

⁷ Section 6 of The Probation of Offenders Act,1958

⁸ Section 12 of The Probation of Offenders Act, 1958



17. Parole

One of the most important but controversial devices for reducing pressure on prison institutions is the selective release of prisoners on parole. Parole has a dual purpose, namely protecting society and at the same time bringing about the rehabilitation of the offenders. The parole system is an excellent way to allow prisoners to rehabilitate and get in touch with the outside world. Parole is a legal sanction that lets a prisoner leave the prison for a short duration, on the condition that she/he behaves appropriately after release and reports back to the prison on termination of the parole period. The conditional release from prison under parole may begin any time after the inmate has completed at least one-third of the total term of his sentence but before his final discharge.

Release on parole is a part of the reformatory process and is expected to provide opportunity for the prisoner to transform himself into a useful citizen. Parole is thus a grant of partial liberty or lessening of restrictions to a convict prisoner, but release on parole does not, in any way, change the status of the prisoner. Parole is a penal device which seeks to humanise prison justice. It enables the prisoners to return to the outside world on certain conditions. The main objects of the parole as stated in the Model Prison Manual are:

- a) To enable the inmate to maintain continuity with his family life and deal with family matters
- b) To save the inmate from the evil effects of continuous prison life.
- c) To enable the inmate to retain self-confidence and active interest in life⁹.

It must be noted that a parole is different from a "furlough". While parole is granted to a prisoner detained for any offence irrespective of the duration of imprisonment, a furlough is only granted to prisoners facing long sentences, five years or more. Furlough is a matter of right, but parole is not. However, an abuse of the system is a drag on the country. The urgent need of the hour is for police officials to acknowledge that the parole system is being misused and find ways to ensure that parole laws are properly enforced in prisons across the country.

18. Open Prisons

Taking inspiration from Anglo-American developments in the correctional field of penology, the Indian penologists were convinced that India also cannot tackle its crime problem by putting criminals in prison cells. The institution of open prisons seems to be a viable alternative to the harsh imprisonment system. The whole thrust in these open-prison institutions is to make sure that after

⁹ Bhikhabhai Devshi V. State of Gujarat, AIR 1987 Guj. 136.



release the prisoners may not relapse into crimes and for this purpose, they are given incentives to live a normal life, work on fields or carry-on occupation of their choice and participate in games, sports or other recreational facilities. These are the minimum-security prisons. In these liberal remissions are given to extent of 15 days in a month. The State of Uttar Pradesh was first to set up an open-air camp attached to Model Prison at Lucknow in 1949. Other States, like Andhra Pradesh, Assam, Gujarat, Punjab, Kerala etc. are also set up open-air camps.

19. Remission

Prisoners get remissions periodically for good conduct and work. Special remissions are also given for specific special services. The sentences are reviewed from time to time according to various rules and the prisoners are released before time if they satisfy the prescribed conditions.

20. Work Release

Work release is considered to be a very effective reformation tool in modern criminal justice. In this method, the prisoner is allowed to work for pay in the society for part time basis. This gives him an opportunity to mix up with the society in a normal manner without any limitations. The control of the prison authorities in, however not completely taken away since he has to work within the permitted parameters and during non-working hours, he has to return the concerned correctional institution. The correctional authorities collect his earnings and which are paid to the prisoner on the completion of sentence. However, it differs from parole as inmates continues live in and subject to control of jail authorities except the working hour. This helps the prisoner to adjust in the situation at the work place after the release

21. Overcrowding of Prisons

There has been a continuous record of overcrowding in jails. The position is further complicated by frequent agitations resulting in confinement of a large number of political prisoners, who claim special treatment. Overcrowding results in restlessness, tension, inefficiency and general breakdown in the normal administration. Recently, the Supreme Court of India took exception to the unduly long detention of a large number of under trial prisoners and the Central and State governments have now started taking vigorous steps to remedy this situation.

22. Conclusion



From the time immemorial, each and every ruler of different states treated the offenders to undergo the imprisonment for various offences that shaped the human civilisation and society to protect their life and personal liberty from various anti-social elements. Due to the social transformation, the law also transformed in such a way to rehabilitate the offenders rather than to punish them. This long march of rule of law towards this rehabilitative system made better well-being and peaceful society. But, when it is compared with the developed countries, the Indian prisons need much more reforms for the mental well-being of the prisoners, so that the offender should not be groomed as a habitual offender. This will make our society to abide the law that leads to a healthy nation.