The Prison Administration

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Introduction

Prisonisation symbolizes a system of punishment and also a sort of institution placement of under trials and suspects during the period of trial. Since there cannot be a society without crime and criminal, the institution of prison is indispensable for every country.

The attitude of society towards prisoners may vary according to the object of punishment and social reaction to crime in a given community. If the prisons are meant for retribution or deterrence, the condition inside them shall be punitive in nature inflicting greater pain and suffering and imposing severe restrictions on inmates.

The History of prison in India and elsewhere clearly reflects the change in society’s reaction to crime from time to time. The system of imprisonment represents a curious combination of different objective of punishment. Thus prison may be used as a method of retribution or vengeance by making the life of the offender miserable and difficult.

The origin of prison is inter-linked with the system of imprisonment which originated in the first quarter of 19th century. Initially, prisons were used as detention houses for under-trials. Persons who were guilty of some political Offence or war crime or who failed to pay their debts or fines were lodged in prison cells with a view to extracting confession from them or securing the payments of debts or fines subsequently, with the march of time and advancement of knowledge and civilization the conditions of prisons also improved considerably.

Since the present day penology centers round imprisonment as a measure of rehabilitation of offenders, the prisons are no longer mere detention houses for the offenders but they seek to reform inmates for their future life.

The modern techniques of punishment lay greater emphasis on reformation, correction and rehabilitation of criminals.

The modern ‘prison system in India’ is essentially based on the British prison model which in itself is an outcome of prison developments in America. During the late 18th century it will therefore, be proper to trace the evolution of prison system in America, British, and Russia etc. Before dealing with the prison developments in India

Prisons in India:

A well organized system of prisons is known to have existed in India form the earliest times. It is on record that braharpati laid stress on imprisonment of convicts in closed prisons. Manu was against this system.
Kautilya in his arthashastra has stated that rulers in ancient India made frequent use of fortresses to lodge their prisoners.

In ancient India greater emphasis was laid on the spiritual aspect of human life and therefore the prisons were so modelled as to provide sufficient opportunity for penance and remonstrance. 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 the Hindu and Mughal period in India was to deter offenders from repeating crime. They recognized modes of punishment.

During the Mughal rule in India the condition of prisons was fully draconic. The prisoners were ill-treated tortured and subjected to most common in human treatment.

They were kept under strict surveillance and control. Thus the prison were places of terror and torture and prisons authorities were expected to be tough and rigorous in implementing sentences.

### Enquiry Committee:

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 changed in the existing prison system keeping in view the sentiments of the indigenous people.

- The First prison enquiry commit appointed by the government in India in 1836 recommended for the abolition of the practice of prisoners working on the road. Adequate steps were also taken to eradicate corruption among the prison staff. An official called the Inspector-general of prisons was appointed for the first time in 1855. His main function was to maintain discipline among the prisoners and the prison authorities with this appointment the jailor and other petty officials of prisons could no longer abuse their power and authority.

- The second Jail Enquiry Committee in 1862 expressed concern for the insanitary condition of Indian prisons. Which resulted into death of several prisoners due to illness and disease it emphasized the need for proper food and clothing for the prisoners and medical treatment of ailing prisoners.

So, certain recommendations were also made by the third jail enquiry committee in 1877 followed by further suggestion in 1889 and 1892. As the result of these committees “The prison act, 1894” was enacted to bring about uniformity in the working of prisons in India and in 1866 the medical facilities are also get improved in prisons.
In 1907 onwards vigorous efforts were made to improve the condition of juvenile and young offender.

**Indian jail Reforms 1919-20**

In Indian jail reforms committee 1919-20 which was appointed to suggest measures for prisons reforms was headed by Sir Alexander Cardew.

The committee visited prisons in Burma, Japan, Philippine, Hongkong and Britain besides the Indian jail and to the conclusion that prisons should not only have deterring influence but they should have a reforming effect on inmates.

The committee underlined the point.

- Need of the reformative approach to prison inmates.
- Discouraged the use of corporal punishment in jails.
- Utilize the prison inmates in productive work.
- Emphasized the need for aftercare program for the released prisoners for their rehabilitation.
- The maximum in take capacity of every jail should be fixed.
- Taking a lead in this direction a movement against retention of solitary confinement as a method of punishment.

In 1949 Pakwasa committee accepted the system of utilizing prisoners as labor for road work.

- Through this they provided the wages to them.
- “Good time laws” introduced according to which the prisoner who behaved very well should be rewarded by the reduction in the period of their sentence.


From him following guidelines regarding reformation and rehabilitation of prisoners were anonymously accepted.

- The correctional services should form an integral part of the Home department of each state and a central bureau of correctional services should be establishes at the centre.
- The reformative methods of probation and parole should be used to lessen the burden on prisons.
- State after care units should be set up in each state.
- Solitary confinement as a mode of punishment should be abolished.
- Classification of prisoners for the purpose of this treatment was necessary.
- The state jail manuals should be revised periodically.

A model jail was established at Lukhnow in 1949. Where the prisoners were made to
work on handloom, machines and engaged in various other home industries.

The first women jail was established in Maharashtra at Yarwada.

After it many facilities such as medical, education, and occupation are avail to the prisoners.

**Plea for setting up prison panel:**

All India jail reforms committee in 1980 with justice A.N. Mulla as its chairman. The committee suggested setting up of a national prison commission as a continuing body is removed to bring about modernization of prisons in India.

Following recommendations of the Mulla Jail committee were as follows.

- **The condition of prisons should be improved by making adequate arrangement for food, clothing, sanitation and ventilation etc.**
- **The prison staff should be properly trained and organized into different cadres.** It would be advisable to constitute an all India service called the Indian prisons and correctional service for recruitment of prison office.
- **After care, rehabilitation and probation should constitute an integral part of prison service.** Unfortunately, probation law is not being properly implemental in the country.

- **The media and public men should be allowed to visit prisons and allied institutions periodically so that public may have first hand information about conditions inside prisons and be willing to co-operate with prison officials in rehabilitation work.**
- **Lodging of under trials in jails should be reduced to bore minimum and key should be kept separate from the convicted prisoners.** Since under trials constitute a sizable portion of prison population their number can be reduced by speedy trials and liberalization of bail provision.
- **The government should make endeavor to provide adequate resources and funds for prisons reforms.**
- **It may be noted that recent in Cr.P.C and insertion of a new section 436-A by code of criminal procedure amendment Act, 2005 is indeed a positive step to bring down the rising graph of under trials prisoners in Indian jails.**

The section provides that where an under trials has undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for the offence he shall be released by the court on his personal bond with or without sureties.

- The national Expert committee on women prisoners headed by the Justice V.R. Krishna Ayer in its report submitted to the
government in February 1988 recommended induction of more women in the police force in the view of their special role in tackling women and children offenders.

The women police have greater potential to cool defuse and de-escalate many situations and therefore greater use should be made of them. Women can be employed in non-combative roles requiring restraint, patience and endurance.

The women police should be an integral part of the police set-up with a special role in juvenile crime squad especially in urban areas. They should be specially trained to deal with agitations and mob upsurges in a humane and sensitive manner and acquire mastery over tactics of unarmed combat.

**Role of prisons in modern penology:**

The utility of prison as an institution for rehabilitation of offenders and preparing them for normal life has always been a controversial issue. Stressing on the need for retaining the institution of prison Dr. Paripurnanand Verma

“A prison symbolize evil and therefore evil doers find themselves in perfect harmony inside the house of evils”

This assertion however seems to be over simplification of facts as this does not hold good for all categories of criminals.

There are quite large numbers of criminals; who are otherwise well behaved and are persons of respectable class of society but they fall a prey to criminality an account to momentary impulsiveness provocation or due to situational circumstances.

There are also classes of prisoners who are otherwise innocent but have to bear the rigours of prisons life due to miscarriage of justice.

The real purpose of sending criminals to prisons is to transform them in to honest and law abiding citizens by inculcating in them distaste for crime and criminality.

The prison authorities try to bring out reformation of inmates is temporary and lasts only till the period they are in prisons and as soon as they are released they quiet often return to the criminal world because modern trend is to lay greater emphasis on psychiatric conditions of the prisoners so that they can be successfully rehabilitated to normal life in the community.

**Recent Reforms**

**Prison Reforms – a Summary**

1. “Prisons” is a State subject under List-II of the Seventh Schedule to the Constitution of India. The management and administration of Prisons falls exclusively in the domain of the State Governments, and is governed by the Prisons Act, 1894 and the Prison Manuals of the respective State Governments. Thus, States have the primary role, responsibility and authority to change
the current prison laws, rules and regulations.

2. The existing statutes which have a bearing on regulation and management of prisons in the country are:

3. Various Committees, Commissions and Groups have been constituted by the State Governments as well as the Government of India (GoI), from time to time, such as the All India Prison Reforms Committee (1980) under the Chairmanship of Justice A.N. Mulla (Retd.), R.K. Kapoor Committee (1986) and Justice Krishna Iyer Committee (1987) to study and make suggestions for improving the prison conditions and administration, inter alia, with a view to making them more conducive to the reformation and rehabilitation of prisoners. These committees made a number of recommendations to improve the conditions of prisons, prisoners and prison personnel all over the country. In its judgments on various aspects of prison administration, the Supreme Court of India has laid down three broad principles regarding imprisonment and custody. Firstly, a person in prison does not become a non-person; secondly, a person in prison is entitled to all human rights within the limitations of imprisonment; and, lastly there is no justification for aggravating the suffering already inherent in the process of incarceration.

4. CENTRAL ASSISTANCE TO STATES
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, medical facilities, development of borstal schools, facilities to women offenders, vocational training, modernization of prison industries, training to prison personnel, and for the creation of high security enclosure. The total assistance provided to the State Governments from 1987 to 2002 was Rs. 125.24 crore. The Eleventh Finance Commission had also granted an amount of Rs 10 crore to the Government of Arunachal Pradesh for the construction of jail.

5. NON-PLAN SCHEME ON MODERNISATION OF PRISONS (2002-2007)
An assessment was made by the Bureau of Police Research and Development (BPR&D) on the requirements of the States depending on their prison population and available capacity etc. and a non-plan scheme involving a total outlay of Rs 1800 crore to be implemented over a period of five years from 2002-03 to 2006-07 was launched with the approval of Cabinet.

SALIENT FEATURES OF THE SCHEME
- Total Outlay: Rs. 1800 Crores
• Covering: 27 States (Except Arunachal & UTs)
• Cost Sharing (CS:SS): 75:25
• Project Duration: 2002-03 to 2006-07
• Scheme Extended: Upto 31.3.2009 (without Additional Funds)

MAJOR COMPONENTS OF THE SCHEME

• Construction of new prisons and additional barracks
• Repair and renovation of existing prisons
• Improvement in water and sanitation
• Living accommodation for prison personnel

As against the total Central share of Rs1350 crore over a period of 5 years, an amount of Rs. 1346.95 crores has been released to the State Governments upto 31.3.2009. Out of total central share of Rs. 1350 crore, Rs. 3.05 crore was uncommitted fund and central share of J&K which Rs 1.55 crore was uncommitted fund and Rs. 1.50 crore was the central share of J&K which could not be released to the State Government due to non-submission of utilization certificate.

The progress of the Scheme is being monitored closely with a view to ensure that the funds released to the States are properly utilized for the purpose for which they have been released.

The problem of overcrowding in prisons

It is a known fact that prisons in most parts of India are overcrowded for instance there were 8500 prisoners in Tihar jail of Delhi in 1995 against the capacity of 2500 persons.

As a result of this hardened criminals may spread their influences over other inmates.

The juvenile offenders who are kept in jails because of inadequacy of alternative places where they can be confined come into contact with harden criminals and are likely to become professional offenders. It is in this backdrop that the problem of overcrowding in prisons need to be tacked in right earnest.

The law commissions its 78th report made some recommendations for casing congestion in prisons.

Obviously, if prison’s overcrowding has to be brought down the under trial population has to be reduced drastically.

This of course, cannot happen without the courts and the police working in tandem.

The three wings of the criminal’s justice system would have to act in harmony.

Tihar courts trouble again

The high-security tihar jail is back in the news. The Delhi high court has directed the registrar-general to visit the jail and the Rohini district prison after inmate’s alleged serious violation of their fundamental and human rights by the authorities. At a ‘mahapanchayat’ organized by the inmates to voice their concerns, they alleged that incidents of violence among prisoners like
stabbing and blade attacks are on the rise. The security personnel, they said, have done nothing to contain the situation. Overcrowding is a big problem in the jail that has around 13000 inmates against the combined capacity of 6,200.

**The Hindustan times June 27, 20**

Speedy trials are frustrated by a heavy court worked, police inability to produce witness promptly and a reluctant defense lawyer who is bent upon seeking adjourment, even. If such tactics harm his/her client fast track courts have helped to an extent, but have not made a measurable difference to the problem of pendency.

**The problem of corruption and extortion**

Extortion by prison staff and its less aggressive corollary, guard corruption, is common in prisons around the world given the substantial power the guards exercised over inmates, this problem are predictable, but the low salaries that’s guards are generally paid severally aggravate them. In exchange for contraband or special treatment inmates supplements guards salaries with bribes. Powerful inmates in some facilities in Colombia, India and Mexico enjoyed cellular phones rich diets and comfortable lodging while their less breath lived in squalor.

Conditions in Jails: Chaotic conditions prevail in UP jails. Massive overcrowding, understaffing and rampant corruption have completely derailed the management. The presence of large number of Mafiosi has also badly affected the jail administration. The state Jail Department data indicates that as against the capacity of nearly 44000 there are 85000 prisoners in 62 jails in this state. In some jails like Shahjehanpur, Moradabad, Fatehgarh and Deoria the numbers are four times more than the capacity. Even as ten new jails are under constructions, the existing ones are as old as more then 150 years, which according to a senior department officer require large scale moderation.

“In fact the government comes out of hibernation only after jail break” commented the officer on the condition of anonymity. The situation is unlikely to improve without “decrowding”, he said.

The crowding could be gauged from the fact that as against the provision of 40 sq feet area of each prisoner, 150 to 200 prisons are locked in each barrack.

‘The department wt hrs.700 crore annual budgets have been facing rampant corruption due to lack of facilities in jails.

“The prisoners bribe the jail officers for all sorts of facilities”, said the officer.

There is feeling in the department that rampant corruption could not be contained in the jail without their modernization.

Interestingly there is no dearth of “well-connected “prisoners. At present, there are 11MLAs and one MP in UP jails.
The Problem of prison Discipline

Yet there is another reason to justify the need for strict discipline in prison. One might be imprisoned either for the purpose of custody, control and discipline or from being prevented to escape or being sent to a correctional institution for treatment. Whatever be the object it is certain restriction on the liberty of inmates against their free will. This consciousness of subjection to compulsive forces of the state through the agency of prison often leads to scuffle between prison officials and the inmates the custody of prisoners should also minimize the chance of conflict with prison administrators. Another Problem which is so often faced by the prison authorities is to guard against the possibility of prison riot which is essential on outcome of the combined venture of inmates.

In early times when prisoners were lodged in separate cells, this possibility was completely ruled out as they had no chance of communicate with each other in the modern sense.

Today, the difference between the prison life and free life is reduced to such an extent that even the prisoner have becomes conscious of their rights and obligations of prison authorities towards them.

Their free intermingling with the outside world provides them opportunities to unite and raise a common front against the prison administrators and slightest provocation insufficient to stimulate unrest. The general causes of such riots and disturbance are political instigations, crude, disciplinary incidents, monotonous routine of prison life, separation from members of family, difference with the prison staff and step motherly treatment of wardens and guards towards certain inmates.

THE PRISON LABOUR

Utilization of prisoners in productive work has been accepted as one of the best method of bringing about rehabilitation of offenders.

The xii the International Penal and Penitentiary conference held at Hague in 1950. Suggested “ Works as the best alternative for channelizing the potential of prisoners keeping the prisoners engaged in for productive work would be helpful for their physical and mental fitness , it would also infuse self confidence among them and they can think of relating to society as a law abiding citizen . The greatest advantage of putting inmates towards as suggested by the penitentiary conference in that the wage earned by the prisoners can be utilized for supporting their family of the prisoner from being ruined.

In this way the inmates can help and support their family from inside the prison itself. In shout work would be beneficial to inmates and at the sometimes remunerative to be state.

The supreme court of India was called upon to decide the delicate issue whether prisoners, who are required to do labor as part of their punishment should necessarily
be paid to do labor as part of their punishment, should necessarily be paid wages for such work at the rates prescribed under the minimum wages act answering in the affirmative the apex court in

State of Gujarat and another v. hon’ble high court of Gujarat:

“Reformation and rehabilitation is basic policy of criminal law hence compulsory manual from the convicted prisoner is protected under article 23 of the contrition .Minimum wages be paid to prisoner for their labor after deducting the expenses for them. No prisoner can be asked to do labor free of wages, it is not only the legal right of a work man to have wages for the work, but also a social imperative and an ethical .Compulsion extracting somebody work without giving him anything in return is only reminiscent of the period of slavery and the system of beggar”

Referring to the justice mula committee report (1983) the Supreme Court observed it contains a lot of very valuable suggestion as:

“All prisoners under sentence should be required to work subject to their physical and mental fitness as determine medically. Work is not to be conceived as additional punishment but as to achieve a broad uniformity in wages system in all the prisons in each state and union territory. However, the state government may be permitted to deduct the expenses in cared for food and clothes of the prisoners from their wages. There is nothing uncivilized or unconscionable in it.

Self-government in prisons

In India, however the system of self government in prisons has not been quite successful. The reason for this unsatisfactory condition is perhaps the lack of generally illiterate persons from the lower stare of society. It is for this reason that instead of introducing completes self-government system

India has adopted a system of partial self government in its prisons under this system the prisoners who have good recodes are attached to work with wardens and goods of the institutions and they act as a common link between the prisons authorities and the fellow inmates.

They are extended certain facilities and are even allowed to move out of the prisons occasionally during the course of their work. This proves helpful in money ways.

- Firstly, it develops a sense of duty, honesty trust and loyalty among this prisoners
- Secondly, it has a psychological affection other imamates as they are convinced that a disciplined behavior in prisons would entail-t them certain facilities including some education I their term of sentence their fellow prisons

Unsatisfactory living conditions:

Overcrowding it leads to unsatisfactory living conditions although several jail reforms outlined earlier have feasted on issues like diet, clothing and clean lines,
unsatisfactory living conditions continue in money prisons around the country. A special commission of inquiry conducted for prisons staff

But these are more by way of exceptions and experiments. A Syrian project there is aimed at providing social rehabilitation. However such programmers are few and far between. Many prisons have vocational training activities but these are often outdated. Hardly any of the prisons have well planned prison programmers providing structured daily activities, vocational training, pre discharge guidance and post prison monitoring.

Prisons, though for a short or longer period are places of living for both accused as well as convicts. The reformative objective expects that it should also be a place of learning and earning. To provide physical, material and mental conditions of decent living of prisoners, it requires recreating almost a miniature world inside the prisons. This is difficult if not impossible. European countries are increasingly in search of alternatives to confinement, as they realized more resources for assimilation of deviant are available in open society rather than inside the closed walls. This has not happened so far in India as governments across the ideological spectrum are illiberal and society is unsympathetic to rights of the incarcerated. The result is lowest priority to the prison management.

The problem of prisoner’s health:

The state of health of prisoner is also an important issue which needs attention of the prison authorities.

The term “state of health” includes the description regarding past and present suffering of the disease of new entrants and its duration and treatment taken etc section 37, 39A, 39B and 39C of the prisoners act deal with sick prisoners and require that prisoners and require that prisoners at the time of entry in prisoners be asked about their health, particularly melting to tuberculosis’s and aids act and the treatment which they have undergone for the disease, so that such prisoners a part from bung given special treatment may be seated from rest of the inmates.

It is the duty of the state to ensure that such types of serious disease are cured and not allowed to spread, not only to other prisoners but also the other persons living outside the prison.

In order to tackle the problem of prisoners suffering from serious disease volunteers may be trained in prison nursing so that they effectively help the suffering inmates and develop among them a system to self-help for protection against disease like TB and AIDS etc.

Sub national HIV prevalence in prisons in India

The high court of Madhya Pradesh in

- Anil Kumar v. State of MP
These are the factors which account for increase in the number of prisoners exposed to infection of tuberculosis imprisons. They are as follows:-

- Delay in diagnosis, neglect of prisoner’s health problems insufficient health services in prisoners and inadequate sputum smear microscopy facilities.
- Failure of medical services to refer T.B between and inside prisons.
- Overcrowding and prolonged confinement inside cells.
- Sub-standard treatment resulting in failure to cure patients and prolonged.
- Poor ventilation and poor nutrition may also lead to cause of disease.

The court issued directions to the state government to initiate adequate steps to control spread of disease in prisons.

**Women and health care in prisons:-**

Although the population of women in prisons is relatively low, their adverse social positions and social disadvantages make them more liable to rejection from families and greater dejection from when they are in prisons. Low levels of education and poor legal awareness makes women more likely to serve longer sentences in prisons.

Studies from developed countries find that mental illness is grossly over represented among incarcerated woman. It is a substantial contributor to the poor health status of this population of particular concern is the effects of trauma and substance use disorders, which are often a result of past victimization. Mental ill health may also be appreciated in relation to psychological distress in the form of sociality and self harm both of which are elevated among women compared with their male counterparts and the general population. The prison experience frequency compounded these disadvantages and psychological distress by failing to underlying trauma and the particular metal health needs of female prisoners.

Women in the contemporary prison face problems, some resulting from their lives to imprisonments others resulting from their imprisonment itself.

Women in prisons have experienced victimization, unstable family life, problems. Social factors that marginalize like their participation in mainstream society and contribute to the rising number of woman in prison include poverty, lack of social support, separation or single motherhood and homelessness. Lack of financial support and social ostracisation makes life after release veritable hell particularly difficult situations for women are separation from children and other significant people, including family.
Some women are pregnant when they come into prison and this can be a particularly difficult time, physically and psychologically. It has been found that prison services are not sensitive enough in timely recognition and treatment of their mental health problems and do not address their vocational and educational needs adequately when compared to men. As mentioned earlier, women are more liable to abuse. In some parts of the world, it is said that women in prison are likely to be subject to more disparate disciplinary action than the men.

The characteristic of women offenders and their pathways to crime differ from male offenders. The system response to them differently, therefore there is the need for gender-responsive treatment and service.

**RIGHT OF PRISONERS:**

A convict lodged in a prison is not denuded of all his fundamental right though it is true he does not enjoy all the fundamental right like other persons because of the fetter imposed on him in accordance with the law.

**S.P Anand v. State of Madhya Pradesh**

The high court of M.P has extensively dealt with the basic right which is available to prisoners despite curtailment of their right to liberty. For example, a prisoner must have reasonable accommodation to live a healthy life as provide under the prison rules.

**State of Gujarat v. High Court of Gujarat**

The Supreme Court said that reiterate that reasonable wages should be paid to prisoners of the lab our done while in prison and laid down guidelines for the same. The court further held that conviction for a crime does not reduce the person into a non person whose right is subject to whims of prison administration.

**Procunier v. Martin**

In this case, the court emphasized that since the liberty of a prisoner is constitutional curtailed due to this confinement; his interest in the limited liberty left to him becomes all the more substantial.

All lab our exacted from prisoners should be classified as hard, medium and light lab our according to the physical exertion put in for performance of that work, the priority for selection of prisoners.

1. Prisoner undergoing life imprisonment with rigorous imprisonment.
2. Other prisoners undergoing rigorous imprisonment.
3. Prisoners undergoing simple imprisonment who are willing to work.

It is an effort should be made to protect human right, convicts and victims should entitle for repatriation.

The problem of under trial prisoners

The problem of under trial prisoners has assumed new proportions in recent years. Thousands of under trial prisoners are periods much longer than the maximum term for which they could have been sentence if convicted.

Many of them are innocent persons who are caught in the web of the law eagerly waiting for their trial date and several of them are even prepared to confess their crime and accept the sentence.

There are several reasons for this miserable plight of under trials of them being courts, inanity to take up the cases because of their busy calendar, the prolonged police investigation, unsatisfactory bail system and legal representation being beyond the merge means of poor offenders.

The pre-trial dent ion essentially evolves the question of library, justice, public safety and burden on public exchequer.

The poor are generally subjected to pretrial detention mostly because they cannot afford sureties and stand personal bonds. It is not only affects the family life the under trails but also adversely affects his moral due to vinous impact of prison environment.

Mr. justice V.R Krishan Iyer highlighted the agonies of pre-trials dètentes in the following in the case of

Moti Ram V State of Madhya Pradesh

“The consequences of pretrial dent ion are grave. Defendants presumed innocent are subjected to psychological and physical depravation of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendants lose his job if he has one and is prevented from contributing to the preparation of his defense. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family.

Expressing grave concern at the distressing condition of undertrials in Bihar jails in the land mark case of

Hussainara khatoon V . State of British

The Supreme Court observed that incarceration of under trials that had virtually spent their period of sentence was clearly illegal and blatant violation of their fundamental rights guaranteed under Article 21 of the constitution of India. The court
observed that “speedy trials” is a constitutional mandate and the state cannot valid its constitutional obligation by pleading financial or administrative inability. Consequent to the directions issued by the Supreme Court in this case the state of Bihar released as many as 18,000 under trial prisoners in 1981 and the other status followed the suit.

They are also prevented from taking necessary step to prepare for defense because they can have any problem like economic, or any other family problem.

The provisions contained in article 39-A and 22(i) enumerate the constitutional rights of the accused to be provided free legal aid services

Provision of section 167 of the code of criminal procedure 1973 regarding time limit for completion of police investigation and that of free legal aid to indigent and poor under trials or liberalization of bail etc have not helped in minimizing the number of under trials prisoners in Indian jails.

Article 21 also helps, but the fact remains that the functioning of judicial system still weighs heavily against poor as compared with the non poor.

The court held that there are four major grounds when the accused may be denied bail.

1. Where the offence is grave
2. Where the accused is likely to interfere with witness.
3. If he is likely to repeat the offence.
4. He is likely absconding.

Kalyan Chanra Sarkar V. Rajesh Ranjan alias Pappu Yadav

The Supreme Court observed in this case that fundamental right of an under trial prisoner under Article 21 is not absolute and therefore it may be circumscribed by prison manual and other relevant statues imposing reasonable restriction on such right. In this case jail authorities of Bihar were unable to control illegal activities of the accused that was holding regular darbar’s in jail.

The Supreme Court ordered his transfer to a prison outside Bihar and consequently he was transferred to a Maharashtra jail. The court held that it had the power to order such transfer in exercise of its power under Article 142 of the constitution through the jails manual did not provide for such transfer.

With a view to bringing down the number of under trials prisoners in different jails of the country the code of criminal procedure 1973 as amended in 2005 provides that where a person has during the period
of investigate inquiry or trial under this code of an offence under any law undergone detention for a period extending up to one half of the maximum period of imprisonment specified for that offence under that law. He shall be released by the court on his personal bond with or without sureties.

The section provides that after hearing the prosecution side and for reasons to be recorded in writing, the court may order.

**Bar Against handcuffing**

The prisoners are quite often hand cuffed while being brought from prison to court and vice versa for the sake of security and discipline. Even suspects and under trials are subjected to this humiliating treatment.

**Prem Shanker Shukla V. Delhi Adminstration**

The Supreme Court observed that “handcuffing is prime facie, in human and therefore, unreasonable and harsh and at the first flush arbitrary to inflict ‘iron’ is to resort to zoological strategies repugnant to article 21”.

The court pointed out that where in extreme cases the accused is to be hand cuffed, the escorting authority must inform the court and record reasons for doing so. It is only after getting judicial approval that handcuffing should be resorted to.

Earlier in 1978, the supreme court in the cases of

- Sunil batra V. delhi Adminstration’
- Charles sobraj case

It was seized with question of legality of prisons bars and fetters an under trials and held that handcuffing was voilative of articles 19, 14 and 21 be used only in exceptional cases ‘that too with the prior judicial sanction. The two petitioners in this case were sunil batra, Indian under death sentence and Charles sobraj a French national, an under trials facing detention under MISA from July 1976 and accused of jail break and other serious charges. The court held that locomotion is one of the facts of personal liberty and therefore should not be curtailed as far as possible however where absolutely necessary, handcuffing should be only for small spells and grounds for fetters shall be given to the prisoners and recorded with due approval of the judicial authority.

**SOLITARY CONFINEMENT**

The validity of keeping prisoners under solitary confinement in the name of prisoner disciple was also challenged before the Supreme Court in Sunil Batra Case on the ground that it was most in human and painful.

The petitioner Batra was condemned to death on a murder case and was locked in a
single cell completely isolated from all inmates. He challenged this quasi-solitary confinement and alleged that section 30 of the prison Act 1994 was violative of Arts 19, and 21 of the constitution.

Rejection the petition the court held that putting a prisoner who is under a ‘finally executable death sentence” in confinement is not solitary confinement since it is only a part of procedure for execution of death sentences. The Supreme Court has laid down the parameter of solitary confinement in its decision in – Kishore Singh Ravinder Dev V. State of Rajasthan.

The Reparation of Prisoners Act – 2003

With the incidence of international crimes and Indian citizens committing crimes outside the country and aliens indulging in crimes in India, the reparation of convicted persons posed a serious problem before the criminal law administrators in the absence of any specified law on this subject. The government of India therefore brought out the Reparation of prisoners Act 2003 with the view to providing for transfers brought out the Reparation of prisoners. The Act came into force with effect from 1st January 2004.

The Act provides that government of any country or place outside India in respect of which arrangement has been made by the Indian government for transfer of persons undergoing a sentence of imprisonment under an order passed by a criminal court, from India to such country or place or vice-versa, shall by notification by the central government in the official gazette transfer his custody from India to that country or vice-versa. The prisoner’s record shall be transferred to such country under section 10 of the Act.

It must be realized that cure of crime his not incarceration of prisoners but only in speedy criminals justice by ensuring certainty of punishment rather than its severity.

In this context it would be worthwhile to quote he observations made by Sir Robert Mark who said “Permanent and determined rather criminals do not regard the present criminal justice system as sufficient deterrent no rare they scared of imprisonment because they are aware of the limitation of the police, courts, prison etc. and find crime to be highly profitable and rewarding.”

In India professional criminals seek the protection of resourceful patrons and taking advantage of the slow moving criminal justice system they more often than not manage to escape punishment and prisonisation.

Conclusion

As per the research of my topic is make people understand that prisoner are also a human being but because of the
circumstance they indulged in the criminal activity and become a criminal but the prisonisation is the way to remove his or her guilt and became a good citizen again. So treat them as a human being, don’t stair them like a disease affected person.

According to the law of India and prison act 1894 the purpose of sending behind the jail and for to bring them back o the society with a reformed characteristic crime is a disease and a person is affected from it and prison is a way to make them correctional.

“Punishment” is just given to the person to realize that he violets the rights of another.

But to make him a right person many ways are used like interaction programmes, singing, dancing etc counseling process is also used to brain wash and try to solve their problem and try to develop the love towards life, person, society etc. This is a process to make the people new persons.

Justice krishan Iyer also a say that “bail not jail” “hate the crime not the criminal.”

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