

# System of prison, its history and types in India

By Sakshi Gupta | Views 78257

Blogger

pocket

Digg

## Introduction And Meaning Of Prison

The term prison is derived from the Latin term which means to seize. According to Oxford English Dictionary prison means a place properly efficient and equipped for the reception of persons who by legal process are committed to it for safe custody while pending of trial and punishment.

Under the Government of India Prisons Act, 1870 prison means any goal or penitentiary including the airing grounds and other grounds or buildings engaged for the use of the prison. Prison means jail or any place which is used for the detention of prisoners permanently or temporarily under the general and special orders of a Local Government.

According to the Encyclopaedia Britannica prison means an institution used for the confinement of persons who convicted for major crimes or felonies.

Traditionally, prison means a place in which persons are kept in custody when trial is pending or in which they are confined as punishment after conviction. The meaning of prison is different for different people like for law abiding person it is a place where criminals end up and for criminals it may be a vague peril or an unavoidable humiliation and for social inadequate it may be a shelter and for some isolated persons prison may be a place where they can find some appearance of championship and for prison officer prison is a place of work and for the psychologist it is a career in studying behaviour and for other persons it is an experience which slows up time, which crows them together, sets them apart and changes the course of their lives.

## History Of Prison System In India

During Vedic period administration of a justice was not a part of the state duties. In this period offences such as theft, murder and adultery are mentioned but there is nothing which designate that the king or an authorised person as a judge have power to pass any judicial judgement either in criminal or civil cases. Even in the sutras and shastras we rarely come across the word prison or jail.

In general the history of prison system is divided into three phases. In the first phase which lasted until the middle of the 16th century prison institution was chiefly cell of detention room in safe and secure parts of the cities or villages in which prisoner whose trial is pending or whose sentence is executed was kept. In the second phase there was experimentation with imprisonment a form of punishment for certain types of offenders specially juveniles. In the third phase there was universal adaptation of imprisonment as a substitute for all capital punishments.

## Ancient India

In the ancient time, in India prison was only a place of detention where an offender was detained till his trial and judgment and the execution of the judgement. In ancient time, the structure of society was based on the principles pronounced by Manu and explained by Yagnavalkya, kautilya and others. Imprisonment was the easiest kind of penalty known importantly in ancient Indian Penology among the various kinds of bodily punishments such as branding, hanging, mutilation and death.

This type of punishment was suggested in Hindu scriptures that the wrongdoer or evildoer was put into prison to set aside him from the society. The main aim of imprisonment was to keep away the wrongdoer and not corrupt he members of social doer. These prisons were totally dark hole, cool and damp, unlighted and unwarmed.

There was also not proper arrangement for sanitation and no means of facility for human residence. In ancient time fine, imprisonment, banishment, mutilation and death sentence were the modes of punishment. Fine was the most common punishment and when a person who was not able to pay the bill, was condemned to bondage until it was paid by his labour. Fines for murder of a Brahmin ere 1000 cows, for murder of Khastriya 500 cows, for murder of Vaishya 100 cows and for murder of Sudra or women of any caste.

The Indian law also gave some description of jail life. A few Smriti writers also gave some information related to the jail. Yagnavalkya stated that a person who assists the prisoner in escaping from the prison was liable for capital punishment. Vishnu suggested the penalty of imprisonment for that person who hurt the eye of a man. Kautilya described the place of prison and also the occasions on which prisoner was released.

The officer of the jail was known as Bhandanagaradhyaksa who was the superintendent of jail and karka who was his assistant of superintendent. The jail department was work under the charge of Sannidhata. Kautilya also described the duties of the jailor who always keeps eye on the movement of the prisoners and proper functioning of the prison.

In the post Ashokan age the jatakas said that prisoner should be released at the time of war. From Harshacharita it appears that the conditions of the prisoners were not satisfactory. At the time of the Royal coronation the prisoners were released from the jail. According to Hiuen Tsang the treatment with the prisoners was generally harsh.

In ancient time the regular prison system as such was not in existence. Imprisonment as a mode of punishment was not a regular in comparison to Modern System in India.

## Mediaeval India

The legal system in the mediaeval India is similar to Ancient India and existing Muslim rulers seldom. During the Mughal period source of law is the Quran. Crimes were divided into three groups that is crime against god, crime against state, crime against private person. The punishments for these crimes were divided into four categories that is Hadd, tazir, qisas and tasir. Imprisonment was not considered as a punishment in the case of ordinary criminals.

It was mostly used as a means of detention only. There were fortresses which were situated in different parts of the country in which criminals whose trial and judgement was pending, were detained. There were three Noble prisons or Castles in Mughal India. One was at Gwalior, second was at Ranathambore and the last one was at Rohtas.

The only redeeming feature of the prisoners was that the order for his release was issued on special occasions. In 1638 AD Sahajahan issued the order of release of prisoners on the occasion of the celebrations of recovery from illness of the favourite Princess Begum Sahib. There were some rooms which were reserved for prisoners and culprits who commit the serious crimes. These rooms were known as Bhandhikhanas or Adab khanas.

During the Maratha period also imprisonment was not a common form of punishment. At that time death, mutilation fine were the common forms of punishment. The form of punishment in Maratha period was also same as of Ancient and Mughal period.

### **The main features of the prison system that was prevailed in the pre- British period are as follows:**

- There were no prisons in Modern sense.
- There were no descriptions of internal administration of prisons.
- There were no rules for maintenance and functioning of prisons.
- There were no existence of separate prison service and courts were not feeding centre for prisons.

## Modern India

The present prison system of our country is a gift of the British rule. It was a creative creation of the colonial rulers our local penal system with the motive of making imprisonment a terror to wrong doers. There was a great leap in the history our penal reforms as it makes possible the abolition of our old system of barbarous punishment and substitution of imprisonment as the chief form of punishment for crimes.

In 1784 the British Parliament gave power to the East India Company to rule over the India. There were some attempts also made to introduce improvement in the administration of the law and justice. There were 143 civil jails, 75 criminal jails and 68 mixed jail presented at that time. These jails were the extension of Mughal rule which were managed by the members of the East India Company.

The East India Company made their efforts to maintain peace and security and wanted to establish their trade. The British only believed in keeping the prisoners in custody as economically as possible and with the intention of making maximum profit of the government. The early British Administration formulated its prison policy easily with a view to serve its colonial interest alone.

In 1835 Lord Macaulay drew the attention of the Legislative Councils of India towards the unacceptable conditions of the Indian Jails and proposed to appoint a committee for the purpose of collecting information related to the condition of the Indian prisons and preparing an improved plan of prison discipline and also for the suggestion related to the reforms in the prison due to this the jail will become the model for other prisons.

The Legislative Councils of India accepted the proposal of Lord Macaulay and appointed 'The Prison Discipline Committee'. Hon'ble H Shakespeare was the president of the committee and Lord Macaulay was one of the members of the committee. This committee submitted his report in 1838. The Enquiry Committee was the

landmark in the history of the penal administration in India. After this the meaning, nature, and character of the prison institution was changed and also got different treatment but this change was basically penal in nature.

For the very first time, this committee directed the attention of the English rulers of India towards the variety of vices of the administration of the Indian jails. This report criticised the corruption of subordinate establishment, the carelessness of discipline and the system of employing prisoners in extra mural labour or public roads. This committee deliberately rejected all types of reforms which influenced moral and religious teaching, education or the system of giving reward for the good conduct.

The focus of the authority of committee is in favour of increased rigour of treatment and also proposed to engaged all prisoners in dull, monotonous wear some and interesting task in which quicker relief was secured by working harder for a time. According to this committee the purpose of prison was to make the prison a place of dread through a brutal process of severe privation, really hard work, solitude, silence and separation.

On the report, suggestion, and advice and in the pursuance of the recommendations of the committee a Central Prison was established at Agra in 1846. This was the first Central Prison in India after that a central prison was established at Barilley and Allahabad in 1848, at Lahore in 1852, at Madras in 1857, at Bombay in 1864, at Alipore in 1864, at Banaras and Fatehgarh in 1864, and at Lucknow in 1867. This was a positive contribution in the history of the prison reforms in our country, along with its advocacy of the theory of retribution in prison administration.

In 1884 the first inspector General of prison was appointed on the experimental basis for two years in the North Western province and tenure was further extended. In 1850 the Government of India made this post as a permanent post and also recommended that each province should appoint an inspector General of prisons. In 1862 the North Western province employed civil surgeon as a Superintendent of District Jails.

The Prison Act was passed by the Government of India in 1870. This Act laid down that there should be a Superintendent, a medical officer, a jailor and some other subordinate officers as the local government thinks necessary.

This Act also specified and categorised the duties of the prison officers. This Act also provide provision related to the separation of male prisoners from female, separation of children offenders from adult, and separation of criminal from civil offenders. In 1877 and 1889 third and fourth enquiry committee was constituted. On the recommendations of the committees the Prison Act 1894 was passed. Due to the effect of this Act there was a considerable material progress in the concept of jails during this period.

In 1919 the British government appointed a joint commission of officials which investigate about the management of jails and suggest improvement in the maintenance of jails. This commission gave recommendations related to the separate institution like Borstal school for juvenile delinquents. Offenders whose trial is pending should be kept separate from the convicted offender, there should be classification of habitual and casual offenders between the adults.

The report of the committee also through some light on the view of the transportation of offenders to the Andaman Island and recommended to stop this practise. Solitary confinement was also abolished after this report. All convicts who were the below of 29 years of age were to be cared under the adult education programmes and libraries were also established in the jails. The quality of food was also improved and two pairs of clothes should be provided to the prisoners.

The main idea or purpose of the committee was the reformation of the inmates which was the ultimate object of imprisonment and rehabilitation of prisoners as social necessity.

This prison reform system received a sudden obstruction due to the constitutional changes which was brought by the Government of India Act, 1919. This Act transferred the control of the Jail Department from the Government of India to the Provincial Government. After the Independence of India there was increase in the reforms of prison. Indian leaders were ready with blue print for the industrial development of the country, but the jail reforms could not escape their eyes as all of them passed their prime life in the jail.

Under the Indian constitution prison administration was the subject of state. This organisation was headed by the Inspector General of Prisons. This organisation consist several central prisons, sub jails, district jails. All states adopt different patterns of jail administration. The central jails are intended for long term prisoners who were convicted in court.

## System Of Prison In India

A prison is something that is defined as a place of accommodation which was used for the individuals who have committed an offence and whose trial is pending for having committed that offence. The prison and prisoners law

in India are one of the laws that was unnoticed and forgotten and it cannot get sufficient importance as it should be for reforms in today's scenario.

There is lack of strong legislations for those people who are staying in the prisons who also have the right to live with dignity and also entitled for basic respect like all other citizens of the country.

There are many instances in which prisoners have been subjected to inhuman conditions or treatment and deprived of basic needs such as proper food and proper sanitary conditions. Prison should help in reforming humans instead of only punishing them. Reforms only be brought in society when criminals get the right chance of improvement. If a person commits crime that does not means that person stops from been a human being or becomes non- human he cannot deprived from personal liberty.

Prison and their administration is a state subject covered by item number 4 under the state list of seventh schedule of Indian Constitution. State government has exclusively power related to the management and administration of prison. It is governed by the Prison Act 1894 and the prison manuals of the respective state governments. The state has primary role and responsibility and authority to change the current prison laws, rules and regulations.

The central government only have power to give assistance to the states to improve security in prisons, medical facilities, for the repair and renovation of old prisons, development of borstal schools, facilities to women offenders, vocational training, modernisation of prison industries, training to prison personnel and for the creation of high security enclosures.

The Supreme Court of India through various judgments enumerated several rules related to the prison administration.

#### **Some of the rules are as follows:**

- Every person is entitled to his own personal liberty. If a person lives in a person it does not means that a person becomes a non-person.
- A person who commits an offence is also entitled of all kinds of human rights but within the confinement and limitations of imprisonment.
- A person is already suffering for the commission of crime by punishment then no other suffering is given to him.

The Supreme Court of India paid greater importance related to the various issues of prison such as lack of proper healthcare and medical facilities, overcrowding, provisions of proper facilities for the inmates as well as free legal aid which is expressly provided in the Constitution of India.

## **Types Of Prison In India**

In India there are three levels of Prison such as Taluka level, district level and central level (sometime it is also known as zonal /range level). The jails in these levels are known as Sub jails, district jails and central jails respectively. In general the infrastructure, security, medical facilities, educational and rehabilitation facilities are better from sub jail to central jail. There are also some other types of jail such as women jails, Borstal school, open jails, and special jails.

### **Central Jail**

The criteria for dividing a jail as a central jail are different from state to state. The common feature of all states central jail is that those prisoners are confined in the central jails who are sentenced to imprisonment for a long period that is more than two years. These jails are made for lifers and for those people who commit heinous crime. In this type of prison, effort is made to re-establish the morality and integrity of the prisoners.

The criminals in these jails earn their wages by doing some hard work. These jails have larger capacity of accommodation in comparison to other jails. These jails also have additional facility of rehabilitation. There are total 134 central jails. Delhi has the highest number of central jails that is 16, Madhya Pradesh have 11, Maharashtra, Punjab, Rajasthan and Tamil Nadu each have 9 central jails, Karnataka has 8 central jails, Gujarat has 4 central jails.

Arunachal Pradesh, Meghalaya, Andaman and Nicobar Islands, Dadra and Nagar Haveli, Daman and Diu and Lakshadweep do not have a single central jail.

### **District Jail**

There is not much difference between the central jails and district jails. District jails are the main jails for those states and union territories where there is no central jail. There are total 379 district jails in India. Uttar Pradesh has 57 district jails, Madhya Pradesh has 39, Bihar has 31, Maharashtra has 28, Rajasthan has 24, Assam has

22, Karnataka has 19, Jharkhand has 17, Haryana has 16, Gujarat has 11, Kerala has 11, West Bengal has 12, Chhattisgarh has 11, Jammu Kashmir and Nagaland each has 10 district jails.

## Sub Jails

In India these sub jails play the role of the sub-divisional jails. These jails are the smaller institution situated at the sub-divisional level of the state. These jails have the well organised and better set up of prison because they are formed at the lower level. There are 9 states which have higher number of sub jails in India. These states are Maharashtra has 100 sub jails, Andhra Pradesh has 99, Tamil Nadu has 96, Madhya Pradesh has 72, Karnataka has 70, Odisha has 73, Rajasthan has 60, Telangana and West Bengal each has 33. Odisha had the highest capacity of inmates in various sub jails.

There are 7 states or union territories which have no sub jails. The names of these states or union territories are Arunachal Pradesh, Haryana, Mizoram, Manipur, Meghalaya, Nagaland, Sikkim, Chandigarh and Delhi.

## Open Jails

The name of these types of jails may appear contradictory but this is true. These jails are the minimum security prisons. According to the Rajasthan Prison Rules open jails means the prison without walls, bars and locks. In these jails only those convicted prisoners are admitted who possess good behaviour and satisfying the norms which are prescribed in the prison rules. Minimum security is kept in these jails and prisoners are engaged in the agricultural activities and allowed to earn for their families.

First open jail in India was introduced in the Kerala by the Home Minister of Kerala P.T. Chacko in Nettukaltheri near Neyyar Trivandrum on 28 August 1962. There are 63 open jails in the seventeen states of India. Rajasthan has the highest number of open jails that is 29. Till the end of 2015 there were no open jails in the union territories of India. In December 2017 Supreme Court of India directed the centre to establish more open prisons in India.

## Special Jail

These jails are the maximum security prisons and have special arrangements for the prisoners. In these jails prisoners of particular class or classes are confined. Prisoners who are confined in special jails are those who are convicted for the offence of terrorism, violent crimes, habitual offenders, serious violation of prison discipline and inmates are violent and aggressive towards other inmates. There are total 43 special jails in India. Kerala has the highest number of special jails that is 16. Provisions related to the keeping female prisoners in the special jail are also available in the state of Tamil Nadu, Gujarat, West Bengal, Kerala, Assam, Karnataka and Maharashtra.

## Women's Jails

Women's jails are those which are exclusively only for the female prisoners. These jails are established for the safety of the women prisoners. These jails comprise of female staff members. These jails are existing at sub-divisional, district and central level. There are total 20 women's jails in India. Women's jails have limited capacity so mostly female prisoners are confined in other forms of jail. Maharashtra has 5 women's jails; Kerala and Tamil Nadu each have 3 jails.

## Borstal School

It is a type of youth detention centre and is used exclusively for the confinement of minors or juveniles. The main and primary object of these schools are to ensure care, welfare and rehabilitation of young offenders in which environment which is suitable for children and keep them away from infecting atmosphere of the prison. The juveniles in conflict with law are detained in Borstal School and provide various vocational and educational training with the help of trained teachers. For the reformation of juvenile and to prevent him from crime main emphasis given to the education, training and moral influence.

Nine states have Borstal School. The names of these states are Himachal Pradesh, Jharkhand, Karnataka, Kerala, Maharashtra, Punjab, Rajasthan, Tamil Nadu, and Telangana. Tamil Nadu has the highest capacity for keeping inmates in Borstal school. Himachal Pradesh and Kerala are the only states which have capacity to keep female inmates in 2 of their Borstal school. There are no Borstal school in union territories of India till the end of 2015.

## Other Jails

Jails which do not fall under the above mentioned categories then these jails are come under the category of other jails. Only three states have other jails. The name of these states is Karnataka, Kerala and Maharashtra and each state have one other jail. Karnataka has the highest capacity to keep the inmates in other jail after that Kerala and then Maharashtra has. In spite of these state no other state or union territories of India have other

jails.

## Functions Of Prison

The legal system of the India is always based on the non violence, mutual respect for each other and treating other human with dignity. If a person commits crime that does not means that the person stops or barred from been a human being or becomes a non- human or non-person, he cannot deprived from personal liberty. The prisoners are also entitled for the human rights because torture is a confession to the failure of the justice system.

Article 21 of the Constitution of India guarantees personal liberty and prohibit all kinds of inhuman, cruel and degrading treatment towards any person whether an Indian national or an alien. The violation of this Article would attract the article 14 of the Constitution of India which talks about the right to equality and equal protection under the law. The rights of prisoners are covered under the Prison Act, 1894.

**Prisons have the function of upholding the rights of the prisoners which are as follows:**

### Right To Legal Aid:

The human rights and personal liberty are of no use if person not getting the proper legal aid to enable that they have proper access of justice in case of violation of their rights. Legal aid is a legal right of every person it is not a charity. The main purpose of legal aid is that justice should be administered properly and easily available and accessible.

It should be ensure that legal aid is available for all persons who want to enforce their rights. Legal aid provides an opportunity to the Indian society for the redressal of the damages of the poor and the needy and establishes the foundation of rule of law. Judiciary plays a important role in the development of the concept of legal aid and expand its scope.

In the case of **M.H. Wadanrao Hoskot vs. State of Maharashtra** AIR 1978 SCC 1548, (1978) 3 SCC 544 the court held that the right to legal aid is the basic necessity of free trail. It should be free for indigent and poor accused.

### Right To Speedy Trial:

This is a most important fundamental right of prisoners. This right is implied in the Article 21 of the Constitution of India. This aspect covers the both social interest as well as public interest.

In the case of **Hussainara Khatoon vs. State of Bihar** 1979 AIR 1369, 1979 SCR (3) 532 this case laid down the foundation for ensuring speedy justice after seen that there are large number of cases of men, women and juveniles are pending and men, women and juveniles are still in prison.

In the case of **Mathew Areparmtil and others vs. State of Bihar** 1984 AIR 1854, 1985 SCR (1) 776 the court passed an order for the release of those persons who are in prison and their case was still pending. In this case Court had seen that there were large number of people who have committed offences and still waiting for trial of minor offences.

In the case of **Raj Deo Sharma vs. State of Bihar** (1998) 7 CC 507 Supreme Court issued following directions: If the trail is of the committed offence for which the period of imprisonment exceeds the seven years then the court should close the prosecution evidence within two years from the date of he record of plea , no matter that accused was in jail or not.

The trail court have power to release the accused on bail on certain conditions if the accused was in jail for the half of the period of punishment as mention for that offence which was committed by accused.

If the offence has been in trail is punishable with imprisonment for a period exceeding 7 years then the prosecution must close the evidence within three years from the date of the recording of the plea, no matter accused was in jail or not.

### Right Against Solitary Confinement And Protection From Torture:

There is a prohibition of separate or solitary confinement of the prisoner or the complete isolation of the prisoner from the entire society. Torture is the something that was consider normal by an investigating officer or agency for the confession. Morally it shows the burden of the stronger over the weaker.

In **Prem Shankar Shukla vs. Delhi Administration** 1980 AIR 1535, 1980 SCR (3) 855 in this case the appellant are in an under trial prisoner in Tihar jail. He was supposed to be taken from the jail to the magistrate and come back to the prison periodically in relation to the certain cases that are pending against him. In such cases handcuffs should not be permitted or practiced if there is no warrant. The Supreme Court held that handcuffs

must be used only as a last alternative.

In the case of **D.K. Basu vs. State of West Bengal** 1997 1 SCC 416 the court held that torture during custody is a gross violation of human dignity and is degrading to the individual personality. The right to life and liberty is an expression of human right. So, the court held that no person who is arrested can be detained in custody without giving him knowledge and information about the grounds of the arrest and he should not be denied for the right of the legal practitioner.

### **Conclusion**

The prison system as it operates today is legacy of the British rule in our country. It was the creation of the colonial rulers over our penal system with the motive of making imprisonment a terror to wrong doers. The Indian criminal administration also includes prison administration. It is true to said that a man is not a criminal by birth but the social and economical conditions makes him criminal.

Proper food, shelter and health care treatment must be given to prisoners by the prison authority. Prisoners should not be treated inhuman because the main motive of imprisonment is not to punish but to reform a criminal due to which he will be able to live in society normally after the completion of his punishment. The punishment system in Indian is also based on the reformatory theory. There were many reforms in the Prison system in India but still there is need of some other reforms because the condition of prisoners in prison is degradable.

There was also no strong legislation for the prisoners. In present days there is many cases in which prisoner suicide or murdered in the prison and he was tortured or beaten up by the prison officers and these cases are increasing day by day so there is need of proper legislation for the protection of prisoners because prisoners are also human being and they also have all rights which other citizens have. There were also needs of the more numbers of the jails or prison because the capacity of all prisons is less than the number of prisoners. Some reforms in the prison system also suggested by legislative member or the jurists.