

PRISON LAWS IN INDIA : A SOCIO-LEGAL STUDY

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Introduction

The system of prison administration in our country is more than 100 years old. If one looks back one cannot but be impressed with the vast change made during this period. The innovation, while still halting and employed only in some and not in all the prisons of the country, nevertheless give promise of the system of treating offenders. Gone are now many of the brutal methods of treatment yielding place to several new methods including outdoor labour, facilities for higher education, recreational and correction plans, group work and payment of wages. Attempts are now being made to treat the prisoners under less repressive discipline and with greater freedom.¹

Administration of prisons and reformation of prisoners has been a matter of intense debate and sharp criticism at various public fora. Hon'ble Supreme Court of India in the recent years has come down heavily on the inhuman and degrading conditions in prisons. In many states, the problems of dilapidated prison structure, overcrowding and congestion, increasing proportion of undertrial prisoners, inadequacy of prison staff, lack of proper care and treatment of prisoners, etc., have been engaging the attention of the press and social activists. With a growing advocacy for the protection of human rights in the various walks of lives, the plight of prisoners has emerged as a critical issue of public policy.²

Concept of Prisons

A prison also known as gaol or jail is a place in which people are physically confined and usually deprived of a range of personal freedoms.³

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¹ Vidya Bhushan, Prison Administration in India, S. Chand & Co., (1970), p. 246.

² Model Prison Manual for the Superintendence and Management of Prisons in India, prepared by Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, New Delhi, (2003), p. I

³ For details see: <http://en.wikipedia.org/wiki/wiki/prison/definition>, (Accessed on 10.05.2013)

The Online Oxford English dictionary defines prison as, “A building to which people are legally committed as a punishment for a crime or while awaiting trial.”⁴ In our country “Prison” falls under state subject in List II of the Seventh Schedule to the Constitution of India. The administration of Prisons falls in the hands of the state Governments, and is governed by the Prisons Act, 1894 and the Prison Manual of the respective State Governments. Thus, States have the primary responsibility and authority to change the current prison laws, rules and regulations.

Prisons are the public institutions and therefore they must perform the function assigned to them by law. The law declares simply and precisely that if individuals are convicted of crimes, they shall be placed on probation, fine, or undergo a sentence of imprisonment. Men are thus sent to a prison as punishment. Strictly speaking, the law sends them not to be reformed but primarily to be held in safe custody. Thus we can safely say that till the last century the idea has been to keep the prisoner in safe custody alone. The recent tendency now is, of course, that prison system is meant for reformation of the prisoners that they may return to society as useful members and this function of the prison is now termed as discipline.⁵

Historical Perspective

Penal institutions are places where persons whose liberty have been curtailed by law are confined to assure the successful administration of justice or the application of penal treatment. Three epochs may be distinguished in their history. During the first, which lasted until the middle of sixteenth century, penal institutions were chiefly dungeons of detention rooms in secure parts of castles or city towers which were used to detain prisoners awaiting trial or execution of sentences. The second epoch was one of experimentation with imprisonment as a form of punishment for certain types of offenders, mostly juveniles, “sturdy beggars”, vagabonds and prostitutes. The third epoch was of universal adoption of imprisonment as a substitute for virtually all corporal or capital penalties. In contemporary society the prisons have replaced the scaffold, the stocks, and the pillory

⁴ For details see: <http://Oxforddictionaries.com/definitions/english/prison?q=prison>, (Accessed on 10.05.2013)

⁵ B.S. Haikerwal, *A Comparative Study of Penology*, Ram Narayan Lal Law Publisher, Allahabad, (1979), p. 97.

and whipping post as the most conspicuous if not the most commonly used instrument of penal treatment. From the point of view of the role they play in the Judicial Administration, four classes of institutions can be distinguished those for temporary confinement of persons arrested; those for persons awaiting trial or execution of sentence; those in which sentences of penal treatment are liquidated; and those for the internment of socially dangerous offenders.⁶

Prisons in official language may be called as, jail, workhouse, penitentiary, reformatory, state prison, house of correction or whatever else, it is simply a place where the punishment of imprisonment is executed.

Importance of Prisons

In every democratic society, prison has a unique role as a formal agency of the criminal justice system. The purpose of imprisonment as a punishment is plain enough - the person who has committed a wrong must suffer in return. The state through the prison is entitled if not morally obligated to hurt the individual who has broken the criminal law. Since a crime is by definition a wrong committed against the state. Imprisonment should be punishment, not only by depriving the individual of his liberty, but by imposing a kind of painful condition under which the prisoner must live within the walls. Today prisons serve main three purposes, which may be described as custodial, coercive and correctional. A prison as a place of correction historically is developing and new in conception. Earlier prisons served only the custodial function, where an alleged offender could be kept in lawful custody until he could be tried and if found guilty punished. The Digest of Justanian, in Roman law established the custodial principle with the statement that “a prison is for confinement, not for punishment” and in countries that followed Raman law the principle that imprisonment was not a legal punishment was dominant for many years. In England also the High Court judges went out to “deliver the gaols” - to clear them not to fill them. The prisons of the middle ages were, therefore, concurred only with holding prisoners awaiting trial. Penal institutions were chiefly dungeons or detention rooms in secure parts of castles or city towers, used to detain prisoners awaiting trial or execution of sentence. The

⁶ Amarendra Mohanty, *Indian Prison System*, Ashish Publishing House, New Delhi, (1990), p. 2

punishments imposed were torture, banishment, exile, death, branding, mutilation, but never imprisonment.⁷

The coercive function means that imprisonment may be used to persuade a person to comply with an order made by the court of law, whether civil or criminal; if he complies, he is released. The first use of the prison in this way was against convicted offenders, mostly for juveniles, “sturdy beggars”, vagabonds and prostitutes. This function is still active in England, since those committed for non-payment of fines or debts or for contempt of court may secure release by paying what they owe or purging their contempt.⁸

The purposes of prison is protection of the community, supply of food, clothing, shelters to convicted criminals, and protection of inmates from each other and from persons in the outside community, imposition of punishment and rehabilitation of criminals. These purposes are assigned by outsiders and are shared by institutional personal, although some of them are logically contradictory. A complex division of labour is established to attempt their achievement, and each of the purposes is achieved to some extent by the people whose institutional behaviour is patterned by the roles that make up the division of labour. The three principal sections in this division of labour are a hierarchy of custodial ranks, an industrial hierarchy, and a social welfare agency-and they are devoted to keeping inmates, using inmates and serving inmates.⁹

The prisons, during the last three centuries or so have evolved to the status of an institution of social control and symbol of legitimate coercion. It is no more a resting ground in the legal process where death penalty, banishment, or life transportation may be the verdict. Rather, the institution of prison has imbibed and is influenced by the conventional norms, ideals and assumptions of humanitarianism, enlightenment and the welfare state. It not only carries the bearings of the ideals of the period, but is also impregnated with the expediencies of organizational science.¹⁰

⁷ Id., at p.3

⁸ Ibid.

⁹ Donald R. Cressy, “*The Prison: Studies in Institutional and Organizational and Change*”, Holt, Rinehart and Winston, Inc. New York, (1961), p.5

¹⁰ Indra Jeet Singh, “*Indian Prison: A Sociological Enquiry*”, Concept Publishing House, Delhi, (1979), p.1.

The prison is not an autonomous body like a church. It is not an independent system of power, but an instrument of the State, shaped by its social milieu and the stage of social, political and economic development. It reacts to and is acted upon by the society as various struggle to advance their interests.¹¹

Theories of Imprisonment

In ancient societies prisoners were simply confined in the prison. Punishments were given to them outside the prison. But latter due to the growth of civilization imprisonment became the main method of punishment.¹²

There are mainly four important theories of punishment, namely, retributive theory, deterrent theory, preventive theory and reformative theory. Precisely, retributive theory is the first and foremost one. A child who falls down, kicks the floor inadvertently generally it is believed to be a form of taking revenge and would not serve any penal purpose. Second is theory of deterrence. This theory by punishing the offenders deters the wrongdoer specially and deters the general public also by punishing him and refrain them from committing an act which is an offence. Preventive theory incapacitates an offender from repeating the crime, while reformative theory serves the purpose of rehabilitation of the offender. Modern penologists do not believe in purposeless punishment. They believe that a criminal is a patient and he be treated with humanity.¹³

International Scenario on Prison Reformation

There are various important International documents on prison administration though not directly related to reformation of prisoners but very much concerned with prison justice and indirectly called for recognition of the inherent quality of prisoners as human family and protection from tyranny and oppression. Some of those international documents are as under:

¹¹ *Id.*, at p. 16.

¹² *Supra* note 6 at p.4

¹³ For details see: <http://works.bepress.com/cgi/viewcontent.cgi?article=1006&contextkrishnaareti&sei->, (Accessed on 17th July 2013)

Universal Declaration of Human Rights

In 1948 a movement was started in the United Nations in the form of Universal Declaration of Human Rights which was adopted in the General Assembly of the United Nations. This organic document is also called as Human Rights Declaration. This important document provides some basic principles of administration of justice. Among the important provisions in the document following are as follows:

- No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹⁴
- Everyone has the right to life, liberty and security of person.¹⁵
- No one shall be subjected to arbitrary arrest, detention or exile.¹⁶
- Every one charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.¹⁷

The International Covenant on Civil and Political Rights, 1966

The International Covenant on Civil and Political Rights remains the core international treaty on the protection of the rights of prisoners. Following relevant provisions of the covenant are as:

- No one shall be subject to cruel, inhuman or degrading treatment or punishment.¹⁸
- Everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention.¹⁹
- All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.²⁰
- No one shall be imprisoned merely on a ground of inability to fulfill a contractual obligation.²¹

¹⁴ Universal Declaration of Human Rights, 1948, Article, 1

¹⁵ *Id.*, Article 3

¹⁶ *Id.*, Article 9

¹⁷ *Id.*, Article 11

¹⁸ The International Covenant on Civil and Political Rights, 1966, Article 7

¹⁹ *Id.*, Article 9

²⁰ *Id.*, Article 10

²¹ *Id.*, Article 11

Declaration on Protection from Torture, 1975

On 9th December, 1975 United Nations General Assembly by consensus adopted a Declaration on Protection from Torture. Various important provisions relevant herein are as under:

- Any act of torture or other cruel inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the universal declaration of human rights.²²
- No state may permit or tolerate torture or other cruel, inhuman, degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, human or degrading treatment or punishment.²³

The European Convention on Human Rights (1953-69)

Another important International document is European Convention on Human Rights. This Convention has its own history in the importance of human rights. Some of the important provisions of this convention are as under:

- Every one's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by the law.²⁴
- No one shall be subject to torture or to inhuman treatment or degrading treatment or punishment.²⁵
- Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of

²² The Declaration on Protection from Torture, 1975, Article 2

²³ *Id.*, Article 3.

²⁴ The European Convention on Human Rights (1953-69), Article 2

²⁵ *Id.*, Article 3.

his detention shall be decided speedily by a court and his release be ordered if the detention is not lawful.²⁶

- Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.²⁷

Standard Minimum Rules for the Treatment of Prisoners²⁸

Amnesty International in 1955 formulated certain standard rules for the treatment of prisoners. These rules form certain basic principles of law in most of the democratic countries of the world. Some important relevant rules are as under:

- One of the important rules embodied is the principle of equality, that there shall be no discrimination on grounds of race, sex, colour, religion, political or other opinion, national or social origin, property, birth or other status among prisoners.²⁹
- Men and women shall so far as possible and practicable be detained in separate institution, in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separated.³⁰
- There must be complete separation between civil prisoners detained for the debt etc. and persons imprisoned by reason of criminal offence; young prisoners should be kept separate from the adult prisoners.³¹
- Corporal punishment, punishment by placing in dark cells, and all cruel, inhuman degrading punishments shall be completely prohibited.³²

²⁶ *Id.*, Article 4

²⁷ *Id.*, Article 5

²⁸ Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N.DOC./A/C/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR supp. (No. 1) at 11, U.N.DOC.E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR supp. (NO. 1) at 35, U.N.DOC.E/5988 (1977), available at, <http://www1.umn.edu/humarts/instree/g1smr.html>, (Accessed on 10/05/2013)

²⁹ *Id.*, Rule 6(1)

³⁰ *Id.*, Rule 8(a)

³¹ *Id.*, Rule 8(c) & (b)

³² *Id.*, Rule 31

- There shall be available the services of at least one qualified Medical Officer who shall also have some knowledge of psychiatry.³³
- Young untried prisoners should be kept separate from adults and shall in principle be detained in separate institutions.³⁴

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment³⁵

United Nations General Assembly adopted and opened for signature and ratification, a document called Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Various important provisions of the convention are as under:

- Each state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.³⁶
- No state party shall expel, return or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.³⁷
- Each state party shall ensure that all acts of torture are offences under its criminal law.³⁸
- Each state party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction with a view to preventing any cases of torture.³⁹
- Each state party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.⁴⁰

³³ *Id.*, Rule 22(1)

³⁴ *Id.*, Rule 85(2)

³⁵ UN Resolution 39/46 of 10th Dec. 1984

³⁶ The Convention against Torture, 1984, Article 2(1)

³⁷ *Id.*, Article 3 (1)

³⁸ *Id.*, Article 4 (1)

³⁹ *Id.*, Article 11

⁴⁰ *Id.*, Article 14

As per above provisions, it seems Convention is a solid organic document with full teeth to prevent the acts of torture or inhuman treatment. But, unfortunately, India till now has not ratified this organic document.

Thus, it can be said that the basic requirements of human dignity and conditions necessary for prisoners to return to normal life are common in all above mentioned International documents.

National Documents on Prison Administration

At the national there are number of legislations touching directly or indirectly administration of the prisons and reformation of prisoners. Some of the important legislations are as under:

Constitutional Provisions

Constitution of India nowhere expressly provides any provision for the protection of prisoners or prison justice, but certain basic rights have been guaranteed in part III of Indian Constitution which are available to the prisoners as well because a prisoner is treated as a 'person' in the prison.

Article 14 of Constitution of India says:

“The state shall not deny to any person equality before law or the equal protection of laws within the territory of India.”

Thus, Article 14 contemplated that like should be treated alike, and also provided the concept of reasonable classification. This article is very useful guide and basis for the prison authorities to determine various categories of prisoners and their classifications with the object of reformation.⁴¹

Indian Constitution guarantees six freedoms⁴² to all the citizens of India. Among these freedoms there are certain freedoms which the prisoners cannot enjoy because of the very nature of these freedoms, such as, “freedom of movement⁴³”, “freedom to residence and to Settle⁴⁴”

⁴¹ Nitai Roy Chowdhury, “*Indian Prison Laws and Correction of Prisoners*”, Deep and Deep Publications, New Delhi, (2002), p. 75

⁴² The Constitution of India, 1950, Article 19

⁴³ *Id.*, Article 19(1)(d)

⁴⁴ *Id.*, Article 19(1)(e)

and “freedom of profession⁴⁵”. But there are other freedoms under this article which a prisoner can enjoy even behind bars, viz., “freedom of speech and expression⁴⁶” & “freedom to become member of an association⁴⁷”.

Moreover, constitution of India provides various other provisions though cannot directly be called as prisoner’s rights but may be relevant. Among them are Article 20 (1&2), Article 21, and Article 22 (4-7).

The Prisons Act, 1894

Prisons Act, of 1894 is the first legislation regarding prison regulation in India. Commenting upon the Prisons Act, of 1894, Dr. Amarendra Mohanty in her book Prison system in India observed the following:

“This Act was largely based on deterrent principles reflected mainly the British policy on the subject. The legislators took little pains to look into the other side of the problem. They were concerned more with the prison working than with treatment of the prisoners. This Prisons Act remained unchanged for last more than one hundred years except very minor change.”

Among the various other provisions under the Prisons Act, 1894, the following sections are related with the reformation of prisoners in one-way or the other.

- Accommodation and sanitary conditions for prisoners.⁴⁸
- Provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison.⁴⁹
- Provisions relating mental and physical state of prisoners.⁵⁰
- Provisions relating to the examination of prisoners by qualified

⁴⁵ *Id.*, Article 19(1)(g)

⁴⁶ *Id.*, Article 19(1)(a)

⁴⁷ *Id.*, Article 19(1)(c)

⁴⁸ The Prisons Act, 1894, Section 4

⁴⁹ *Id.*, Sec. 7

⁵⁰ *Id.*, Sec. 14

⁵¹ *Id.*, Sec. 24(2)

Medical Officer.⁵¹

- Provisions relating to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and undertrial prisoners.⁵²
- Provisions relating to treatment of undertrials, civil prisoners, parole and temporary release of prisoners.⁵³

The Prisoners Act, 1990

For the purpose of prison reformation and prison justice under this Act, following sections are relevant here to mention:

- That all reference to prisons or the imprisonment or confinement shall be construed as referring also to reformatory schools to detention therein.⁵⁴
- That it is the duty of Government for the removal of any prisoner detained under any order or sentence of any court, which is of unsound mind to a lunatic asylum and other place where he will be given proper treatment.⁵⁵
- That any court which is a High Court may in case in which it has recommended to Government the granting of a free pardon to any prisoner, permit him to be at liberty on his own cognizance.⁵⁶

The Transfer of Prisoners Act, 1950

This act was enacted for the transfer of prisoners from one state to another for rehabilitation or vocational training. This Act is also helpful for transfer of prisoners from over-populated jails to less congested jails within the state.

The Prisoners (Attendance in Courts) Act, 1955

This Act contains provisions authorizing the removal of prisoners to a civil or criminal court for giving evidence or for answering to the

⁵² *Id.*, Sec. 27

⁵³ *Id.*, Sec. 31 & 35

⁵⁴ The Prisoners Act, 1990, Section 28

⁵⁵ *Id.*, Section 30

⁵⁶ *Id.*, Section 33

charge of an offence.

Thus, apart from the substantive prison laws, the Government of India appointed a National Expert Committee on women prisoners (1968-87) under the chairmanship of Justice Krishna Iyer to examine the conditions of women prisoners. The committee among other things recommended the following suggestions particularly towards reformation and rehabilitation of women prisoners.⁵⁷

- In women's rehabilitation, employment training has a pivotal role. Consequently, work in prison has to be given such potential economic worth and utility that all women in custody are willing to engage in work programmes.⁵⁸
- Training of women prisoners in an area of great relevance to correctional work and to the process of restoration of dignity of the women offender.⁵⁹
- Probation, Parole and other non-institutional modalities of corrective treatment shall be widely used in case of women offenders.⁶⁰

Moreover, at National Conference on Human Rights of Prisoners on 14th Nov. 1995, consensus was emerged to work out the draft law on prisons. A Core Group has prepared a Draft Bill namely, the Indian Prisons Act, 1995 which was circulated to State Governments for their consideration and observation and also to Ministry of law. But unfortunately Bill is still pending under consideration of the Government of India.

Problems of Indian Prisons

Jail administration in India being an important part of the criminal justice system has suffered neglect and lack of recognition. A lot has been talked about the police, a little less about the courts and almost nothing about prisons and prisoners. The problem of prison administration needs to be highlighted to focus public attention on this very vital sphere of social concern.

It is nearly 30 years since the submission of the report of the All

⁵⁷ *Supra* note 41 at p. 140

⁵⁸ *Id.*, p. 153

⁵⁹ *Id.*, p. 152

⁶⁰ *Id.*, p. 325

India Committee on Jail Reforms (1980-83) headed by Justice A.N. Mulla. One may ask why the recommendations of the committee have not been followed and implemented in letter and spirit. There is little significant improvement on an all India basis.

The main reason often cited by the centre not being able to implement the recommendations of the Mulla Committee is that prison is a state subject. This only shows that if there is political will, there shall be no difficulty at the centre taking an active and direct interest in prison administration.

After analyzing different dimensions of prison laws and prison administration, one can lay down the following major problem areas, which afflict the prison system and need priority attention.

1. Delay in trials in the courts has assumed very serious proportions. Even though problem has been highlighted by the Mulla Committee, National Police Commission and through Public Interest Litigation (in the *Hussainara Khattun's case*⁶¹) there has been no relief at all. Delays commences at the investigation stage itself. In many cases, charge sheets are filed by the police very late leading to a long chain reaction. On the other hand courts are also not without blame. Even though law requires that trials should be conducted from day to day till completed, in practice this rarely happens. Cases are adjourned for a couple of months at a time, which further aggravates delay.⁶²
2. Overcrowding itself leads to unsatisfactory living conditions. Although several jail reforms outlined earlier have focused on issues like diet, clothing and cleanliness, unsatisfactory living conditions continue in many prisons around the country. A special commission of inquiry, appointed after the 1995 death of a prominent businessman in India is high-security Tihar Central Jail, reported in 1997 that 10,000 inmates held in that institution endured serious health hazards, including overcrowding, "appalling" sanitary facilities and a shortage of medical staff⁶³. The National Police Commission pointed out that 60% of all

⁶¹ *Hussainara Khatoon v. State of Bihar*, AIR 1979 (SC 1377)

⁶² For details see: <http://www.oocities.org/indianfascism/fascism/prison.htm>, (Accessed on, 18 July 2013)

⁶³ For details see: http://www.nimhans.kar.nic.in/prison/chapter_2.pdf (Accessed on, 16th July 2013)

⁶⁴ *Supra* note 62

arrests were either unnecessary or unjustified. This has resulted in overcrowding and accounts for 43.20% of the expenditure of jails⁶⁴.

3. Extortion by prison staff and its less aggressive corollary guard corruption is common in prisons around the world. Given the substantial power that guards exercised over inmates these problem are predictable, but the low salaries that guards are generally paid severely aggravate them. In exchange for contraband or some special treatment inmates supplement guard salaries with bribes.⁶⁵
4. The arrangement for facilitating communication between prisoners and their relatives, friends and legal advisors require attention. Many of these aspects have been drafted within the Mulla Committee Report and deserve immediate implementation.
5. Inadequate rehabilitative programmes and vocational training facilities is another problem of Indian prisons. Even if there are few rehabilitative programmes they are just outdated.
6. Apart from above mentioned problems of Indian prisons there are other problems also which include lack of legal aid, health problem, homosexual abuses, drug abuse, and prison violence.

Role of Judiciary in the Administration of Prison Justice

Indian judiciary mostly Supreme Court plays a vibrant and active role in the reformation and administration of prisons. One can say that till eighties Indian judiciary adopted status quo jurisprudence and showed a lack of appreciation and concern by its “hand-off” approach to the operations of prisons. It was in 1974 when Apex Court came up with new prison jurisprudence. In a major breakthrough Court in *D.B.M. Patnaik’s case*⁶⁶, asserted that the mere detention does not deprive the convicts of all the fundamental rights enshrined in our Constitution. Supreme Court again in 1977 in *Hiralal’s case*⁶⁷ stressed for the rehabilitation of prisoners and reformation of prisons. This judicial wave continued. In Sunil Batra's case⁶⁸ which is taken as a milestone in the field of prison justice and rights of the prisoners in India, Court held that “the fact that a person is

⁶⁵ *Ibid.*

⁶⁶ *D. B. M. Patnaik v. State of A. P.*, AIR 1974 (SC 2092)

⁶⁷ *Hiralal Mallick v. State of Bihar*, AIR 1977 (SC 2237)

⁶⁸ *Sunil Batra v. Delhi Administration.*, AIR 1978 (SC 1675)

legally in prison does not prevent the use of Habeas Corpus to protect his other inherent rights". In *Prem Shankar Shukla's case*⁶⁹, Court observed that no person shall be hand-cuffed, fettered routinely for convince of the custodian's escort. Supreme Court again in *R.D. Upadhyay's case*⁷⁰ has held that right to fair treatment and right of judicial remedy are pre-requisites of administration of prison justice. In *Hussain Ara Khatun's case*⁷¹ Court adopted a dynamic and constructive role with regard to prison reforms. Court apart from other things stressed on the improvements of the conditions of the prisons in India.

Therefore, this vibrant role of Indian Judiciary shows the change of attitude towards the rights of prisoners and reformation of prisons by treating prisons as correctional rehabilitative institutions.

To sum up

In the recent years all the world over prison jurisprudence developed in order to protect inherent rights of prisoners and for the proper administration of prisons. Therefore, to start with, the existing legal structure of the prisons administration has to be changed, Criminal law should be amended, a new Prisons Act should be enacted and all Jail Manuals need to be revised. Most importantly Indian Judiciary must continue to play its constructive and active role in prison justice.

In conclusion it must be never being forgotten that the problem of prison justice and rehabilitation of prisoners is only a part of the larger problem of social regeneration. The prison administration alone cannot successfully rehabilitate the prisoners. It can only make its humble efforts to set right the prisoners, but efforts will succeed only if our economics, our education and our social institutions and values are properly integrated into a coherent and harmonious whole based on the knowledge of the human institution.⁷²

⁶⁹ *Prem Shankar Shukla v. Delhi Administration.*, AIR 1980 (SC 1535)

⁷⁰ *R.D. Upadhyay v. State of A.P. and Ors.*, AIR 2001 (SCC 437)

⁷¹ *Hussain Ara Khatun v. State of Bihar*, AIR 1979 (SC 1377)

⁷² *Supra* note 1 at p. 201