CHAPTER III
Prison Acts at a Glance

Liberty is the life-line of every human being. Life without liberty is 'lasting' but not living.¹

There are various prison laws dealing with prisons, prison discipline, prison administration and allied matters. However the drawback with all these prison laws is that they are pre-modern i.e. pre-human rights era and are rooted in the ideology of treating prisoners as sub-humans unfit for any rights. The age old deterrent and retributive theory of condemning a prisoner as a sub-human to face wretched conditions of prison life, ruled the prisons and prison administration till almost the end of 19th century. It was only during the end of 19th century that some sort of minimal and negligible reforms of prisons commenced in US and Britain, which paved the way for prison laws and regulations in those countries. The very same laws with the same policies were enacted in India during the colonial rule. Though there is urgent need to re-enact all prison laws lock, stock and barrel in the light of latest human rights discourse and international law, unfortunately, the prison

laws continue to be the same in the country even now, with minor changes and some amendments by the individual States. In view of this stagnant situation in law reform, much burden had fallen on the Supreme Court to 'legislate' various prisoners rights in the guise of interpretation so that the country's standard of treating prisoners falls in line with the international standards. The existing prison laws are given below:

(a) Prisons Act, 1894: An Act to amend the law relating to Prisons. Whereas it is expedient to amend the law relating to prisons in India except the territories which, immediately before the 1st November, 1956, where comprised in Part B States, and to provide rules for the regulation of such prison, it is hereby enacted as follows. The preamble of the Act itself discloses that, this Act was enacted in the British era, the main purpose of this enactment is to subunit the freedom fighters.

The Prisons Act, 1894 provides the skeletal framework for the statutory body of prisoner's rights and prison facilities. This Act came into force on 01-07-1894 and it contains 62 sections dealing with subjects like, maintenance of prisons, officers of prisons, duties of officers, prisoners discipline, death of convicts and procedure thereof,
classification of prisoners, provisions for prisoners like food, clothing, bed, employment, health, visits, prison offences and punishments. This is a routine law reflecting the ideas of that period and is based on deterrent theory. It has no seeds of reformation of prisoners in the modern sense, but it was definitely considered as reformative during those days as it was the first law in which prisoner was accorded the status of a ‘subject’. The Prisons Act provides a room to the states with considerable authority to pass laws, rules and regulations regarding the details of prison life. In most of the states these enactments are compiled in “Prison Manuals” or “Jail Manuals” in the form of both statutory and non-statutory rules. Some of the many aspects of prison life which are addressed by the Prison Manuals include diet, health care, physical and sanitary requirements, daily routine, separation of prisoners, employment, prison discipline, punishment for committing prison offences, interviews and other communications with outsiders and rules regarding parole, furlough, remission of sentence and release.

There is no point in evaluating or criticizing an enactment of 1894 with a perspective of future generations, except pointing out the legislative lethargy in not replacing it or amending it to as per the
present needs. The provisions in this Act provide for various punishments like solitary confinement, whipping etc for the violation of prison laws in the prison. The later central Act\(^1\) abolished the whipping punishment but it is better if the legislature takes interest in consolidating all the prison laws and to enact a new, comprehensive, uniform law to suit the present era of rights of prisoners. In chapter IX section 45 of the Act prescribes 16 kinds of punishments on the prisoners who violates the prison laws, knowingly or unknowingly without conducting any trial.

Under section 45 of The Prisons Act, 1894 declared the following acts are to be prison offences when committed by a prisoner in the prison and punishments were prescribed under section 46 of the Act, those are,

(1) Such willful disobedience to any regulation of the prison as shall have been declared by rules made under Section 59 to be a prison offence.

(2) Any assault or use of criminal force.

(3) The use of insulting of threatening language.

\(^{1}\) Central Act No. 44 of 1955
(4) Immoral or indecent or disorderly behavior.

(5) Willfully disabling himself from labour.

(6) Contumaciously refusing to work.

(7) Filing, cutting, altering or removing handcuffs, fetters or bar without due authority.

(8) Willful idleness or negligence at work by any prisoner sentenced to rigorous imprisonment.

(9) Willful mismanagement of work by any prisoner sentenced to rigorous imprisonment.

(10) Willful damage to prison property.

(11) Tampering with or defacing history tickets, records or documents.

(12) Receiving, possessing or transferring any prohibited article.

(13) Feigning illness.

(14) Willfully bringing a false accusation against any officer or prisoner.

(15) Omitting or refusing to report, as soon as it comes to his knowledge, the occurrence of any fire, any plot or conspiracy, any escape, attempt or preparation to escape, and any attack or preparation for attack upon any prisoner or prison official. and
16. Conspiring to escape, or to assist in escaping, or to commit any other of the offences aforesaid.

46. Punishment of such offences:—

The Superintendent may examine any person touching any such offence, and determine thereupon, and punish such offence by,

(1) a formal warning;

Explanation: A formal warning shall mean a warning personally addressed to a prisoner by the Superintendent and recorded in the punishment book and on the prisoner’s history tickets;

(2) Change of labour to some more irksome or severe form for such period as may be prescribed by rules made by the State Government.

(3) Hard labour for a period not exceeding seven days in the case of convicted criminal prisoners not sentenced to rigorous imprisonment.

(4) Such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rules made by the State Government.
(5) The substitution of gunny or other coarse fabric for clothing of other material, not being woolen, for a period which shall not exceed three months.

(6) Imposition of handcuffs of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the State Government.

(7) Imposition of fetters of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the State Government.

(8) separate confinement for any period not exceeding three months;

**Explanation:** Separate confinement means such confinement with or without labour as secludes a prisoner from communication with, but not from sight of, other prisoners, and allows him not less than one hour’s exercise per diem and to have his meals in association with one or more other prisoners.

(9) Penal diet- that is, restriction of diet in such manner and subject to such conditions regarding labour as may be prescribed by the State Government
Provided that such restriction of diet shall in no case be applied to a prisoner for more than ninety six consecutive hours, and shall not be repeated except for a fresh offence nor until after an interval of one week;

(10) Cellular confinement for any period not exceeding fourteen days; provided that after each period of cellular confinement an interval of not less duration than such period must elapse before prisoner is again sentenced to cellular or solitary confinement.

**Explanation:** Cellular confinement means such confinement with or without labour as entirely secludes a prisoner from communication with, but not from sight of, other prisoners;

(11) Penal diet as defined in clause (9) combined with (Cellular) confinement.

(12) Whipping, provided that the number of stripes shall not exceed thirty.
Provided that nothing in this section shall render any female or civil prisoner liable to be imprisonment of any form of handcuffs or fetters or whipping.

(b) Prisoners Act 1900:

This Act is a simple enactment, enacted by the than British government for the entire India, as it was enacted by the central government, it extends to the entire India except the state of Jammu and Kashmir, dealing with the procedures for keeping a sentenced person in prison custody for a specific period or life by the prison authorities. The Act lays down the procedure for keeping prisoners in prisons on the basis of warrant issued by competent trial courts or appellate courts like District courts, High Courts and Supreme court, the places are to be notified by the appropriate state Governments or central Government where the prisoner is sentenced to imprisonment for life are to be kept and similar procedures contained. Though the Act originally contains 52 sections, now it has only 33 sections, after the repeal of sections 34 to 52 dealing with the attendance of prisoners in courts, by the central Act No. 32 of 1955.

(c) The Transfer of Prisoners Act 1950:
This Act is only an enabling Act providing procedure for the transfer of prisoners from one State to another State upon the orders of the Court or Governments concerned. The Act has only 3 Sections.

(d) Prisoners (Attendance in Courts) Act, 1955:

This is yet another enabling Act simply providing for the production of prisoners in courts for the purpose of deposing evidence or for appearance during trial and such other matters. This Act contains only 10 sections dealing with the matters aforesaid.

(e) Women Prisoners – Special Rules:

A. Separation of Women Prisoners.

1. Women prisoners must be rigidly secluded from men prisoners. In a prison containing men and women prisoners, women shall be imprisoned in separate buildings in such a manner as to completely prevent any interaction with male Prisoners. (ACS, Sect. II, Part.1 (I), Prisons Act, Sect.27 (1)).

2. Habitual women prisoners, prostitutes, and procuresses must be separated from the other women prisoners. Also, young women

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prisoners must be separated from older women prisoners (Government Resolution, Home Department, No RJM 1063 (XL VIII) XVI, dated 18th January 1971 (hereinafter “WR” Sect.II.3 (i)).

3. When women leave the women’s section of the prison they should be accompanied by a matron. If not, then at-least by two male guards (Maharashtra Prisons (Discipline) Rules, 1963 (hereinafter “MPDR”), Sect. 1.5(i)).

4. No male prisoner can enter a women’s section of the prison, unless to do necessary conservancy work and supervised by a jail guard in the presence of the matron (MPDR, Sect.1.5 (iii)).

5. Any male officer must be accompanied by a women jailor or the matron, if they enter a women’s section of the prison (MPDR, Sect.I.6).

B. Extra Facilities to Women Prisoners:

1. Every women prisoner shall be supplied with 28 grams per week of shikakai or soap for hair washing at Government cost (WR, Sect.II.5 (i). Women prisoners need not cut their hair without their consent unless it is deemed “indispensable” by the suggestions of the female
Medical Officer on grounds of health or cleanliness (MPDR, Sect. I.16).

2. Women prisoner may retain her glass or conch bangles. Non-glass bangles, if obligatory by the religious customs of a prisoner, must be supplied whenever necessary at Government cost (WR, Sect. II.5 (ii)).

3. For each and every women prisoner if needed Kumkum powder shall be supplied at Government cost to those women who desire it use as per her religious needs (WR, Sect. II.5 (iii)).

4. Women prisoners shall be allowed to wear nose rings, ear rings, and other religious ornaments like manslaughters (WR, Sect. II.5 (IV)).

5. Women prisoners shall be provided with suitable clothes during the menstruation periods. Any woman may buy sanitary napkins at her own cost, if any women prisoner financially not in a position to purchase sanitary napkins they must be supplied to them at the cost of the government (WR, Sect. II.5 (v)).

C. Women prisoners shall be examined by the female Medical Officer in the presence of a female Jailor or Matron. Pregnant women must be
sent to the hospital for examinations, special medical and dietary care must be given to those pregnant women prisoners (WR.Sect.II.6).

D. If any female undertrial prisoner is subjected to interrogation by the order of the court, she must be interrogated by the women police only in the presence of higher female police officers or constables. Female suspects shall not be kept in a police lock-up in which male suspects are detained, every female suspect shall be guarded by the women constables Sheela Barse Vs. State of Maharashtra.

E. The fact that if a child is born to the female prisoner during the course of imprisonment it shall not be recorded in the birth registrar in prison. Naming rites and such other religious rites of that occasion, as far as possible, shall be allowed in prison (WR, Sectt.II.8).

F. Women prisoners who are unable to have alternative care for their young breast feeding children or who have children, while in prison, shall be allowed to keep the child with them until the child completes the age of four years, to both the child and mother necessary dietary medical facilities shall be provided specially. (WR Sect.II.9).

G. Women with children must be given if needed, 58 grams per month per child of carbolic soap and 28 grams per child per week of coconut oil (WR. Sect.II.10).

H. Women prisoners who are fit and able to work in the prison, as far as possible in accordance with their physical and mental conditions, shall be employed on work that will be useful to them to get their livelihood after release. Women prisoners cannot be employed heard labour and outside the prison, they must be provided remuneration equal to that of male prisoners (WR, Sect.II.12).

I. Literacy classes must be conducted for illiterate women prisoners at government cost (WR, Sect.II.13).

J. At least one month before a women prisoner is going to release, a letter must be sent to her parents or relatives and ask them to be present at the prison on that day release to take her home (WR.Sect.II.16(i)).

K. Women prisoners, on release must be provided with conveyance or bus fare, if the distance they must travel is greater than two miles (WR, Sect.II.16 (ii)).
L. Women prisoners, as far as possible, if they so desire, must be provided with lodging in a shelter home (or a similar institution) for women (WR,Sect.II.16(iv)).

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