

UNIT 1 PRISONS ACT

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1.1 Introduction

The prisons as an institution of punishment have been in existence since the beginning of the society. The basic object/ philosophy behind the prison has always revolved around the penal theory followed at a particular time. Till the 18th and 19th century the prisons were seen as an instrument to fulfill the objectives of deterrent penal policy. As the penal theory of punishment changed from deterrent, to rehabilitative than the prisons were structured to further the ends of the rehabilitative penal philosophy. Then came the concept of retribution and now the emphasis is on the restorative concept of punishment. The brief account of the theories of punishment is necessary for the understanding of the role of prison institution.

1.2 Objectives

The objective of this study is to appraise the readers regarding the prison legislation governing the Prison Administration and the Prisoners. After going through this unit the readers would be able to know; about the legislations which governs prisons in India; the present scenario concerning the prison legislation; the details of the Prisons Act of 1894; the critical analysis of the Prisons Act will further enlighten the readers about the inherent weaknesses and lacunas in the Act. The brief account

of theories of punishment is also given which will give readers, an insight about the shift in these theories of punishment.

1.3 Prisons- an Overview of Legislations

After the Indian Independence, the Constitution of India place “Jail” along with Police and law and order in the State list of the Seventh Schedule. As a result of this, the Union Government had literally no responsibility of modernizing prisons and their administration. The prison as a subject of legislation is placed under Entry 4 in List-II [state list] of the seventh Schedule of the Constitution of India. Therefore, being a State subject the law governing the same also falls within the domain of State government. Hence, the prison legislations of different states vary in their content.

Broadly speaking there is four legislations i.e., The Prison Act 1894, the Prisoners Act 1900, the Transfer of Prisoners Act, 1950, the Prisoners (Attendance in Courts) Act 1955, the Identification of Prisoners Act 1920 are the main legislation that governs the administration of prisons in India. Apart from the aforesaid legislations the day-to-day administration of prisons in all the states and union territories of India are governed by the respective Jail Manuals containing the Rules, Regulations, and Orders.

Keeping in view that the laws are now archaic and that the Prison Act of 1894 was drafted during the period of British rule experts and committees have been demanding the enactment of a new law. The All India Committee on Jail Reforms [1980 - 83] more popularly known as the Mulla Committee in fact drafted a model prison bill on the lines of the standards recommended by the United Nations Standard Minimum Rules for Treatment of Prisoners, 1955. Then the National Human Rights Commission of India proposed two model prison bills for consideration by state governments and re-enactment of the prison legislations in their states in accordance with the standards prescribed by the Commission. These were the Indian Prison Bill of 1996 and The Prisons [Administration and Treatment of Prisoners] Bill of 1998 respectively. It is to be mentioned that a few states namely; Delhi, Jammu & Kashmir and Rajasthan had come out with new bills/ legislations. The Ministry of Home Affairs which is responsible for administration of prisons in India, then circulated the draft bill of 1998 to all the state governments for consideration. At present, the prisons department of the Bureau of Police Research & Development [BPR&D] under the Ministry of Home Affairs is engaged in drafting a Model National Prison Manual relying on Article 252 of the Constitution.

Please answer the following Self Assessment Question.

Self Assessment Question 1

What are the legislations prevailing to administer prisons in India?
Which is the main prison legislation?

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1.4 THEORIES OF PUNISHMENT

Deterrent Theory

The basic objective of punishment is deterrent and the aim is to make the evil-doer an example and warning to other perspective all who are like minded with him. According to this theory, offences are result of a conflict between the interests of the wrong-doer and those of society. This theory has been criticed on the ground that it is ineffective in cases where crime is committed under severe mental stress. In such cases to punish the wrongdoer to deter him is meaningless.

Preventive theory-

As per this theory punishment is, preventive or disabling. Its primary and general purpose being to deter by fear, its secondary and special purpose is wherever possible and expedient, to prevent a repetition by wrongdoer by the disablement of the offender. The aim of this theory is not to repeat the crime the crime but this theory takes no note of criminal. It prefers to disable the wrong-doer from committing any more crime but it ignores one of the basic object of the criminal law, i.e. to reform the criminal.

Reformatory theory

This theory is based on the premises that a crime is committed as a result of the conflict between the character and the motive of the criminal. One may commit a crime either because the temptation of the motive is stronger or because the restrain imposed by character is weaker.

The deterrent theory by showing that crime never pays separate the motive., while the reformatory theory seems to strengthen the character of the man so that he may not become victim of his own temptation. This theory would consider punishment to be curative or to perform the function of medicine. The ultimate aim of reformists is to try to bring

about a change in the personality and character of the offender, so as to make him a useful member of society.

Retributive theory

The retributive theory of punishment provides that retributive punishment, in the only sense in which it is admissible in any rational system of administering justice, is that which serves for the satisfaction of that emotion of retributive indignation, which in all healthy communities is strived up by injustice. This was formerly based on theory of revenge.-“tooth for tooth” and “eye for eye”. A retributive theory sees the primary justification in the fact that an offence has been committed which deserves the punishment of the offender.

Restorative Justice

The theory restorative justice is of recent origin and it takes into account the need of both i.e., the prisoners and the offender. The Community Service Order and the Victim Offender Mediation are the recent example of this theory.

The shift in the theories of punishment is the reflection of the change in the value system of the society and the attitude towards the offenders. The prisons as an institution are also to be administered as per the value system of the society, which get reflected through the legislation governing prison.

Please answer the following Self Assessment Question.

Self Assessment Question 2

What are the theories of punishment? Explain the penal theory presently governing the criminal justice system?

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1.5 THE PRISON ACT OF 1894

An imprisonment is the usual punishment for offences. The problem of housing hundred of criminals in one institution requires a code of rules and regulations for the safety and efficiency in running the prison

institution. The Prisons Act of 1894 was one such an attempt made by the British government prior to independence. The Act contains provision regarding the prison, prisoner, prison staff, medical officers, superintendent of prison, etc. The subsequent paras will be dealing with the details of the provisions contained in the Act.

Chapter-I of the Prisons Act deal with the definitions of prison, criminal prisoners, convicted prisoners, civil prisoners, system of remission, etc. The chapter II of the Act deals with the accommodation for the prisoners however, it nowhere lays down the minimum criterion on the basis of which accommodation will be provided. It further specifies that the Director of Prisons who shall have general control and superintendent of the prison and its staff, other officers provided in the Act are Superintendent, A Medical Officer, a Medical Subordinate and a Jailer. Instead of providing powers and function for the aforesaid officers it has stated that the State government shall make the rules in that regard. The accommodation of the prisoners is another area provided by the Act, in the event of necessity i.e., overcrowding and spread of epidemic disease, and the State government is further empowered to make rule to that effect.

Superintendent of Jail

The Chapter III provides for the control and duties of officers of prisons. The subordinate staff has to act under the directions of the Superintendent and the Jailer. The Act provides that the officers of a prison shall not sell or let, or derive any benefits from selling or letting, any article to any prisoner or have any money or other business dealings directly or indirectly with any prisoner. All the matters in the prison relating to discipline, labour, expenditure, punishment and control are to be managed by the superintendent. The superintendent is duty bound to obey the orders of the Director of Prisons and the District Magistrate. The following records are required to be kept under the supervision of the superintendent, a register of prisoners admitted; a book showing when each prisoner is to be released; a punishment-book for the entry of the punishments inflicted on prisoners for prison-offences; a visitors' book for the entry of any observations made by the visitors touching any matters connected with the administration of the prison; and a record of the money and other articles taken from prisoners.

Medical Facilities

The Act envisages that in every prison a hospital or proper place for the reception of sick prisoners shall be provided. The Act provides that the Medical Officer shall have charge of the sanitary administration of the prison, and shall perform such duties as may be prescribed by rules made by the State government. The Medical Officer is required to report to

the Superintendent together with his observation, the cases of prisoners which he has reason to believe that the mind of such prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected. This report, with the orders of the Superintendent thereupon, is sent to the Director of Prisons for information. In the event of the death of any prisoner, the Medical Officer is required to record in a register the following particulars, namely: the day on which the deceased first complained of illness or was observed by the prison officials to be ill, the labour, if any, on which he was engaged on that day, the scale of his diet on that day, the day on which he was admitted to hospital, the day on which the Medical Officer was first informed of the illness, the nature of the disease, when the deceased was last seen before his death by the Medical Officer or Medical Subordinate, when the prisoner died, and in cases where a post-mortem examination is made an account of the appearances after death and any other special remarks that appear to the Medical Officer to be required. Any prisoner desirous to see the health officer has to report to the Jailer who will call the attention of the medical officer without delay. The record of health condition of the prisoner has to be entered into the history ticket of the prisoner.

The aforesaid discussion reveals that the main emphasis is on maintaining paper work in rather than providing effective medical treatment.

Jailer

The Jailer is duty bound to reside in the prison and not to leave even in the night, he is also required to give immediate notice in case of death of any prisoner to the Superintendent and the Medical Subordinate. The Jailer is responsible for the safe custody of the records, documents and other articles taken from prisoners. The Act instead of providing details provisions for the powers and duties of the Jailer, Deputy Jailer or Assistant Jailer it has provided that the State government is competent to frame rule in that behalf.

Treatment of Prisoners in the Prison

The chapter IV to IX of the Act contains provisions for the admission, removal, discharge, discipline, food, clothing, bedding, employment, health and right to visit of prisoners. The prisoners are examined and searched on the admission. The Medical Officer makes a record of the state of the prisoner's health, and the class of labour he is fit for if sentenced to rigorous imprisonment, and any observations which the Medical Officer thinks fit to add. The provisions of the Act also provides for the separation of prisoners. The requisitions of this Act with respect

to the separation of prisoners are as follows; in a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoners; in a prison where male prisoners under the age of twenty-one are confined, means shall be provided for separating them altogether from the other prisoners and for separating those who have arrived at the age of puberty from those who have not; unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners; and civil prisoners shall be kept apart from criminal prisoners. The act further envisage for the confinement of convicted criminal prisoners in association or individually in cells or partly in one way and partly in the other. The Act puts restriction on the solitary confinement.

The Act provides that a civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessaries, but subject to examination and to the rules provided by the Director of Prisons. The provisions of the Act further put restriction on transfer of food, clothing and other necessaries between certain prisoners i.e., civil or unconvicted criminal prisoner. It nowhere talks about the convicted prisoners. The Act says that if the civil prisoner and unconvicted criminal prisoner are unable to provide themselves with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary. The civil prisoners are entitled to work and follow any trade or profession. The civil prisoners finding their own implements, and not maintained at the expense of the prison shall be allowed to receive the whole of their earnings; but the earnings of such as are furnished with implements or are maintained at the expense of the prison shall be subject to a deduction to be determined by the Superintendent, for the use of implements and the cost of maintenance. The Act further provides that a criminal prisoners can not be subjected to more labour except nine hours in a day. The safeguards are provided in the Act for the protection of the health of the labouring prisoners by way of measurement of the weight of the prisoners by the medical officer. If the Medical Officer is of opinion that the health of any prisoner suffers from employment on any kind or class of labour, such prisoner shall not be employed on that labour but shall be placed on such other kind or class of labour as the Medical Officer may consider suited for him. The medical officer is the deciding authority to change the labour of the prisoner, however, the power to decide the change of labour of the prisoner should be vested with other officer of the prison and the report of the Medical Officer regarding the health should be taken into account. The Act makes provisions for the employment of all the prisoners sentenced to simple imprisonment.

Visiting Rights of the Prisoners

The Act takes care of the visiting rights of the prisoners, the Act provides for the visit of the persons with whom the civil and unconvicted criminal prisoners desire to communicate. It further provides that the care be taken in the interest of justice. The Act does not provide such provisions for the other category of prisoners.

As a matter of precaution the Act also provide that the Jailer may demand the name and address of any visitor to a prisoner, and, when the Jailer has any ground for suspicion, may search any visitor, or cause him to be searched but the search shall not be made in the presence of any prisoner or of another visitor. If the visitor refuses to permit himself to be searched the jailer may deny him admission.

Rights to Meet Legal Advisor

The provisions of the Act provide that the undertrial prisoners may see their duly qualified legal advisers without the presence of any other person. The Act does not visualize similar provisions for the other prisoners.

Offences in Relation to Prisons

The Act provides for imprisonment of six month or to fine of two hundred rupees for certain categories of offences the same are discussed below:
Prisoner who Supplies prohibited article in or outside the prison.

Every officer of a prison who knowingly allows the introduction, removal and possession of prohibited article by any prisoner, or to be supplied to any prisoner outside the limits of a prison.

Whoever, contrary to any such rules, communicates or attempts to communicate with any prisoner,

Whoever abets any offence made punishable by this section.

The Act further empowers the arrest of persons and refuses on demand of such officer to state his name and residence, or gives a name or residence which such officer knows, or has reason to believe, to be false.

The following acts are declared to be prison-offences when committed by a prisoner:-

- (1) such wilful 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 or threatening language;
- (4) immoral or indecent or disorderly behaviour;
- (5) wilfully disabling himself from labour;

- (6) contumaciously refusing to work;
- (7) filing, cutting, altering or removing handcuffs, fetters or bars without due authority;
- (8) wilful idleness or negligence at work by any prisoner sentenced to rigorous imprisonment.
- (9) wilful mismanagement of work by any prisoner sentenced to rigorous imprisonment;
- (10) wilful 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) wilfully 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.

The Superintendent is empowered to examine any persons who have committed such offences and award punishment for the same. The punishment provided for the aforesaid offences are: a formal warning personally addressed to a prisoner by the Superintendent and recorded in the punishment book and on the prisoner's history-ticket; change of labour to some more irksome or severe form for such period as may be prescribed by rules made by the State Government; hard labour for a period not exceeding seven days in the case of convicted criminal prisoners not sentenced to rigorous imprisonment; 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; the substitution of gunny or other coarse fabric for clothing of other material, not being woollen, for a period which shall not exceed three months; 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; 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; separate confinement for any period not exceeding three months; 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; 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 the prisoner is

again sentenced to cellular or solitary confinement: the cellular confinement means such confinement with or without labour as entirely secludes a prisoner from communication with, but not from sight of, other prisoners; penal diet as discussed above combined with cellular confinement; whipping, provided that the number of stripes shall not exceed thirty, the female and civil prisoners are exception to this rule i.e., they are not liable for imposition of any form of handcuffs or fetters, or to whipping.

The Act provides that any two of the punishments enumerated above may be awarded for any such offence in combination, subject to the following exceptions, namely: formal warning shall not be combined with any other punishment except loss of privileges; penal diet shall not be combined with change of labour nor shall any additional period of penal diet awarded singly be combined with any period of penal diet awarded in combination with cellular confinement; cellular confinement shall not be combined with separate confinement, so as to prolong the total period of seclusion to which the prisoner shall be liable; whipping shall not be combined with any other form of punishment except cellular and separate confinement and loss of privilege admissible under the remission system; no punishment will be combined with any other punishment in contravention of rules made by the State Government. And no punishment shall be awarded for any such offence so as to combine, with the punishment awarded for any other such offence, two of the punishments which may not be awarded in combination for any such offence.

The opinion of medical officer has to be obtained in case the punishment is penal diet. If he considers the prisoner unfit to undergo the punishment, he shall in like manner record his opinion in writing and shall state whether the prisoner is absolutely unfit for punishment of the kind awarded, or whether he considers any modification necessary. In the latter case he shall state what extent of punishment he thinks the prisoner can undergo without injury to his health.

The every punishment inflicted upon the prisoner has to be entered into punishment book.

If any prisoner is guilty of any offence against prison-discipline which, by reason of his having frequently committed such offences, in the opinion of the Superintendent, is not adequately punishable by any punishment which he has power under this Act to award than the Superintendent may forward such prisoner to the Court of the District Magistrate or of any Magistrate of the first class together with a statement of the circumstances, and such Magistrate shall thereupon inquire into and try the charge so brought against the prisoner, and, upon conviction may sentence him to imprisonment which may extend to one year, such term to be in addition to any term for which such prisoner was undergoing imprisonment when he

committed such offence, or may sentence him to any of the punishments enumerated above.

Confinement of Prisoners in irons

Having regard to the state of the prison or the character of the prisoners the Superintendent may, subject to such rules and instructions as may be laid down by the Director of Prisons with the sanction of the State Government, confine them in irons. The Act further provides that the prisoners who are under sentence of imprisonment for life may, subject to any rules made by the State government, be confined in fetters for the first three months after admission to prison. These fetters can be retained on any such prisoner for more than three months, with the sanction of the Director of Prisons. However, the Act does not favour putting of irons and mechanical restraint in routine.

Rule Making Power of the State Government

Lastly the Act empowers the State government to make rules with respect to the following matters. To define the act which shall constitute prison-offences; determining the classification of prison-offences into serious and minor offences; fixing the punishments admissible under this Act which shall be awardable for commission of prison-offences; for the award of marks and the shortening of sentences; regulating the use of arms against any prisoner or body of prisoners in the case of an outbreak or attempt to escape; defining the circumstances and regulating the conditions under which prisoners in danger of death may be released; for the classification of prisons, and description and construction of wards, cells and other places of detention; as to the food, bedding and clothing of criminal prisoners and of civil prisoners maintained otherwise than at their own cost; for the employment, instruction and control of convicts within or without prisons; for defining articles the introduction or removal of which into or out of prisons without due authority is prohibited; for classifying and prescribing the forms of labour and regulating the periods of rest from labour; for regulating the disposal of the proceeds of the employment of prisoners; for regulating the confinement in fetters of prisoners sentenced to imprisonment for life; for the classification and the separation of prisoners; for regulating the confinement of convicted criminal prisoners under section 28; for the preparation and maintenance of history-tickets; for the selection and appointment of prisoners as officers of prisons; for rewards for good conduct; for regulating the transfer of prisoners whose term of [imprisonment for life or shorter] or imprisonment is about to expire; subject, however, to the consent of the State government to which a prisoner is to be transferred; for the treatment, transfer and disposal of criminal lunatics or recovered criminal lunatics confined in prisons; for

regulating the transmission of appeals and petitions from prisoners and their communications with their friends; for the appointment and guidance of visitors of prisons; for extending any or all of the provisions of this Act and to the officers employed, and the prisoners confined, therein; in regard to the admission, custody, employment, dieting, treatment and release of prisoners; and generally for carrying into effect the purposes of this Act.

Please answer the following Self Assessment Question.

Self Assessment Question 3

What are the salient features of the Prisons Act 1894?

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1.6 Critical Analysis of the Prison Act

1. The prisons Act an antique legislation passed by the colonizers to further the ends of their regime and thus included provisions more concerning maintenance of prison discipline. The welfare aspect of the prisoners is missing in the Act. However, the detailed emphasis is; on the prison offences committed by the prisoners while remaining in the prison; the punishment for the prison offences to be inflicted by the superintendent of the Jail and if he cannot punish the prisoners adequately than the cases can be transferred to the Magistrate having jurisdiction for the proper punishment. Apart from the offences relating to prison discipline the Act also provides for the offences by prison subordinates.

2. The Act provides for the punishment of whipping and the manner in which the same to be inflicted. These provisions have lost relevancy in today's scenario when the more stress is placed on the protection of human rights of the prisoners.

3. The provisions of the Act mandatory provide putting iron fetters for the first three months to the prisoners who are life convicts. The rule for putting iron fetters has been challenged in the court of law and now there is absolute bar on putting iron fetters except in the certain category of offences.

4. The Act does not envisage special provisions for the female prisoners except the fact that the search and examination of female prisoner is to be carried out by the matron in the jail and they be kept in the separate part of the building of the prison.

5. The Act contains provisions, which puts restriction on the prisons in one form or the others.

After the examination of the Prison Act of 1894 it will be desirable to know in brief the about the other Acts concerning the prison and the prisoners.

Please answer the following Self Assessment Question.

Self Assessment Question 4

Give brief account of the inherent weaknesses in the Prison Act of 1894?

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1.7 THE IDENTIFICATION OF PRISONERS ACT 1920

The Acts mainly deals with taking measurement and photograph of certain categories prisoners i.e., convicted, non-convicted, habitual offenders, etc. If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the Code of Criminal Procedure it is expedient to direct any person to allow his measurements or photograph to be taken, he may make an order to the effect. The person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer. The further provides for the destruction of photographs and records of measurements on acquittal. If any person who under this Act is required to allow his measurements or photograph to be taken resists or refuses to allow the taking of the same, it shall be lawful for the concerned authorities to use all means necessary to secure the taking of measurement and photograph. The Law Commission of India in its 87th Report exclusively dealt with the Identification of Prisoners Act. The Law Commission was of the view that this Act gives importance to three species of evidence, finger prints, measurement and photographs. The object of this Act is to facilitate the identification of criminals or suspected criminals. The Act

permits the taking of certain coercive measures in order to facilitate the identification of convicts, persons arrested in connection with certain offences and persons ordered to give security in certain cases.

Please answer the following Self Assessment Question.

Self Assessment Question 5

What is the objective of the Identification of Prisoners Act?

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1.8 THE PRISONERS ACT 1900

The Prisoners Act of 1900 is concerned with the consolidation of the law relating to the prisoners confined by the orders of the court. The prisoners Act provides for the power for officers incharge of prisons to give effect to sentences of certain courts, removal of prisoners Lunatic prisoners and how to be dealt with them. It also deals with the discharge of prisoners in the cases where the High Court, may, have recommended to the President for the grant of a free pardon to any prisoner. In such cases the Prisoners Act envisages to permit the prisoner, to be at liberty on his own recognizance.

Self Assessment Question 6

What is the objective of the Prisoners Act 1900?

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1.9 THE PRISONERS (ATTENDANCE IN COURTS) ACT 1955

This Act provide for the attendance in Courts of persons confined in prisons for Obtaining their evidence or for answering criminal charge. It deals with requiring the attendance of prisoners and obtaining their

evidence. If the Courts including High Courts has require the evidence of any person it can pass an order to that effect and also direct to the officer in charge of the prison.

The Act further provides for the issue of Commission for recording the evidence of the person confined to the prison which is situated outside the State in which the evidence is required to be given.

1.10 SUMMARY

1.11 TERMINAL QUESTIONS

1. Whether the Prison Act of 1894 can be said to be welfare oriented? If no, please give the reasons?
2. Please define the objectives of the Identification of Prisoners Act 1920, the prisoners act 1900 and the prisoners (attendance in courts) act 1955?

1.12 REFERENCES AND SUGGESTED READING

1. All India Committee on Jail Reforms [1980 - 83].
2. The Prison Act 1894.
3. The Prisoners Act 1900.
4. The Transfer of Prisoners Act, 1950.
5. The Prisoners (Attendance in Courts) Act 1955.
6. The Identification of Prisoners Act 1920.