



## Prison in India: an Overview

### KEYWORDS

Commission, Health, Legal Aid, Prisoners, Prison Administration and Treatment.

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### ABSTRACT

*The management and administration of prisons falls exclusively in the domain of the State governments, and is governed by the Prisons Act, 1894 and the Prison manuals of the respective state governments. The prison population has been steadily increasing during the last decade. A majority of the prison population is male (nearly 96%) and approximately two-thirds are pre-trial detainees (under trials). The United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955 declares that there shall be no 'discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The present paper provides a broad overview of the international obligations and guidelines, with respect to the care of prisoners, and summarise the various steps taken towards prison reform in India. It also deals with the general problems of Indian prisons.*

### Introduction:

Prisons in India, and their administration, are a state subject covered by item 4 under the State List in the Seventh Schedule of the Constitution of India. The management and administration of prisons falls exclusively in the domain of the State governments, and is governed by the Prisons Act, 1894 and the Prison manuals of the respective state governments. Thus, states have the primary role, responsibility and authority to change the current prison laws, rules and regulations. The Central Government provides assistance to the states to improve security in prisons, for the repair and renovation of old prisons, medical facilities, development of borstal schools, facilities to women offenders, vocational training, modernization of prison industries, training to prison personnel, and for the creation of high security enclosures. The Supreme Court of India, in its judgments on various aspects of prison administration, has laid down 3 broad principles regarding imprisonment and custody. Firstly, a person in prison does not become a non-person. Secondly, a person in prison is entitled to all human rights within the limitations of imprisonment. Lastly, there is no justification for aggravating the suffering already inherent in the process of incarceration.

According to the UN Global Report on Crime and Justice 1999, the rate of imprisonment in our country is very low, i.e. 25 prisoners per one lakh of population, in comparison to Australia (981 prisoners), England (125 prisoners), USA (616 prisoners) and Russia (690 prisoners) per one lakh population. A large chunk of prison population is dominated by first offenders (around 90%) The rate of offenders and recidivists in prison population of Indian jails is 9:1 while in the UK it is 12:1, which is quite revealing and alarming. Despite the relatively lower populations in prison, the problems are numerous. As of 2007, the prison population was 3,76,396, as against an official capacity of 277,304, (representing an occupancy rate of 135.7%) distributed across 1276 establishments throughout the country. The prison population has been steadily increasing during the last decade. A majority of the prison population is male (nearly 96%) and approximately two-thirds are pre-trial detainees (under trials)

### International Obligations and Guidelines

The International Covenant on Civil and Political Rights (ICCPR) remains the core international treaty on the protection of the rights of prisoners. India ratified the Covenant in 1979 and is bound to incorporate its provisions into domestic law and state practice. The International Covenant on Economic, Social and Cultural Rights (ICESR) states that prisoners have a right to the highest attainable standard of physical and mental health. Apart from civil and political rights, the so called second generation economic and social human rights as set down in the ICESR also apply to the prisoners. The earlier United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955 consists of five parts and ninety-five rules. Part one provides rules for general applications. It declares that there shall be no 'discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. At the same time there is a strong need for respecting the religious belief and moral precepts of the group to which a prisoner belongs. The standard rules give due consideration to the separation of the different categories of prisoners. It indicates that men and women be detained in separate institutions. The under-trial prisoners are to be kept separate from convicted prisoners. Further, it advocates complete separation between the prisoners detained under civil law and criminal offences. The UN standard Minimum Rule also made it mandatory to provide separate residence for young and child prisoners from the adult prisoners. Subsequent UN directives have been the Basic Principles for the Treatment of Prisoners (United Nations 1990) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (United Nations 1988). On the issue of prison offences and punishment, the standard minimum rules are very clear. The rules state that „no prisoner shall be punished unless he or she has been informed of the offences alleged against him/her and given a proper opportunity of presenting his/her defence“. It recommends that corporal punishment, by placing in a dark cell and all „cruel, in-human or degrading punishments shall be completely prohibited as a mode of punishment and disciplinary action“ in the jails.

### Prison Reforms in India

The modern prison in India originated with the Minute by TB Macaulay in 1835. A committee namely Prison Discipline Committee, was appointed, which submitted its report on 1838. The committee recommended increased rigorousness of treatment while rejecting all humanitarian needs and reforms for the prisoners. Following the recommendations of the Macaulay Committee between 1836-1838, Central Prisons were constructed from 1846. The contemporary Prison administration in India is thus a legacy of British rule. It is based on the notion that the best criminal code can be of little use to a community unless there is good machinery for the infliction of punishments. In 1864, the Second Commission of Inquiry into Jail Management and Discipline made similar recommendations as the 1836 Committee. In addition, this Commission made some specific suggestions regarding accommodation for prisoners, improvement in diet, clothing, bedding and medical care. In 1877, a Conference of Experts met to inquire into prison administration. The conference proposed the enactment of a prison law and a draft bill was prepared. In 1888, the Fourth Jail Commission was appointed. On the basis of its recommendation, a consolidated prison bill was formulated. Provisions regarding the jail offences and punishment were specially examined by a conference of experts on Jail Management. In 1894, the draft bill became law with the assent of the Governor General of India.

### Prisons Act 1894

It is the Prisons Act, 1894, on the basis of which the present jail management and administration operates in India. This Act has hardly undergone any substantial change. However, the process of review of the prison problems in India continued even after this. In the report of the Indian Jail Committee 1919-20, for the first time in the history of prisons, 'reformation and rehabilitation' of offenders were identified as the objectives of the prison administrator. Several committees and commissions appointed by both central and state governments after Independence have emphasised humanisation of the conditions in the prisons. The need for completely overhauling and consolidating the laws relating to prison has been constantly highlighted.

The Government of India Act 1935 resulted in the transfer of the subject of jails from the centre list to the control of provincial governments and hence further reduced the possibility of uniform implementation of a prison policy at the national level. State governments thus have their own rules for the day to day administration of prisons, upkeep and maintenance of prisoners, and prescribing procedures. In 1951, the Government of India invited the United Nations expert on correctional work, Dr. W.C. Reckless, to undertake a study on prison administration and to suggest policy reform. His report titled 'Jail Administration in India' made a plea for transforming jails into reformation centres. He also recommended the revision of outdated jail manuals. In 1952, the Eighth Conference of the Inspector General's of Prisons also supported the recommendations of Dr. Reckless regarding prison reform. Accordingly, the Government of India appointed the All India Jail Manual Committee in 1957 to prepare a model prison manual. The committee submitted its report in 1960. The report made forceful pleas for formulating a uniform policy and latest methods relating to jail administration, probation, after-care, juvenile and remand homes, certified and reformatory school, borstals and protective homes, suppression of immoral traffic etc. The report also suggested amendments in the Prison Act 1894 to provide a legal base for correctional work.

### The Model Prison Manual

The Committee prepared the Model Prison Manual (MPM) and presented it to the Government of India in 1960 for implementation. The MPM 1960 is the guiding principle on the basis of which the present Indian prison management is governed. On the lines of the Model Prison Manual, the Ministry of Home Affairs, Government of India, in 1972, appointed a working group on prisons. It brought out in its report the need for a national policy on prisons. It also made an important recommendation with regard to the classification and treatment of offenders and laid down principles.

### The Mulla Committee

In 1980, the Government of India set-up a Committee on Jail Reform, under the chairmanship of Justice A. N. Mulla. The basic objective of the Committee was to review the laws, rules and regulations keeping in view the overall objective of protecting society and rehabilitating offenders. The Mulla Committee submitted its report in 1983.

### The Krishna Iyer Committee

In 1987, the Government of India appointed the Justice Krishna Iyer Committee to undertake a study on the situation of women prisoners in India. It has recommended induction of more women in the police force in view of their special role in tackling women and child offenders.

### Subsequent Developments

Following a Supreme Court direction (1996) in *Ramamurthy vs State of Karnataka* to bring about uniformity nationally of prison laws and prepare a draft model prison manual, a committee was set up in the Bureau of Police Research and Development (BPR&D). The jail manual drafted by the committee was accepted by the Central government and circulated to State governments in late December 2003. How many have acted on it is anybody's guess. As in the case of the recommendations of the National Police Commission (1977), which had sought the creation of a State Security Commission and the promulgation of a new Police Act to replace the 1861 enactment, implementing jail reform recommendations rests with the States. The Home Ministry can do precious little if there is no political will on the part of States to push through both police and prison reforms. In 1999, a draft Model Prisons Management Bill (The Prison Administration and Treatment of Prisoners Bill- 1998) was circulated to replace the Prison Act 1894 by the Government of India to the respective states but this bill is yet to be finalized. In 2000, the Ministry of Home Affairs, Government of India, appointed a Committee for the Formulation of a Model Prison Manual which would be a pragmatic prison manual, in order to improve the Indian prison management and administration. The All India Committee on Jail Reforms (1980-1983), the Supreme Court of India and the Committee of Empowerment of Women (2001-2002) have all highlighted the need for a comprehensive revision of the prison laws but the pace of any change has been disappointing (Banerjee 2005). The Supreme Court of India has however expanded the horizons of prisoner's rights jurisprudence through a series of judgments.

### Major Problems of Prisons Relevant to India

Despite the relatively low number of persons in prison as compared to many other countries in the world, there are some very common problems across prisons in India, and the situation is likely to be the same or worse in many developing countries. Overcrowding, prolonged detention of under-trial prisoners, unsatisfactory living conditions, lack

of treatment programmes and allegations of indifferent and even inhuman approach of prison staff have repeatedly attracted the attention of the critics over the years.

### Overcrowding

Congestion in jails, particularly among undertrials has been a source of concern. The Law Enforcement Assistance Administration National Jail Census of 1970 revealed that 52% of the jail inmates were awaiting trial (Law Commission of India 1979). Obviously, if prison overcrowding has to be brought down, the under-trial population has to be reduced drastically. This, of course, cannot happen without the courts and the police working in tandem. The three wings of the criminal justice system would have to act in harmony. Speedy trials are frustrated by a heavy court workload, police inability to produce witnesses promptly and a recalcitrant defence lawyer who is bent upon seeking adjournments, even if such tactics harm his/her client. Fast track courts have helped to an extent, but have not made a measurable difference to the problem of pendency. Increasing the number of courts cannot bring about a desired difference as long as the current 'adjournments culture' continues (Raghavan 2004).

### Corruption and extortion

Extortion by prison staff, and its less aggressive corollary, guard corruption, is common in prisons around the world. Given the substantial power that guards exercised over inmates, these problems are predictable, but the low salaries that guards are generally paid severely aggravate them. In exchange for contraband or special treatment, inmates supplement guards' salaries with bribes. Powerful inmates in some facilities in Colombia, India, and Mexico enjoyed cellular phones, rich diets, and comfortable lodgings, while their less fortunate brethren lived in squalor. An unpublished PhD dissertation from Punjab University on „The Functioning of Punjab Prisons: An appraisal in the context of correctional objectives“ cites several instances of corruption in prison. Another article suggested that food services are the most common sources of corruption in the Punjab jails. Ninety five percent of prisoners felt dissatisfied and disgusted with the food served (quoted in Roy 1989).

### Unsatisfactory living conditions

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's 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 staff (Human Rights Watch 2006). No one wants to go to prison however good the prison might be. To be deprived of liberty and family life and friends and home surroundings is a terrible thing. "To improve prison conditions does not mean that prison life should be made soft; it means that it should be made human and sensible".

### Staff shortage and poor training

Prisons in India have a sanctioned strength of 49030 of prison staff at various ranks, of which, the present staff strength is around 40000. The ratio between the prison staff and the prison population is approximately 1:7. It means only one prison officer is available for 7 prisoners, while in the United Kingdom, two prison officers are available for every 3 prisoners.

### Inequalities and distinctions

Though prisons are supposed to be levelling institutions in which the variables that affect the conditions of confinement are the criminal records of their inmates and their behaviour in prison, other factors play an important part in many countries" (Neier et al 1991). This report by the Human Rights Watch, specifically cite countries like India and Pakistan, where a "rigid" class system exists in the prisons. It states that under this system, special privileges are accorded to the minority of prisoners who come from the upper and middle classes irrespective of the crimes they have committed or the way they comport themselves in prison.

### Inadequate prison programmes

Despite the problems of overcrowding, manpower shortage and other administrative difficulties, innovative initiatives have been undertaken in some prisons. For e.g. the Art of Living has been carrying out a SMART programme in Tihar Jail. This includes two courses per month and follow up sessions every weekend. Two courses are annually conducted for prison staff. But these are more by way of exceptions and experiments. A Srijan project there is aimed at providing social rehabilitation. However, such programmes are few and far between. Many prisons have vocational training activities, but these are often outdated. Hardly any of the prisons have well planned prison programmes providing structured daily activities, vocational training, pre-discharge guidance and post-prison monitoring.

### Poor spending on health care and welfare

In India, an average of US\$ 333 (INR 10,474) per inmate per year was spent by prison authorities during the year 2005, distributed under the heads of food, clothing, medical expenses, vocational/educational, welfare activities and others. (National Crime Records Bureau 2005). This is in contrast to the US, where the average annual operating cost per state inmate in 2001 was \$ 22,650 (the latter presumably also includes salaries of prison staff). The maximum expenditure in Indian prisons is on food. West Bengal, Punjab, Madhya Pradesh, Uttar Pradesh, Bihar and Delhi reported relatively higher spending on medical expenses during that year, while Bihar, Karnataka and West Bengal reported relatively higher spending on vocational and educational activities. Tamil Nadu, Orissa and Chattisgarh reported relatively higher spending on welfare activities.

The scheme for modernisation of prisons was launched in 2002-03 with the objective of improving the condition of prisons, prisoners and prison personnel. The components include construction of new jails, repair and renovation of existing jails, construction of additional barracks, improvement in sanitation and water supply and construction of staff quarters for prison personnel. Activities under the scheme have been construction of 168 new jails, renovation, repairs and construction of 1730 new barracks, construction of 8965 staff quarters as well as improvement of water and sanitation in jails. The scheme was extended up to 31.3.2009 without affecting the total outlay of Rs.1800 crores (Govt of India, Ministry of Home Affairs). A second phase has been envisaged in 2009 with a financial outlay of Rs 3500 crores. However, questions have been raised whether modernisation can bring about change without integrity of purpose. Can isolation of any institution from public support and scrutiny make it transparent and attentive to its objectives? Any government that claims attempt to integrate the felon into society first of all should

declare prison is as much a public institution as that of a university or hospital; remove its isolation and integrate it functionally and physically into society; make police, judiciary, medical and educational departments, conscious of their accountability for pathetic prison conditions (Karnam 2008). Otherwise things are not going to change just with allocation of crores of rupees and launching of schemes.

#### **Lack of legal aid**

In India, legal aid to those who cannot afford to retain counsel is only available at the time of trial and not when the detainee is brought to the remand court. Since the majority of prisoners, those in lock up as well as those in prisons have not been tried, absence of legal aid until the point of trial reduces greatly the value of the country's system of legal representation to the poor. Lawyers are not available at the point when many of them mostly need such assistance. A workshop conducted by the Commonwealth Human Rights Watch in 1998 in Bhopal, focused on several aspects related to legal aid. It was pointed out that 70% of the prison population is illiterate and lacks an understanding of prisoner's rights. Thus the poor in prison do not always get the provisions in law though the State is obliged to provide legal aid. As also observed by the Mulla Committee, most prison inmates belong to the economically backwards classes and this could be attributed to their inability to arrange for the bail bond. Legal aid workers are needed to help such persons in getting them released either on bail or on personal recognisance. Bail provisions must be interpreted liberally in case of women prisoners with children, as children suffer the worst kind of neglect when the mother is in prison. The lack of good and efficient lawyers in legal aid panels at that time was also a concern raised. Several suggestions were made to speed up trial processes so that the population of under trials could be reduced. Some of the suggestions provided were expeditious holding of trials, making it possible for under trials to plead guilty at any stage of the trial, system of plea bargaining. In a seminar, efforts made at the Tihar Jail by the University of Delhi faculty and students of law in the field of legal aid were highlighted. These included imparting legal literacy to the prisoners, sensitizing the prison administration, taking up individual prisoners to provide legal aid, involving para-legal staff to work with prisoners, both convicts and under trials.

#### **Abuse of prisoners**

Physical abuse of prisoners by guards is another chronic problem. Some countries continue to permit corporal punishment and the routine use of leg irons, fetters, shackles, and chains. In many prison systems, unwarranted beatings are an integral part of prison life. Women prisoners are particularly vulnerable to custodial sexual abuse. The problem was widespread in the United States, where male guards outnumbered women guards in many women's prisons. In some countries, Haiti being a conspicuous example, female prisoners were even held together with male inmates, a situation that exposed them to rampant sexual abuse and violence. A book reviewing prison services in Punjab, reported that, to get food supplements, or blankets in winter, class c-prisoners must fan the convict officers, or massage their legs, or even perform sexual favours for them. The enslavement of other prisoners to the convict officers who effectively run the prisons is particularly severe for new comers (known as *amdani*). They are teased, harassed, abused and even tortured as part of the process of breaking them in (Human Rights Watch 2001).

#### **Consequence of prison structure and function**

Physical and psychological torture resulting from overcrowding, lack of space for segregation of sick, stinking toilets for want of proper supply of water, lack of proper bedding, restrictions on movement resulting from shortage of staff, parading of women through men's wards for lack of proper separation, non-production of under trials prisoners in courts, inadequate medical facilities, neglect in the grant of parole, rejection of pre-mature release on flimsy grounds, and several such afflictions result not from any malfeasance of the prison staff but from the collective neglect of the whole system (Human Rights Watch 2001). In many places, non-governmental organisations provide rehabilitation programmes and a few provide aftercare. Some notable examples include the Prison Fellowship International. Most prisoners are ill prepared for release. No steps are taken to minimise their chance of committing re-offences. Programmes to develop a set of values, the ethos of honest labour and to build pro-social ties with the community are essential. Well-established prisons with continuous good leadership generally impart literacy to the illiterate inmate and offer facilities for higher education to those who are already reasonably educated and are willing to improve on their knowledge so that they are usefully employed after getting back to the community.

#### **Health Problems in prisons**

The overcrowding, poor sanitary facilities, lack of physical and mental activities, lack of decent health care, all increase the likelihood of health problems in prisons. Kazi et al (2009) mentioned that prisons are excellent venues for infectious disease screening and intervention, given the conditions of poverty and drug addiction. It is surprising and indeed shocking that despite the large prison population in India, there is a complete dearth of published information regarding the prevalence of health problems in prisons. An exception is a small study in the Central Jail at Hindalga in the Belgaum district of Karnataka, 850 prisoners were evaluated (letter in the Indian Journal of Community Medicine, Bellad et al 2007). Follow-up of these prisoners for a period of 1 year revealed that anaemia (54.82%) was the commonest morbidity among chronic morbidity followed by respiratory tract infections (21.75%) and diarrhoea (13%) for acute morbidity. Pulmonary TB and HIV contributed 2% and 1.5% respectively. Other morbidity included diabetes (3.6%), senile cataract (7%), pyoderma (12%) etc. Very few details are available of this work including criteria for diagnosis, investigations carried out etc. In another study, anaemia was the common physical problem.

#### **Women and Health Care in Prisons**

Although the population of women in prisons is relatively low, their adverse social positions and social disadvantage make them more liable to rejection from families and greater dejection when they are in prison. Low levels of education and poor legal awareness makes women more likely to serve longer sentences in Studies from developed countries find that mental illness is grossly over-represented among incarcerated women. It is a substantial contributor to the poor health status of this population. Of particular concern are the effects of trauma and substance use disorders, which are often a result of past victimisation. Mental ill health may also be appreciated in relation to psychological distress in the form of suicidality and self-harm, both of which are elevated among women compared with both their male counterparts and the general population. The prison experience frequently compounds this disadvantage and psychological distress by failing to address the underlying trauma and the particular mental

health needs of female prisoners. Women are “unable to defend themselves, and ignorant of the ways and means of securing legal aid. They are unaware of the rules of remission or premature release, and live a life of resignation at the mercy of officials who seldom have understanding of their problems.” (Agarwal 1994).

Women in the contemporary prison face many problems; some resulting from their lives prior to imprisonment, others resulting from their imprisonment itself. Women in prison have experienced victimization, unstable family life, problems in education and work, and substance abuse and mental health problems. Social factors that marginalise their participation in mainstream society and contribute to the rising number of women in prison include poverty, lack of social support, separation or single motherhood, and homelessness. Lack of financial support and social ostracisation makes life after release a veritable hell. Particularly difficult situations for women are separation from children and other significant people, including family. Some women are pregnant when they come into prison and this can be a particularly difficult time, physically and psychologically. World over, it has been found that prison services are not sensitive enough in timely recognition and treatment of their mental health problems and do not address their vocational and educational needs adequately when compared to men. Women are more liable to abuse. In some parts of the world, it is said that women in prison are likely to be subject to more disparate disciplinary action than the men. The characteristics of women offenders and their pathways to crime differ from male offenders. The system responds to them differently, therefore there is the need for gender-responsive treatment and services.

#### Conclusion:

It is surprising and indeed shocking that despite the large prison population in India, there is a complete dearth of published information regarding the prevalence of health problems in prisons. There is a dire need for constant monitoring of prisons in order to identify inadequacies and shortcomings in the prison administration. It is also necessary to reform law and provide legal aid to the needy.

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