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Human Rights, Ethics & Prison Administration in India: A Critical Overview

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"The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country. A calm dispassionate recognition of the rights of the accused and even of the convicted criminal against the State; a constant-heart-searching of all charged with the deed of punishment: tireless efforts towards the discovery of regenerative processes; unfailing faith that there is treasure, if you can find it, in the heart of every man. These are the symbols which in the treatment of crime and criminals make and measure the stored-up strength of a nation and are sign and proof of the living virtue in it."

(Winston Churchill, as Home Secretary, stated in the House of Commons)

Introduction

Prisons constitute a critical area of human rights. The sentence of imprisonment not only implies deprivation of freedom which is the most basic of all human rights but also imposes restrictions on the life and personal liberty of the individual involved. Once a person is incarcerated and his/her life is regulated by the State, he/she is endangered to suffer human rights abuses. Apart from the stigma associated with imprisonment, there is a general attitude of prisoners not being considered fit for the same protection as other members of society. As the poor are over represented in prison population, with little advocacy to protect their human rights, they are particularly vulnerable to maltreatment¹.

The concept of human rights arises from the inherent dignity and work of the individual and invokes all such inalienable rights and freedoms that he/she is entitled to as a member of society. During incarceration these rights



may be restricted or curtailed but can not be denied or taken away. The ideology propounded by the Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948, serves a springboard for a global action to uphold human rights in different spheres. The ideology propounded by the UDHR has been well concretised in the covenants on civil and political rights and on economic, social, and cultural rights. Among the provisions which have a direct bearing on criminal justice, of which prison administration is a major organ, are those relating to the right to life, liberty and security of person, the right to equality before and equal protection of law, right to be presumed innocent until proven guilty, right of not to be subjected to any cruel, inhuman or degrading treatment or punishment, and right to an effective remedy for any unlawful violation.

Supreme Court Rulings and Prison Administration

Significantly, the human rights embodied in the United Nations Instruments² wholly in tune with the spirit behind the Fundamental Rights and Directive Principles of State Policy and in the Constitution of India. Human Rights of prisoners have been interpreted within the framework of the fundamental rights as laid down in the Constitution of India. Over the past 30 years, the Supreme Court of India has

reiterated the Principle “imprisonment does not spell farewell to fundamental rights”³. Thus, the Court has cordially declared that for a prisoner the fundamental rights are enforceable reality, though restricted by the fact of imprisonment. This aspect has repeatedly been emphasised by the Apex Court and has led to the articulation of three basic principles for the prison administration to follow:

- (i) a person in custody does not become a non-person;
- (ii) An incarcerated individual is entitled to enjoy all human rights within the limitation of imprisonment; and
- (iii) An offender is sent to prison as punishment and not for punishment i.e. the prison administration has no authority to aggravate his/her suffering incidental to confinement.



In recent years, the advocacy for the protection of human rights of persons in prison custody has stirred the Court to intervene in all such areas where the prison management is likely to exercise its power arbitrarily or indiscriminately.

Discarding its erstwhile “hands-off” doctrine towards prisons in favour of a judicial intervention when the rights of prisoners are found in jeopardy, the Supreme Court has issued a number of directives to the prison administration. Accordingly, the Court has held that prisoners must be allowed to read and write, exercise and recreation, meditation and chant, creative comforts like protection from extreme cold and heat, freedom from indignities like compulsory nudity, forced sodomy and other unbearable vulgarity, movement within the prison campus subject to requirements of discipline and security, the minimum joy or self-expression to acquire skills and techniques and all other fundamental rights as tailored to the limitation of imprisonment.

According to the Supreme Court, while physical assaults are to be totally eliminated even pushing the prisoners into a solitary cell, denial and necessary facility, transferring prisoners to a distant prison, allotment of degrading labour, assigning him/her to desperate or tough gang, etc. must satisfy Articles 21, 11 and 19 of the Constitution. The young inmates must be separated and freed from exploitation by adults. Any harsh isolation from society for long or lengthy cellular detention can be inflicted only consistently with fair procedure. Subject to discipline and security, prisoners must be given their right to meet his fellowmen/fellow women, interviews, visits and confidential communication with lawyers nominated by the competent authorities.

In a comprehensive judgment delivered in *Rama Murthy v. State of Karnataka*⁴ on December, 1996, the Supreme Court observed that there were nine major problems that affected the prison system in India and required immediate attention. These include: overcrowding, delay in trial, torture and ill-treatment, neglect of health hygiene, insubstantial food and adequate clothing, prison vices, deficiency in communication, streamlining of jail visits and management of open air prisons. While issuing show cause notices to central and State Governments on the relevant points, the Court has emphasised, inter alia the need to consider the enactment of a new prison law on the lines suggested by the National Human Rights Commission, and the formulation of a new Model Jail Manual for the country as whole. A



reference has also been made to the recommendations of the All India Committee on Jail Reforms (1980-83) commonly known as Mulla Committee, in regard to the systems of remission, parole and pre-mature release, facilities for health and hygiene, food and clothing and streamlining of the jail visits.

The Supreme Court further observed that "A sound prison system is a crying need of our time". The Court emphasised that the cases of Charles Sobraj⁵ and Sunil Batra⁶ should be considered as "beacon lights in so far as management of jails and rights of prisoners are concerned."

Broadly, the following rights of prisoners have been recognised under the various Indian laws governing prisons², Supreme Court and High Court rulings as well as those recommended by Expert Committees. Each category lists the corresponding duties of the prison staff and other officers of the criminal justice system⁸:

- Right to be lodged appropriately based on proper classification⁹
- Special right of young prisoners to be segregated from adult prisoners¹⁰
- Rights of women prisoners¹¹
- Right to healthy environment and timely medical services¹²



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- Right to bail¹³
- Right to speedy trial¹⁴
- Right to free legal services¹⁵
- Right to have interviews with one's lawyer¹⁶
- Right against being detained for more than the period of sentence imposed by the Court¹⁷
- Right to protection against being forced into sexual activities¹⁸
- Right against arbitrary use of handcuffs and fetters¹⁹
- Right against torture, cruel and degrading punishment²⁰
- Right not be punished with solitary confinement for a prison offence²¹




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- Right against arbitrary prison punishment²²
- Right to air grievances to effective remedy²³
- Right to evoke the writ Habeas Corpus against prison authorities for excesses²⁴
- Right to be compensated for violation of human rights²⁵
- Right to visit and access by family members of prisoners²⁶
- Right to write letters to family and friends and to receive letters, magazines, etc.²⁷
- Right to reformatory programmes²⁸
- Right in the context of enjoyment of prisoners and prison wages²⁹
- Right to information about prisons rules³⁰


Besides, Supreme Court and High Court rulings on prisoners rights, the problems of

prison administration in India have been examined by expert bodies since independence. Their reports contain extensive recommendations for streamlining prison management. As early as 1951, Dr. W.C. Reckless was invited by the Government of India under the UN Technical Assistance Programme to prepare a plan for the reorganisation of prison system on modern lines. The All India Jail Manual Committee, 1957-59, formulated a model prison manual which was circulated among the State Governments as a guide for revising their respective prison manuals. Subsequently, the All India Committee on Jail Reforms 1980-83 (commonly known as Mulla Committee) presented detailed blueprint for the restructuring of prison administration in a progressive manner. Among its major recommendations, this Committee proposed a draft of a national policy and an outline of consolidated law on prisons in the country. However, the performance has yet to match the intent, as a result of which the cleavage between the objectives and the achievements has increased over the years, especially in the wake of a heightened advocacy for the protection of human rights in prisons and the judicial activism to see it happening³¹

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This aside, during last 25 years various committees Kapoor Committee (1986),³² National Expert Committee on Women Prisoners (1987),³³ All India Model Prison Manual Committee (2000),³⁴ Parliamentary Committee on Empowerment of Women 2001-02,³⁵ All India Committee on Reforms in Criminal Justice (2003)³⁶ (commonly known as Malimath Committee), All India Committee on National Draft Policy on Prison Reforms and Corrections (2007),³⁷ and Committee on Draft Policy on Criminal Justice Reforms³⁸ headed by Dr. Madhav Menon were constituted by the Government of India to improve human rights situation to the extent as are conducive to the reformation and rehabilitation of prisoners in the changing scenario.

Besides Supreme Court and High Court rulings and recommendations made by various committees on prisons reforms, the National Human Rights Commission³⁹ has also issued guidelines and written letters to various

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authorities including the Judiciary, the prison departments and the State Governments to ensure that the right of prisoners are respected. The Commission has also recommended the payment of interim compensation to the prisoners/next of kin in violation of their human rights during incarceration period.

The Impact of Judicial Activism in Improving Prison Conditions

The Judicial activism in prison related matters had a limited impact, since the Court could generally provide relief in individual cases, the overall governance of prisons remained more or the less unaffected. This is not surprising in view of the nature of the prison regime. The prison bureaucracy is most resistant to change and view outside interventions as unnecessary interference. Mulla Committee (1983 p. 279) commented on the apprehensions:

"The humanistic approach in the treatment of offenders being emphasised by the courts through their judgment seems to have generated an unfounded apprehension of security and personal risk among them. Staff has taken all such

healthy directions in the wrong perspective and has interpreted them as leading to unbridled laxity in prison discipline."

Besides higher judiciary reforms initiated by various Commissions and Civil Society Organisations during last 15 year or so could not show cascading effect on the ground level. The prison officials dislike bleeding heart liberal attitude of the judiciary and Human Rights Commission because it has opened the floodgate of prison litigations many of which, they say, are based on false and frivolous ground. To explain their view point, they say that offenders charged for organised and political crime, etc. often forward false and malicious complaints against prison staff in order to brow-beat and demoralise them. Some prisoners, they say, are interested in lax administration so that they may violate the rules of prison discipline, extract privileges, acquire a dominant position on other inmates, smuggle contraband and arrange for frequent visits to outside hospitals. In order to achieve these objectives they want to demoralise the prison staff by making false, baseless and malicious allegations.

Notwithstanding the indifferent or hostile attitude of the majority of the prison officials in regard to court tailored prison reforms, there are few amongst them who see a silver lining in the judicial and quasi-judicial interventions in prison management.

Judicial intervention in certain cases has been welcomed by the



progressive prison managers who have long recognised the need for change, but have lacked the courage to prod the legislature and other officials to do their duty. Judicial activism, they argue, can help accomplish the reforms that many prison officials are waiting to accomplish. Their more important argument is that under judicial threat of court action the legislators and top level prison management might accelerate appropriate remedial measures for prison reforms.

Academics in Criminology and Correctional Administration, social workers and human rights activists engage in the field have widely welcomed activist intervention of the judiciary in the murky business of prison administration. They feel that the judicial intervention has at least been able to create the possibility and appearance of inmates rights. They perceive three net gains.⁴⁰

- (i) the transformation of prisoners from non-persons to a jural entity;
- (ii) prison officials are nervously beginning to accept that absolute powers over the lives of inmates is threatened; and
- (iii) prison litigations have forced a small opening in a system surely in need of ventilation.


There is a widespread awareness among the enlightened circles that despite court ordered reforms and the monument work done by various expert committees at the national and State levels, prison administration has been neglected for long. The rulings of the Apex Court have increased the gap between the cherished principles and actual practices. Governed by the archaic laws, out moded structure and obsolete methods and apparatuses, the prison administration find itself unable to cope with the changed and changing demands of the society in transition. It is therefore, high time that a major thrust is provided towards through restructuring of the Indian prison system.

The Ethical Basis of Prison Management

Ethics (also known as moral philosophy) is a branch of philosophy which seeks to address questions about morality; that is about concepts like good and bad, right and

wrong, justice, virtue, etc. Major branches of ethics include Meta ethics, applied ethics, moral psychology, and descriptive ethics⁴¹.


In view of this, ethics in prison administration is a set of practices and

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philosophy to guide member of prison service to act in a manner consistent with the values and standards prescribed by international human rights law and constitutional provisions as interpreted by the Supreme Court in many path-breaking judgments relating to prisoners rights and prison reforms as well as reiterated by various expert committees on Prison reforms, and to actively internalise and enforce these norms, standards and values.

It is an established fact that prison management needs to operate within an ethical framework. Without a strong ethical context, the situation where one group of people is given considerable power over another can easily become an abuse of power. The Ethical context is not just a matter of the behaviour of the individual staff towards prisoners. A sense of the ethical basis of imprisonment needs to pervade the management process from top to down. An emphasis by the prison authorities on correct processes, a demand for operational efficiency, or pressure to meet management targets without a prior consideration of ethical imperatives can lead to great inhumanity. A concentration by the prison authorities or technical processes and procedures will lead staff to forget that a prison is not the same as a factory which produces motor cars or washing machines. The Management of prisons is primarily about the management of human beings, both staff and prisoners. This means that there are issues which goes beyond effectiveness and efficiency. When making decisions about the treatment of human beings there is a fundamental consideration; the first question which must always be asked is "Is what we are doing right—⁴²

More recently, Amartya Sen in his famous book "*The Idea of Justice*"⁴³ has presented a theory of justice in a very broad sense. It advocates that how we can proceed to address questions of enhancing justice and removing injustice, rather than to offer resolutions of questions about the nature of perfect justice. The central theme of Sen's argument in his theory of justice is that a theory of justice that can serve as a basis of practical reasoning must include ways of judging how to reduce injustice and advance justice, rather than aiming only at the *Charter Barter of Perfectly Justice Societies*—exercise that is such a dominant feature of many theories of justice in political philosophy today. In understanding the contract between an arrangement-focused and a realisation focused view of justice it is useful to invoke an old distinction from the Sanskrit literature on ethics and jurisprudence Consider two different words—*niti and nyaya*—both of which stand for justice in Classic Sanskrit. Among the principal

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uses of the term *niti* are organisational proprietary and behavioural correctness. In contrast with *Niti*, the term *nyaya* stands for a comprehensive concept of realised justice. In that line of vision, the role of institutions, rules and organisation, important as they are, have to be assessed in the broader, and more inclusive/perspective of *nyaya* which in inescapably linked with the word that actually emerges, not just the institutions or rules we happen to have.

In context of prison administration, the prison managers shall implement human

rights and ethical standards through transparency and community participation. It is a well known fact that obscurity that covers the institution of prison makes it a fertile breeding ground for human rights violation. Baring a few institutions, prison conditions are appalling in the country. Most of these afflictions result not from any malfeasance of the prison staff but not from the collective neglect of the whole system⁴⁴. Those who can deliver goods do not know how to do that. Those who know have no means to remedy the ills. There is lack of effective communication. Those who communicate lack perseverance. There is no linkage, no monitoring, no deadlines, no evaluation and therefore no result. A classic example of this is the Performance Audit Report of the management of prisons in Maharashtra published by the Comptroller and Accountant General⁴⁵ covering period 2003-08 revealed that there was short receipt of central funds due to non-utilisation of funds by the State in time; provisions of financial codes were not adhered to in the maintenance of cash books; a large number of posts of security staff were lying vacant; modern security equipments were not installed in the prisons; there was overcrowding in the prisons; a large number of works relating to improvement to prison infrastructure were not completed; inspections of the prisons was not carried out regularly by the IGP; the internal audit of 42 units was pending for periods ranging upto 35 years, and Model Prison Manual 2003 furnished by the Government of India to the State Government for adoption in December, 2003, was not accepted as of August, 2008.

Reforms in Prison Policies: Contemporary Scenario

Dr. W.C. Reckless report on 'Prison Administration in India' submitted to the Government of India in 1952 is marked a turning point in the history of prison reforms in post independence period. In pursuance of the recommendations of Dr. Reckless, a conference of IG Prisons of various States was conveyed



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in Bombay at the instance of Government of India in 1952. This conference provided on excellent forum for exchange of views to evolve prison correctional policies based on reformation and rehabilitation of prisoners. As a result of IG Prisons Conference, the Ministry of Home Affairs, Government of India, appointed an All India Jail Manual Committee in 1957 with IG prisons, correctional administrators and social scientists. The Committee Submitted a Comprehensive report in 1959 along with a "Model Prison Manual" containing elaborate standards and guidelines on the subject. It has also recommended that Acts relating to prison be revised.

All India Committee on Jail Reforms, 1980-83 has analysed in detail the basic problems confronting the system and identified areas of concerted action. The Supreme Court in *Rama Murthy v. State of Karnataka*⁴⁶, besides others, has specifically directed the central Govt. to enact a new Prisons Act to replace the century old Prison Act, 1894, and also prepare a new all India Jail Manual as a concrete plan for prison restructuring. Accordingly, Bureau of Police Research and Development (BPR and D) Ministry of Home Affairs, Government of India⁴⁷, has prepared a Model Prison Manual on 31-1-2004 and appealed to States and UTs for in adoption to promote:



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- I. basic uniformity in the legal framework in the administration of prisons all the country; and
- II. to lay down the framework for custody and treatment of prisoners.

In this context, the National Human Rights Commission has also been engaged, since its inception in 1993, in building a national consensus for the rationalisation of prison legislation as the starting point towards a thorough restructuring of the prison system in consonance with its cherished goal. With the assistance of a core group of leading prison administrators and experts, an outline of the proposed Prison Bill has been prepared and circulated among the Chief Ministers for consideration. Besides taking into account the suggestions emanating from national forum the provisions of the relevant United Nations instruments especially the Standard Minimum Rules for the treatment of prisoners have also been drawn up to the extent consistent with the indigenous milieu. The State Governments have been requested to move their respective legislatures to pass a resolution for a central law and the subject as required under the Constitution⁴⁸.

More recently, the Ministry of Home Affairs, Government of India has prepared a draft Nation Policy on Prison Reforms and Correctional Administration in 2007 and the same has been circulated to all States/UTs for comments in order to evolve nation consensus. The draft policy document contains various recommendations for structuring the prison management in the country in the light of Supreme Court rulings and recommendations made by expert committees constituted so far on prison reforms. Academics and field practitioners in Criminology and Correction Administration consider this as a positive move to evolve a nation policy on prisons, however, they strongly feel that wide consultation with other Stakeholders (other than Governments) would have made the draft policy paper more inclusive and participative in nature.

Despite the Court rulings on several aspects of prison administration, including the human rights of prisoners and initiatives taken by BPR&D and RICAs, NHRC and SHRCs, academic institutions and Civil Society Organisations (CSOS) to sensitise prison staff on Human rights issues, prisons are still effectively screamed from public visibility and accountability, and

the predictable abuses continue to take place⁴⁹.

Specific Areas of Human Rights in Prisons

Of various aspects of prison administration, living conditions of inmates have been subjected to severe criticism by courts, expert committees, advocacy groups and other interested in the maintenance of minimum standards of human dignity in prisons. The criticism has been leveled on account of insufficient accommodation, indiscriminate handling of different categories of offenders, unhygienic conditions, sub-standard food, inadequate water supply; inadequate medical care, lack of properly devised correctional activities and vocational training, atrocities on young, women prisoners and maltreatment with the poor prisoners (specially prisoners belonging SC/ST categories), etc.

Within the overall framework of the administration of prisons and management of prisoners in the context of human rights, there is a definite need for further differentiating the approach towards certain categories of prisoners. Among such categories, women prisoners, young offenders and mentally ill persons in confinement have to be dealt in view of their specific correctional needs and rehabilitative

requirements. The expert committees (including Mulla Committee) constituted from time to time on prison reforms and the National Human Rights Commission, have proposed a set of special provisions and safeguards for these categories. Broadly, the following recommendations were made by various expert committees to streamline prison administration from human rights perspective:

- (i) replacement of dilapidated prisons;
- (ii) improvement of living conditions;



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- (iii) provisions for medical and psychiatric services
- (iv) vocational training and gainful employment;
- (v) diversification of education programme;
- (vi) improvement in the conditions of women prisoners;
- (vii) segregation of prisoners;
- (viii) provisions for free legal aid; and
- (ix) speedy trial including humane and dignified treatment with the prisoners.

In compliance with the court rulings and recommendations of expert committees and the National Human Rights Commission, the Government of India released a fund to the tune of Rs 125.24 crore during 1987-2000. However, conditions of prisoners did not improve as per expectations nor was there any significant change in the general conditions of prisons or in the attitude of jail authorities.

Due to paucity of funds with the State Governments and keeping in view the awful conditions of the prisons in the States, the Kapoor Committee (1986)⁵⁰ especially, emphasised the need to provide central assistance to the States under the scheme called the "Modernisation of Prisons" for improving the conditions of the prisons, prisoners and prisons personnel.

Considering the appalling conditions of the prisons in the States, paucity of the funds with the State Governments and the dire need for improving the conditions of prisons, prisoners and prison staff, a much larger investment in this sector was required.⁵¹ Based on the assessment conducted by the Bureau of Police Research and Development (BPR&D), the Central Government in 2002-03 launched a non-plan scheme of Modernisation of Prison Administration with a total outlay of Rs 1800 crore. The scheme involved the contribution from Central as well as the State Governments on the cost sharing basis of 75:25 and was proposed to be implemented over a period of five years for 2002-03 to 2006-07. Under this scheme, financial assistance was given to State Governments for undertaking the following items of work:

- (i) construction of additional jails to reduce overcrowding;
- (ii) repair and renovation of existing jails;
- (iii) improvement in sanitation and water supply; and
- (iv) living accommodation for prison staff.



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While launching this scheme, Ministry of Home Affairs envisaged that "The scheme would definitely help in improving the physical condition in prison as creation of additional accommodation would help in reducing overcrowding. Repairs, renovation

and water and sanitation works will help in improving the living condition of prisoners, the construction of staff quarters for prison personnel will boost the morale of the prison staff which will thereby help them in performing their duty more efficiently.⁵²

More recently, the implementation of this scheme was assessed by the Department-Related Parliamentary Standing Committee on Home Affairs in 2009.⁵³ The Committee noted that some States like Chhatisgarh, Haryana, Gujarat, Jammu and Kashmir, Manipur, Tamilnadu and Andhra Pradesh have performed better while the States of Bihar, Goa, Himachal Pradesh, Jharkhand and Kerala have performed badly. Besides, evaluating this scheme, the Committee has made various progressive recommendations for augmenting prison infrastructure suitable for realisation of human rights in prison setting.

Prison Staff: Facilitators for Realisation of Prisoners Rights

Several court rulings and media reports have already highlighted the situation, however, many revelations and writings on the subject do not go deep into the prison malaises and hardly report on why human rights abuses take place in prison? This is an area on which very less authentic literature is available. With this view in mind we will examine the role of prison staff in creating an enabling environment in the prisons.

The protection of human rights of prisoners and inculcating a culture of human rights in prison setting is heavily dependent on the quality, caliber and competence of the staff engage in the care, management and treatment of prisoners. Prison staff carry act out of the most difficult tasks of a civilised society. Prisons are part of criminal justice system. The international instruments stress that the best security is in the establishing, by all the prison staff, of good working relationship with prisoners. Hence, the manner in which they are treated depends primarily on the attitude, capacity, competence and motivation of the middle and cutting edge prison staff. The international instrument has, laid down the adequate provisions in the Standard Minimum Rules for the development and growth of prisoners and the prison



personnel. Unfortunately, the rights of prison staff who actually implement the human rights of the prisoners, have not been recognised after 62 years of independence and the policy of the British Raj of running the prisons in as cheap a manner as possible still continues.

An assessment of the working and service conditions of prison staff shows that the conditions in which the lower echelons of the prison staff lived are in some cases worse than those of the prisoners. This is an important factor contributing to the poor functioning of prisons, apathy of the prison staff towards the plight of prisoners, corruption and all over deprivation of prisoners of their basic amenities. Such sub-standard conditions of service produce a culture of frustration and dehumanisation in the service which often spills over and gets translated into aggression on prisoners. Thus, the conditions of work create an environment that discourages initiative, leadership qualities and an enlightened rights based approach.⁵⁴

Another impediment for creating and enabling environment in prisons relates to the quality of leadership at management level. It is noteworthy to mention that the Jail Officers at the management level, (DG/IG/DIGs) majority of whom are on deputation from the police service, consider this as punishment posting and are generally too demoralised to contribute significantly to the building up of the department. Most of them are merely time servers. The supervisory level (the Superintendents/Deputy

Superintendents and Assistant Superintendents Jailors, etc.), consisting of staff belonging to the prison services, too is demoralised because of poor service conditions, lack of career opportunities and public esteem. At the grassroots level (Head Warders/Warders, etc.) the department has people who remain inside the prison walls, interacting with prisoners most of the time. This factor combined with their pathetic service conditions, has the effect dehumanising them. Some of them develop vested interest and join hands with the criminals.

This aside, most of the prisons are having the problem of under staffing. This would result in pressure on the staff already posted leading to deterioration in the quality of facilities for the inmates.⁵⁵

The ground realities of Indian prisons require a thorough restructuring of the system. This include rationalising policies for staff recruitments, deployment and development, working and service conditions and adequate



training which could cater effectively to the requirements of both custody and correction.

The Way Forward


The task of protecting human rights that prisoners are entitled to and of implementing progressive ruling of the Supreme Court and High Courts and recommendations made by various commissions and committees on prison reforms including radical reforms suggested by the National Human Rights Commission call for a thorough restructuring and reorganisation of prisons in India. To address human rights issues in prison setting requires two fold strategy:

- (i) Devise actionable strategy for addressing the human rights violations in prison; and
- (ii) Inculcating a culture of human rights through rights based approach to prison management.

These two essential elements need radical reforms in prison administration, development of coherent strategy to tackle specific human rights issues in prisons through accountability and transparency in the routine matters of prison administration, widespread public debates and mounting pressures from human rights activists, (including Human Rights Commissions and other Statutory Commissions such as Women's Commissions and Child Rights Commissions, etc.), judiciary, investigative journalists and forward looking criminologists and correctional social workers. Also there is an urgent need to develop the framework and tools in consultation with key stakeholders for monitoring, evaluation and impact assessment of human rights modules delivered by prison training institutions.

In this regard, social audit of "Modernisation of Prisons" scheme launched by the Central Government in 2002-03, (under a non-plan scheme) should be conducting by independent researchers so that an impact of this scheme could be evaluated in addressing specific areas of human rights as accommodation, diet, clothing, bedding and medical care, education, work and vocational training programmes, parole and pre-mature release including remission, legal aid, gender and caste specific discrimination in prison setting. It is also important that second phase of prison Modernisation scheme (as proposed by the Ministry of Home Affairs, Government of India with the proposed outlay of Rs 4000 crore and under consideration of the Government of India) should include better service conditions for prison staff so as to create a conducive environment, where the respect of prisoners rights is possible. Finally, there is a

strong need to develop and strengthen interface between prisons and the community including local self bodies and Panchayati

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Raj institutions so that prisons are accepted as social development issue and included in their development plans and budget outlays.

The present accent on the protecting of human rights of persons in custody has aggravated the need to restructure the prison and sharpen its role in the context of social and community development. In this regard, the following recommendation of the All India Committee on Jail Reforms, 1980-83 (Mulla Committee), deserves attention:

“Programmes for reformation and rehabilitation of offenders, for making them useful citizens, must find a place in our national plans. These programmes should be included in the plans for the same reasons for which educational and social welfare programmes have been so included. No greater justification need to be adduced in support of our recommendation than the fact that prisons in a welfare State like ours are not merely agencies of law enforcement but are welfare institutions providing correctional programmes for the offenders and social defence programmes for the welfare of the society as a whole.”

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¹ Improving Prison conditions in India—A Human Rights Perspective. Unpublished concept paper of the National Human Rights Commission, New Delhi.

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(i) Standard Minimum Rules for the Treatment of Prisoners (1955).

(ii) Principles of Medial Ethics relevant to the Role of Health Personnel, particularly physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1982).

(iii) Convention Against Torture (1984).

(iv) Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment (1988).

(v) Basic Principles for the Treatment of Prisoners (1990).

(vi) United Nations Standard Minimum Rules for non-custodial measures (The Tokyo Rules (1990)).

³ *Charles Sobraj v. Supt., Central Jail*, (1978) 4 SCC 104 : AIR 1978 SC 1514.

⁴ (1997) 2 SCC 642 : AIR 1997 SC 1739.

⁵ *Charles Sobraj v. Supt., Central Jail*, (1978) 4 SCC 104 : AIR 1978 SC 1514;

⁶ *Sunil Batra v. Delhi Admn.*, (1978) 4 SCC 494 : AIR 1978 SC 1675; *Sunil Batra (II) v. Delhi Admn.*, (1980) 3 SCC 488 : AIR 1980 SC 1579

⁷ These are Prisoners Act (1894), Prisons Act (1900), Identification of Prisoners Act (1920), Transfer of Prisoners Act (1950) Prisoners (Attendance in Courts) Act (1955), Civil Jails Act (1874), Borstal School Act, Habitual Offenders Act, and Mental Health Act, 1987. Other than these, the Jail Manuals of each State govern the day to day administration of prisons in the States.

⁸ Sreekumar, R. (2003): Handbook for Prison Visitors, New Delhi: Commonwealth Human Rights Initiative.

⁹ Section 27(3), Prisons Act, 1894: and *Rakesh Kaushik v. B.L. Vig.*, 1980 Supp SCC 183 : AIR 1981 SC 1767.

¹⁰ Section 27(3) Prisons Act, 1894. Also refers to the Right to Protection Against Being Force into Sexual

Activities.

¹¹ *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96 : AIR 1983 SC 378; and also refer Section 24(3) of Prisons Act, 1894.

¹² Refer various sections of Prisons Act, 1894: such as Sections 24(3); 13, 26(3), 26(2), 29, 35(2), and 39-A. Also refer *Rama Murthy v. State of Karnataka*, (1997) 2 SCC 642 : AIR 1997 SC 1739; and NHRC letter DO No. 4/3/99-PRP and P dated 11-2-1999 addressed to all Chief Secretaries/Administrators of all States/UTs.

¹³ Section 436-A CrPC lays down the right of an undertrial to apply for bail once he/she has served one-half of the maximum term of sentence he/she would have served had he/she been convicted. On a bail application filed under this section, the Court shall hear the Public Prosecutor and may order the:

- (i) release such person on a personal bond with or without surety; or
- (ii) release of such person on bail instead of personal bond; or
- (iii) continue detention of such person (in cases pertaining to (2) and (3)). The Court is required to record reasons in writing. This section further prescribes the detention of an undertrial beyond the maximum period of punishment prescribed for the offence he/she is alleged to have committed. (This provision is not applicable to persons who are accused of an offence which attracts death sentence as are of the punishment). This is noteworthy to maintain that Section 436-A was inserted in the Criminal Procedure Code by the Code of Criminal Procedure (Amendment) 2005 vide Act 25-9-2005, w.e.f. 23-6-2006.

Please also refer Supreme Court rulings in *Motiram v. State of M.P.*, (1978) 4 SCC 47 : AIR 1978 SC 1594; *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 93 : AIR 1979 SC 1360; *Supreme Court Legal Aid Committee v. Union of India*, (1994) 6 SCC 731; *Common cause v. Union of India*, (1996) 4 SCC 33.

¹⁴ *Hussainara Khatoon (1) v. State of Bihar*, (1980) 1 SCC 93 : AIR 1979 SC 1360. This aside, non-official visitors appointed under Jail Manual Rules should follow up with the officials concerned.

¹⁵ *M.H. Hoskot v. State of Maharashtra*, (1978) 3 SCC 544 : AIR 1978 SC 1548. Also refer Section 383 CrPC 30 *Sunil Batra (II) v. Delhi Administration*, (1980) 3 SCC 488 para 79(1) of p. 522.

¹⁶ Section 40 of Prisons Act, 1894. Also refer *Sunil Batra (II) v. Delhi Admn.*, (1980) 3 SCC 488 para 78 (3) of p. 521.

¹⁷ *Veena Sethi v. State of Bihar*, (1982) 2 SCC 583 : AIR 1983 SC 339. Also refer Section 12(2) of Prisons Act, 1894.

¹⁸ *Munna v. State of U.P.*, (1982) 1 SCC 545 : AIR 1982 SC 806. Also refer No escape: Male rape in US prisons, Human Rights Watch, New York, 2001.

¹⁹ *Prem Shankar Shukla v. Delhi Admn.*, (1980) 3 SCC 526 : AIR 1980 SC 1535. Also refer *Sunil Gupta v. State of M.P.*, (1990) 3 SCC 119 and *Citizens for Democracy v. State of Assam*, (1995) 3 SCC 743 : AIR 1996 SC 2193.

²⁰ *Francis Coralie Mullin v. Union Territory of Delhi*, (1981) 1 SCC 608 : AIR 1981 SC 746

²¹ *Sunil Batra v. Delhi Admn.*, (1978) 4 SCC 494 : AIR 1978 SC 1675

²² Section 50 of Prisons Act of 1894.

²³ *Sunil Batra (II) v. Delhi Admn.* (1980) 3 SCC 488 para 78(4) at p. 521.

²⁴ *Sunil Batra (II) v. Delhi Admn.* (1980) 3 SCC 488 at page 504.

²⁵ *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141 : AIR 1983 SC 1086, *Sebastian M. Hongray v. Union of India*, (1984) 3 SCC 82 : AIR 1984 SC 1026 and *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416 : AIR 1997 SC 614.

²⁶ *Sunil Batra (II) v. Delhi Admn.*, (1980) 3 SCC 488.

²⁷ *Sunil Batra (II) v. Delhi Admn.*, (1980) 3 SCC 488.

²⁸ *Sunil Batra (II) v. Delhi Admn.*, (1980) 3 SCC 488.

²⁹ Various Sections 34 and 35 of Prisons Act, 1894 and also *State of Gujarat v. High Court of Gujarat*, (1998) 7 SCC 392.

³⁰ *Sunil Batra (II) v. Delhi Admn.*, (1980) 3 SCC 488 para 79 (1) of p. 522.

³¹ Singh, Hira (1999): Status of Human Rights in Prisons, ACPF Sixth World Conference (working papers) held in New Delhi, December, 1999.

³² A Group of Officers on Prison Administration headed by Shri R.K. Kapoor (1986) popularly known as Kapoor Committee, was constituted to examine and review various aspects of administration and management of prisons, especially in the context of security and discipline in prisons and suggest measures for their improvement.

³³ National Expert Committee on Women Prisoners of 1987 chaired by Justice V.R. Krishna Iyer.

³⁴ Bureau of Police Research and Development (BPRandD), Ministry of Home Affairs, New Delhi.

³⁵ Third Report of the Parliamentary Committee on Empowerment on "Women in Detention" presented to the Parliament on 24-8-2001.

³⁶ Committee on Reforms of Criminal Justice System, 2003, Government of India, Ministry of Home Affairs, New Delhi.

³⁷ Constituted by Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, New Delhi.

³⁸ Constituted by Ministry of Home Affairs, 2007.

³⁹ One of the important functions of the National Human Rights Commission as provided under Section 12(c) of the Protection of Human Rights Act, 1993 (as amended) by the Protection of Human Rights (Amendment) Act, 2006—No. 43 of 2006) is to "visit notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations there on to the Government". The Commission during the last 16 years undertook visits to a large number of prisons all over the country, enquired into numerous complaints regarding violation of human rights from prisoners and highlighted the need for prison reform in its orders and reports. The Commission time and again reiterated that there is an urgent need for systematic reforms in prisons. (For details please refer proceeding of workshop on detention held on October 11-12-2008, at New Delhi, published by NHRC, New Delhi, 2008. Also refer Annual Reports and a recent publication "Human Rights Best Practices Relating to Criminal Justice in a Nutshell".

Besides above, for details refer "Rights Behind Bars" published by Commonwealth Human Rights Initiative, New Delhi, 2009 ([website:www.humanrightsinitiative.org](http://www.humanrightsinitiative.org)) and Annual reports of National Human Rights Commission, New Delhi (Available at www.nhrc.nic.in)

⁴⁰ For details refer Reading material for special course on Human Rights in Prison Administration organised by the LNIN National Institute of Criminology and Forensic Science, Ministry of Home Affairs, Government of India, New Delhi.

⁴¹ Retrieved from <http://in.wikipedia.org/wiki/E> Accessed on 31-12-2009.

⁴² Coyle Andrew (2002): A Human Rights Approach to Prison Management—Handbook for Prison Staff; London: International Centre for Prison Studies; p. 13.

⁴³ Sen, Amartya (2009): The Idea of Justice, London: *Penguins Books*.

⁴⁴ Draft compendium for potential justice sector reforms, 2008, UNDP, p. 40.

⁴⁵ Performance Audit Report (Civil) Maharashtra State for the year 2007-08 available at www.cag.gov.in/html/cag-reports/Maharashtra/rep_2008/Civil_Chap.p.87.

⁴⁶ (1997) 2 SCC 642 : AIR 1997 SC 1739.

⁴⁷ Bureau of Police Research and Development (BPR and D) has been mandate by the Government of India to undertake studies on police and prison issues: review the arrangements for police and prison training; formulate and coordinate training policies and programmes; and promote application of science and technology in police work, etc. It is noteworthy to mention that since 1995, the BPR&D has been mandated nodal agency on behalf of the Central Government in the field of Correction Administration (vide GO No. VII 11018 114 192 GPA IV dated 16-11-1995) to perform the following functions in the field of correction administration in the country:

- I. analysis and study of prison statistics and problems of general nature affecting prison administration;
- II. assimilation on and dissemination of relevant information to the States in the field of Correctional Administration;
- III. coordination of research studies conducted by RICAs and other academic/Research Institutions in Correctional Administration and to frame guidelines for conduct of research studies/surveys in consultation with State Governments;
- IV. to review training programmes keeping in the view the changing social conditions, introduction of new

scientific techniques and other related aspects;

- V. to prepare uniform Training Module including Courses, Syllabi for providing training at various levels to prison staff in the field of correctional administration;
- VI. publication of report, newsletter, bulletin and prepare of audio-visual aids, etc. in the field of Correctional Administration; and
- VII. to set-up an Advisory Committee to guide the work relating to Correctional Administration.

⁴⁸ For details please refer Annual Reports and other publication of the National Human Rights Commission, New Delhi (WWW.nhrc.nic.in)

⁴⁹ BPR and D is regularly sponsoring courses on Human Rights and Prison Management through RICA and academic institutions for middle rung prison personnel. The training programmes aim to raise awareness of human rights amongst prison officials, and improve prison management system with special reference/promoting good practice and gender sensitivity in prison management.

The protection of the human rights of the prime concerns of the National Human Rights Commission (NHRC) even since it was established in October 1993. Visits to jail on behalf of the NHRC are undertaken by the members, special rapporteur and officials of the Commission on orders are passed and recommendations are made to the Government for improvement in the living conditions, hygiene and sanitation, medical care, etc. besides, structural reforms in the prison system. This aside, the Commission in collaboration with the governments, academic institutions and civil society organisations also organises seminars/workshops to sensitise prison staff on human rights issues in prison settings.

NGOs working in the field of prison reforms, such as Commonwealth Human Rights Initiative (CHRI), PRAYAS, Mumbai, etc. are also engaged in sensitisation of prison staff on various issues pertaining to prison administration including human rights.

⁵⁰ A Group of Officers on Prison Administrative headed by Shri R.K. Kapoor (1986), Ministry of Home Affairs, Government of India.

⁵¹ "Prisons" being a State subject as per Entry 4 of List II (State List) to the Seventh Schedule of the Constitution the upkeep of prisons is within the jurisdiction of the State Governments.

⁵² Adapted from 126th Parliamentary Standing Committee. Report on the Demands for Grants (2007-08) of Ministry of Home Affairs, presented to Rajya Sabha on 26-4-2007 (Available at: <http://rajyasabha.nic.in>).

⁵³ 142 Report on "Implementation of Central Scheme of Modernisation of Prison Administration", presented to Rajya Sabha on 26-2-2009, Rajya Sabha Secretariat, New Delhi. (Available at <http://rajyasabha.nic.in>).

⁵⁴ Report of the Proceedings of the workshop on Prisons and Human Rights held on 25-4-1998 - 26-4-1998, at Bhopal. This was jointly organised by M.P. Human Rights Commission, Bhopal and Commonwealth Human Rights Initiative, New Delhi.

⁵⁵ Report on "Implementation of Central Scheme of Modernisation on Prison Administration" of the Standing Committee on Home Affairs, presented to the Rajya Sabha on 26-2-2009. (Available at <http://rajyasabha.nic.in>).

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