INTRODUCTION & PRISONS IN INDIA: AN OVERVIEW OF THE CURRENT SITUATION

In this chapter, we provide 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. We then provide a brief overview of prisons in India. We also deal with the general problems of Indian prisons, which undoubtedly play an important part in understanding the challenges in providing mental health services to prisoners and to staff in prisons.

a) 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 UN standard Minimum Rule also made it mandatory to provide a 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).
b) Prison Reforms in India – A Brief Background & Overview

The history of prison establishments in India and subsequent reforms have been reviewed in detail by Mahaworker (2006). A brief summary of the same is presented below.

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.\(^1\)

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.

\(^1\) http://india.indymedia.org/en/2005/04/210469.shtml
c) **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.

*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 centers. He also recommended the revision of outdated jail manuals. In 1952, the Eighth Conference of the Inspector Generals 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* \(^2\) to provide a legal base for correctional work.

\(^2\)http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=108&Itemid=121
1) **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.

2) **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.

3) **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.

4) **Subsequent Developments**

Following the Supreme Court direction (1996) in *Ramamurthy vs State of Karnataka* to bring about the 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). 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.

*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 (Banerjea 2005). The Supreme Court of India has however expanded the horizons of prisoner’s rights jurisprudence through a series of judgments.

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PRISON REFORMS IN INDIA

Specific Problems Related to Indian Prisons

1) The problem of overcrowding in prisons

It is known fact that prison in most parts of India is overcrowded. For instance there were 8500 prisoners in Tihar Jail of Delhi in 1995, as against the capacity of 2500 persons. The effect of overcrowding is that it does not permit to segregation among convicts those punished for serious offences and for minor offences. As a result of this, the hard criminals may spread their influence over other criminals\(^3\).

The juvenile offender who are kept in jails because of inadequacy of alternative places where they can be confined, come into contact with hard criminals and are likely to become professional offenders. And after release from the jail they might cause the harm in the society.

*The law commission in its 78th report made some recommendations for easing congestion to the prisons. These suggestions include liberalization of conditions of release on bail, particularly release of certain categories of under trial on bail*\(^4\).

Other methods of reducing overcrowding in prisons may include extensive use of fine as an alternative punishment for imprisonment, civil commitment and release on probation. Overcrowding may also be reduced by release on parole, a prison after he has served part of the sentence imposed upon him. It is a conditional release of an individual from prison. The system of remission, leave and premature release may also be useful in talking the problem of overcrowding in prison institutions\(^5\).

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\(^1\) Paranjape, N.V., “Criminology Penology”, 12\(^{th}\) edition, Central law publication, 2005, p364

\(^2\) Ibid

\(^3\) Ibid

\(^4\) Nina Kinsella in *Proceedings of the National Conference of Social work*, 1937, p586.
2) Government’s discretion in early release of prisoners

The decisions in Diwan Singh v. State of Haryana,\(^6\) and in Sitabai v. State of M.P.\(^7\) signifies that the government’s discretion to grant premature release subject to section 433A of the Code would not be interfered with. While in the former case, since no final decisions was taken by the government on the proposal to release the petitioner, the writ application was rejected, in the latter case the court pointed out that it was in the discretion of the government to grant or not to grant premature release subject to section 433A. The Court does not have the right to issue discretions.

The Madhya Pradesh High Court in Babupahalwan v. State of M.P\(^8\), was approached by the petitioner under articles 226 and 227 seeking premature release under rules 358 and 359 of the Madhya Pradesh Prison Rules, 1968 framed under section 59 of the Prisons Act, 1894. Some of these petitioners had earlier applied for release on licence under the provisions of the Madhya Pradesh Prisoners Release on Probation Act 1954, and the rules frame there under.

The state opposed their application on the ground that under section 433A the prisoners would have to serve 14 years actual imprisonment. Analyzing the various provision mentioned above, the court conceded that the premature release sought for under each provision was not released with absolute prison but on certain conditions. So such prisoners according to the court, remain under the deemed custody. Describing the release after serving the term under section 433A as release with absolute freedom, the court concluded that the release with condition is equivalent to imprisonment which can be counted towards the 14 years of actual imprisonment under section 433A. The court thus approved the conditional release of prisoners.

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\(^6\) 1990 Cri LJ 2364 (P & H).
\(^7\) 1990 Cri LJ 2226 (MP).
\(^8\) 1990 Cri LJ 2704 (MP).
3) The problem of criminality in prison

Another problem related to prison disciplines concern criminality among inmates inside the prison. The continuous absent from the normal society and detachment from members of the family deprives the inmates of their sex gratification which is one of the vital biological urges of human life\textsuperscript{9}.

The Indian prison management does not accept the idea of conjugal visits, as the system of parole serve more useful purpose so far marital relationship concern. And such conjugal visits cannot be appreciated for the reason of morality and ethical consideration keeping in view the Indian values and cultural norms\textsuperscript{10}. Another case of criminality among prison inmates is their frequent quarrelling inside the institution. Every inmate tries to establish his superiority over his fellow inmates. Therefore prisoners often narrate with exaggeration the tales of their adventure and the dangers overcome by them while committing crime\textsuperscript{11}. There are occasion when inmates quarrel on trifling matters like those of distribution of bread, toilets, etc. or the differences of their opinion about a particular warden, guard or jailor. The offences of petty thefts are also common in prisons because the inmates are supplied only the articles of bare necessities. Obviously the articles stolen are usually soap, oil, utensils or a few loaves of bread which are supplied to inmates in prisons\textsuperscript{12}.

4) 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

\textsuperscript{9} Id at 366.
\textsuperscript{10} Ibid.
\textsuperscript{11} Id at 366
\textsuperscript{12} Ibid.
programmes providing structured daily activities, vocational training, pre-discharge guidance and post-prison monitoring.

Prisons, though for a short or longer period are places of living for both accused as well as convicts. The reformatory objective expects that it should also be a place of learning and earning. To provide physical, material and mental conditions of decent living to prisoners, it requires recreating almost a miniature world inside the prisons. This is difficult if not impossible. European countries are increasingly in search of alternatives to confinement, as they realised more resources for assimilation of deviant are available in open society rather than inside the closed walls. This has not happened so far in India as governments across the ideological spectrum are illiberal and society is unsympathetic to rights of the incarcerated.

The result is lowest priority to the prison management. Karnam M. Commonwealth Human Rights Initiative 2008.
DIFFERENTIAL TREATMENTS

1) Female prisoners

Fortunately the number of female prisoners confined in the jails of the country is small. It is very important that female prisoners should be guarded, trained, and supervised by female only. With the exception of superintendent and few necessary members of the staff, the whole of the staff of the female jail consist of woman\textsuperscript{13}.

Not only should the staff immediately in contact with female prisoners consist of female. But the visitors should also be women as far as possible. The training of females in handicrafts also differs from that of males. When the period of the hard labor- such cleaning and grinding grain on hand mills is over, some form of needle work, cutting out and sewing ordinary cloths, and similar work can be profitably undertaken\textsuperscript{14}.

The after care of the female prisoners usually presents few difficulties, as most of them have a home to go to and need very little assistance, but for the microscopic minority that do need assistance, the prisoners Aid society can be depended on to render help\textsuperscript{15}.

2) Treatment of juvenile or young offenders

The great difference in the problem of the young criminals arises from differences in physical and mental development. It is clear for example, that a child of ten years cannot be treated in exactly the same way as a boy of seventeen years of age. It is very important to keep in mind, is that the younger the offender the greater the care he needs and the more tactful and sympathetic has to be his dealings\textsuperscript{16}.

The first important point to be emphasized in dealing with young offenders is that of rigid separation according to age, it is not only necessary to segregate according to age like youth from the adult, but also necessary to recognize different age categories among young persons themselves.

\textsuperscript{13} P.K. Tarapore, “Prison reform in India”, Oxford University Press, 1936, p33.
\textsuperscript{14} Ibid.
\textsuperscript{15} Ibid at 38.
\textsuperscript{16} Roy, Joytilak Guha, Prison and Society, Gian Publishing House, 1989, p112
The reason for this careful segregation is obvious. Youthful minds are immature, and the younger the person is, the more easily mould arable he is and the more careful one has to be that no evil and noxious influence are allowed to operate, ad so undo any good effects that the adoption of new methods may have.

Another thing is that when a young offender is arrested he should not be kept into the police lock up; in fact every effort should be made not to confine him at all. For this purpose wherever possible, and in cities and in towns, there should be established what are called ‘remand homes’ for the confinement of these young offenders. These homes should be in the charge of an elderly person where children may be looked after\(^\text{17}\).

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\(^{17}\text{Ibid.}\)
3) Politically differentiate

It is often seen in the present scenario that the powerful man always caught free and they even found guilty but not red handed by the police the reason behind is sometime power and money both. Political background offenders have power and by this they even confine in the jail for certain period given a differential treatment like which other prisoner do not treated. Even for the period of their prison they tries to dominate to the other by showing power and also give threat to them if after out from the jail they will see to it. Even they do not have fear of punishment because they know, by politically they will be free ¹⁸.

4) Terrorists

Now in the case of terrorists they must be segregated from other offenders, because the terrorist there mentality and other offenders mentally differs a lot. The mental thinking of killing so many people against the society is very different from other offenders. So they must be kept separately with other offenders. And their mentally set up which they created may harm the other offender to commit that. So there must be segregation between the other offenders. For example Ajmal Ali Kasab, a single survive terrorist in Bombay attack, is segregated from other offenders and given him proper security and proper meal for him alive, so there is differential treatment which given to the terrorists.

¹⁸ Dr. Ashutosh, Rights of Accused, Universal Law Publication Co. 2009, p118.
REHABILITATION OF THE PRISONER- STEP TO BE TAKEN DURING IMPRISONMENT

1) **Education and training etc**

There is a provision made by the prison authority that further education of all prisoners capable of profiting thereby including religious instruction in the countries where there is possible. The education of illiterates and young prisoners should be compulsory and special attention should be paid to it by the administration. Every prison should have a library for the use of all categories of prisoners and they should be encouraged to make full use of it. As far as practicable every prisoner should be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.\(^\text{19}\)

And in purpose of training there is a special raining of cutting, sewing the cloths, and even training for making goods and all. There the training different from male prisoners and the female prisoners. After cleaning and grinding grain on the hand mills, they have given work like needle work etc. for male they may be worked to take heavy materials and all.

2) **Re-socialization**\(^\text{20}\)

As the concept socialization implies group membership, so the derivative concept re-socialization implies changes in group memberships. Many findings in the social origins of individuals behavior suggests that the problem of re-shaping the anti social attitudes and values of offenders is related to the possibility of altering the patterns of group membership which they bring with them into the prison. The question therefore arise to what extend does the prison community provide opportunities for altering the group membership and reversing the socialization process which contributed to the criminal behavior of those incarcerated in it?

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\(^{19}\)Supra note 16

A necessary starting point of this inquiry would appear to be examinations of the prison community as a functional social unite. A prison is a physical structure in a geographical location where a number of people, living under highly specialized conditions, utilize the resources and adjust to the alternatives presented to them by a unique kind of social environment. The people crating and enmeshed in this environment include administrative, custodial and professional employees, habitual petty thieves, one time offenders, gangsters, professional racketeers etc.

ALTERNATIVE TO IMPRISONMENT

1) COMPENSATION TO VICTIMS

This is one of the alternatives to imprisonment, which is suggested by the 78th Law Commission Report. And also a method by which it helps to reduce overcrowding in the prison institutions.

In Laxmi Devi v. Satyanarayan, the court was confronted with a situation wherein it could not have under the law, done anything favorable to the petitioner tough it was a case where the court could not find the defendant guilty of bigamy because of some technical flaw. But the court found reason to grant the compensation. In that case appellant is not able to prove the factum of second marriage which is punishable under section 494 of I.P.C. that does not meant that appellate should be left in the lurch. Exercising power under article 142 of the constitution, appellate should be awarded compensation which will bring some solace when her life is dismally dark. There fore Supreme Court awarded compensation.

21 Ibid
221994 SCC (Cri) 1566.
In *Kewal pati v. State of UP*\(^{23}\), the Supreme Court recognize the right of the legal heirs of the victim prisoner who happened to be killed in the prison, to be compensated by the state as it failed to afford him security in the prison. In a very interesting judgment, among other thing a session court ordered that state government to pay up the cost of education of the children accused till his imprisonment was over.

The Madhya Pradesh High Court in *State of MP v. Mangu Alias Mangilal*\(^{24}\), reversing the session judge’s order stated that the field of payment of compensation is covered by section 357 of the Cr. P.C., and therefore in regard to any related matter, inherent power can not be exercised, learned session judge has committed a grievous error in requiring the state to make payment initially and subsequently to recover it from the first accused and in requiring the state to assure responsibility for the education of the children.

\(^{23}\)1995 (3) SCC 600.
\(^{24}\)1995 Cri. L.J. 3852 (MP).
CONCLUSION

Crime and society co-exist and are dynamic concepts. Society in its quest to preserve social order and solidarity and to recognize certain social and individual values and rights, through its criminal law, prescribes certain social norms, condemns and forbids certain human conduct and stipulates ‘sanction’ to prevent the outlawed conduct. The kind of conduct to be ‘forbidden’ the kind of formal social condemnation considered as best calculated to prevent the officially outlawed conduct, obviously depends upon the moral and social thinking of a community. The perception and the nature and content of crime and societal reaction of its violation, therefore vary with the changes in the social structure, social thinking and socio-economic settings and legal ethos.

Whether criminals are to be punished or dealt with constructively, an accused must not escape before his guilt or innocence has been established. His appearance for trial may be secured through an acceptance of his own promise to present himself. Usually however he must either provide bail as a guarantee of appearance or be committed to jail to await trial.

Correctional system is because for the purpose of threat or fear that other person in the society can not try it further. No person who found guilty should be punished according to the law. But in spite of strict liability crime is happening in the society because of many reasons like for financially (corruption), political power, and different source etc. So by this reasons sometimes crime rate also increasing in the society.

But in spite of that, government has come with an alternative to imprisonment by compensating to the victims and the community service to the prisoners. And also to ratify the problems related in the prison institutions by prison reform. By this it can be more settled in Indian prison system.