

# **THE PRISON, OBJECT AND REFORMS-** RPS Teji- Additional District & Sessions Judge

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“ I know not whether the laws be right,  
Or whether laws be wrong;  
All that we know who lie in gaol  
Is that the wall is strong;  
And that each day is like a year,  
A year whose days or long.”

- Oscar Wilde

Imprisonment has always been looked down by the civilized society but the Prison finds its roots in ancient history and associated with slavery.

No one wants to go to prison however good the prison might be. To be deprived of liberty, family life, friends and home surroundings is a terrible thing as rightly described by Oscar Wilde.

## **IMPRISONMENT AND PRISON**

"What constitutes imprisonment has been long ago defined. It is to be found in a work of very good authority and the application of the common law – namely, "Termes de la Ley" – in these words:

Imprisonment is no other thing than the restraint of a man's liberty, whether it be in the open field, or in the stocks, or in the cage in the streets or in a man's own house, as well as in the common gaols; and in all the places the party so restrained is said to be a prisoner so long as he hath not his liberty freely to go at all times to all places.

This passage was approved by Atkin and Duke LJJ in *Meering v Grahame White Aviation Co.* It is not imprisonment to prevent a person from proceeding along a particular way if it is possible for him to reach his intended destination by another route.

A prison, gaol or jail is a facility in which [inmates](#) are [forcibly](#) confined and denied a variety of freedoms under the authority of [the state](#) as a form of [punishment](#). The most common use of prisons is as part of a [criminal justice](#) system, in which individuals officially charged with or convicted of crimes are confined to a jail or prison until they are either brought to trial to determine their guilt or complete the period of incarceration they were [sentenced](#) to after being [found guilty](#) at their trial. Outside of their use for punishing civil crimes, [authoritarian](#) regimes also frequently use prisons and jails as tools of [political repression](#) to punish [political crimes](#), often without trial or other legal [due process](#); this use is illegal under most forms of [international law](#) governing fair administration of justice. In times of war or conflict, [prisoners of war](#) may also be detained in [military prisons](#) or [prisoner of war camps](#), and large groups of civilians might be imprisoned in [internment camps](#).

Nowadays the power of imprisonment mostly vests in the courts and Judicial systems have been recognized worldwide for bringing home the guilt of offender and awarding them punishment as per the law of land. Legal imprisonment is devised as mode of punitive as well corrective method by the Judicial systems evolved in the civilized society. It is closely linked to jurist theory of Pain and pleasures.

Apart from other punishments awarded, imprisonment plays an important role in protecting the community against the most dangerous offenders and in punishing the most serious crimes.

Law is continuous process and recent research and experience have shown the many disadvantages of over using imprisonment. Imprisonment can harm the chances of people to amend and fulfil their potential as reformed citizens.

The Constitution of India, the Universal Declaration of Human Rights and the Standard Minimum Rules for Treatment of Prisoners clearly specify the standards of treatment with the prisoners in jails.

The purpose of imprisonment is to confine the person to dissociate him from others and for preventing further crimes and at the same time restrain him from spreading his criminality. But it is now felt that prisons have its own shortcomings.

## **PRISONS IN INDIA**

India follows the international obligations and guidelines with respect to the care of prisoners and various steps are being taken towards prison reform.

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 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.

## **INTERNATIONAL 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.

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 defense". 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 suggestions of 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**

Prisons Act, 1894, is the basis on which the present jail management and administration is operated in India. This Act has hardly undergone any substantial change over such a long period. However, the process of review of the prison problems in India remained in continuation.

For the first time in the history of prisons in Indian Jail Committee 1919-20, 'reformation and rehabilitation' of offenders were identified as the objectives of the prison administrator. After Independence several committees & commissions appointed by Central and State governments emphasized humanitarian conditions in the prisons. The need for considerable change and consolidating the laws relating to prison has been constantly highlighted.

## **THE GOVERNMENT OF INDIA ACT 1935-**

Allowed 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 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..

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 (Banerjea 2005). The Supreme Court of India has however expanded the horizons of prisoner's rights jurisprudence through a series of judgments. In its judgments on various aspects of prison administration, the Supreme Court of India has laid down three 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; and,

lastly there is no justification for aggravating the suffering already inherent in the process of incarceration. The existing statutes which have a bearing on regulation and management of prisons in the country are:

- (i) The Indian Penal Code, 1860.
- (ii) The Prisons Act, 1894.
- (iii) The Prisoners Act, 1900.
- (iv) The Identification of Prisoners Act, 1920.
- (v) Constitution of India, 1950
- (vi) The Transfer of Prisoners Act, 1950.
- (vii) The Representation of People's Act, 1951.
- (viii) The Prisoners (Attendance in Courts) Act, 1955.
- (ix) The Probation of Offenders Act, 1958.

- (x) The Code of Criminal Procedure, 1973.
- (xi) The Mental Health Act, 1987.
- (xii) The Juvenile Justice (Care & Protection) Act, 2000.
- (xiii) The Repatriation of Prisoners Act, 2003.
- (xiv) Model Prison Manual (2003).

#### THE DARKER SHADES OF THE PRISON ARE:-

##### A. VIOLENCE:

Prisons are often dangerous places for those they hold. Group violence is also endemic and riots are common. In a three-day riot and stand-off in the Chappra District prison in Bihar towards the end of March, 2002, 6 prisoners died in the shootout that occurred when commandos of the Bihar Military Police were called in to quell the riots.

Incidents of internal violence are there where meek and first time offenders are tortured and made to do all menial tasks for their senior inmates. Failure of compliance many times increases their woes.

##### B. CRIMINALIING EFFECT OF A PRISON:

There are severe chances of contamination of the first time, circumstantial & young offenders into full-fledged criminals being huddled with hard core criminals of heinous crimes in the same prisons.

It is an oft given quote that prisons are universities of crime, where people go in as under-graduates and come out with Ph.Ds. in crime.

There should be scientific and psychological classification of inmates/prisoners.

The courts in Delhi have taken leap bounding step in this regard by creation of separate Family Courts. As for the first time the subjects of family disputes are taken at distance from the regular criminals, this is the first step in avoiding their mixing with the other criminals.

##### C. Overcrowding

Prisons are overcrowded and there is shortage of adequate space. Congestion in jails, particularly among undertrials has been a matter of concern. Majority of the inmates constitute those who are awaiting trial.

To decrease the prison overcrowding the under-trial population has to be reduced drastically. The three wings of the criminal justice system would have to act in harmony to achieve this goal.

#### D. SEXUAL ABUSE:

Prisons are institutions that lodge people of same sex together. Being removed from their natural partners, forces the prisoners to look for alternative ways to satisfy their sexual urges. This often finds vent in homosexual abuses where young and feeble are targeted. Resistance leads to aggravated violence. At times, prisoners are subjected to massive homosexual gang-rapes. Apart from causing severe physical injuries and spreading sexually transmitted diseases including HIV/AIDS, it also induces severe trauma in prisoners forcing some of them to commit suicide. The victims carry a lot of anger and frustration in themselves, which they take out on the next innocent person.

#### E. Corruption and extortion

Extortion by prison staff, and its less aggressive corollary, guard corruption, is common in prisons around the world. The guards exercise substantial power over the inmates and the lust for easy money allures them for these evils. In exchange for contraband or special treatment, inmates supplement guards' salaries with bribes. There are incidents where powerful inmates enjoyed cellular phones, rich diets, and comfortable lodgings even in prisons.

#### F. HEALTH PROBLEMS:

When the common citizen of country cannot enjoy the safe and healthy condition it is farce to think of the same in the prisons meant for criminals. Most of the prisoners already come from socio-economically disadvantaged sections of the society where diseases, malnutrition and absence of medical services are

prevalent. When such people are cramped in with each other in unhealthy conditions, infectious and communicable diseases spread easily.

#### G. DRUG ABUSE:

Besides murder, attempt to murder and other serious anti-personal offences, people booked under the anti-drug laws constitute a substantial percentage of the prison population. Being in prison and cut off from the free world, sees an increased desperation to get the banned substances to satisfy their addictions to drugs.

Since prison is an environment where there is a captive, bored, largely depressed population eager for release from the grim everyday reality, this also increases the danger of fresh prisoners being inducted into drug abuse.

These are some of the grave issues that prisoners face inside the prison complex. Over the time mounting up of every accused in prisons would require creation of more prisons, but there is only limited fund and resources that the government is allowed to spend on such infrastructural requirements.

#### H. Mental illness of prisoners

It has been estimated that the prevalence of severe mental illness in jails and prisons is three to five times higher than that in the community (Lamb et al 1998). Mental illness may develop during imprisonment or be present even before admission to the prison. Among people who are biologically prone to mental disorders, the stress of being in prison can precipitate the illness. Such disorders can also develop due to the prevailing prison conditions (structural and social factors such as overcrowding, dirty and depressive environment, poor food quality, inadequate medical care, lack of meaningful activity, enforced solitude or lack of privacy, isolation from social networks, etc), due to torture or other human rights violations. In addition, prisoners are deprived of their liberty leading to deprivation of choices taken for granted in the outside community: they can no longer freely decide where to live, with whom to associate and how to fill their time, and must submit to discipline imposed by others. Communication with families and friends is often limited. Moreover, prisoners may have guilt feelings

about their offences and anxiety about how much of their former lives will remain intact after release in addition to the stigma associated with having been in a prison.

One of such incident is: of Hitler Baba Khan

In a nether world where reality peeps in only occasionally, Hitler Baba Khan lives in a world of his own, feeding off fantasies scripted by his despair and pain.

Khan, whose real name is Roy Varghese, has been diagnosed as a schizophrenic. But instead of being sent to a psychiatric facility, Roy was kept in solitary confinement in Central Jail, Jaipur. He remained in prison for 18 years, the last seven as an undertrial. At age 53, Varghese is a long-detected schizophrenic with failing eyesight who ran away from his home in Kerala when he was a teenager. He ended up with a conviction on a drug charge in 1992 and received the maximum 10-year sentence. Sometime later, he began to develop signs of mental illness and in 2001, was admitted to a district hospital where he was diagnosed as schizophrenic. In police records, his self-given name became Hitler Baba Khan. His condition made him unfit for release even after he completed his sentence and this is where his fate got sealed. While receiving treatment, on July 2, 2003, Roy allegedly set two other mentally ill patients on fire causing their deaths. The police arrested Varghese and charged him with murder and culpable homicide under section 302 and 301 of IPC. On July 3, 2003, he was presented before court where the medical board concluded that Varghese was a schizophrenic and not in a mental condition to understand court proceedings or fit to stand trial. Yet, human rights activists allege, he was sent back to prison instead of being moved to a facility to treat the mentally ill. "Roy was sent back to prison, kept in solitary confinement instead of being taken to a mental institution," Pujya Pascal from the Commonwealth Human Rights Initiative (CHRI) said. Since then, time has not only stood still for Varghese but the windows to the outside world closed forever. Despite being diagnosed as in need for

institutional care seven years ago, he remains trapped by a system in which he is voiceless.

On May 28, 2010, TOI highlighted Roy's condition in an article that served to fast-track his case and finally gave him a fresh chance at life.

Roy is now in a Kerala mental health facility. Years in solitary confinement have left him blind, disoriented and afflicted with severe schizophrenia, incapable of fully understanding his changed circumstances. But for his sister and supporters who persevered for so many years, his presence amongst them is reward enough.

Roy's sister Vinita said, "He is in great pain and it is only sometimes that he realizes he is out of prison. We hope that continued care will make him better." The family is struggling to make ends meet and is being supported by Commonwealth Human Rights Initiative and Ajmer-based college lecturer Sister Mariola who have worked towards Roy's release. Sister Mariola regularly visited Roy in prison and brought attention to his case. She said, "I am greatly relieved now that he is free. I am not going to stop with this case. I want to help 82 others who are in Jaipur prison pending trial."

A public interest litigation filed in 1989 by Sheela Barse challenged the unconstitutional practice of locking up non-criminal mentally ill persons in jails in West Bengal. Following a series of affidavits and counter affidavits, the Court appointed a commission to evaluate the situation.

Another important issue from a human rights perspective is the issue of "fitness to stand trial". If an accused is suffering from mental illness at the time of trial, the trial against him cannot be proceeded until he becomes mentally fit to stand trial. But there is no clear provision in the Mental Health Act (1987) with regard to further proceedings if a patient is chronically ill, treatment resistant and never likely to be fit to stand trial.

A mentally ill Mr. Machang Lalung who was under-trial prisoner, had languished in the mental institute in Tejpur, Assam as an under-trial prisoner for

54 years. He was detained at the age of 23 but he could secure his release only when he was 77 years old, only after the intervention from the Honorable Supreme Court of India.

The guidelines are being followed by the courts dealing with the Criminal cases within the Jurisdiction of Delhi and the Hon'ble High Court is having continuous vigil over the same. A quarterly report is being sent to the Hon'ble High Court providing the status of mentally ill prisoners in the under-trial cases.

#### I. conditions of Women In Jails

“ The marginalisation and discrimination experienced by women in society does not stop at the prison entrance. Rather it continues to impinge on their lives even when in State custody, perhaps in its most aggravated forms.”

-Hon'ble Justice Geeta Mittal

These few words explain the whole story of plight of the women prisoners. Apart from stigma and humiliations the women has to take care of their children, few of which give birth within the boundaries of the prison itself.

The Hon'ble Supreme Court of India after going through the various reports, affidavits of various State Governments, Union Territories, the Union of India, issued exhaustive guidelines for the protection of the women and child rights within 4 walls of prison: -

This included non treatment of child as an under-trial/convict while in jail with his/her mother and such child entitlement to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.

At least minimum facilities were directed to be provided to pregnant inmates and proper prenatal and post-natal care to the prisoner as per medical advice. Specific directions to avoid childbirth in prison were given and when it is not possible in exceptional cases constituting high security risk or cases of equivalent

grave descriptions, the births in prison, when they occur, shall be registered in the local birth registration office. But the fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned.

Female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years and no female prisoner shall be allowed to keep a child who has completed the age of six years. Upon reaching the age of six years, the child shall be handed over to a suitable surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. As far as possible, the child shall not be transferred to an institution outside the town or city where the prison is located in order to minimise undue hardships on both mother and child due to physical distance.

Such children shall be kept in protective custody until their mother is released or the child attains such age as to earn his/her own livelihood and shall be allowed to meet their mother at least once a week.

#### ALTERNATIVES TO IMPRISONMENT

An “alternative to imprisonment” is any kind of punishment; other than time in prison or jail that can be given to a person who commits an offence.

Just because a certain punishment does not involve time in prison or jail does not mean it is “soft on crime” or a “slap on the wrist.” Alternatives can repair harms suffered by victims, provide benefits to the community, treat the drug-addicted or mentally ill, and rehabilitate offenders. Besides this they can also reduce prison and jail costs and prevent additional crimes in the future. Before we can maximize the benefits of alternatives to imprisonment, we need to repeal mandatory minimums and give courts the power to use cost-effective, recidivism-reducing sentencing options.

#### PRE-SENTENCING STAGE

Under the Indian Penal Code, 1860 (hereinafter "IPC"), different punishments are prescribed for different offences. Section 53 of the IPC lays down an exhaustive

list of punishments provided for offenders: which are, sentence of Death, Imprisonment of Life; Imprisonment can be *Rigorous, that is, with hard labour or Simple. The other punishments are Forfeiture of property and fine.*

Despite the discretion and alternatives available to imprisonment, there appears to be little creativity in the sentencing policy. The most prominent feature of this policy is the over reliance on jails. It often appears that the judges are faced not with a continuum of sentencing options but, rather, a dichotomy: imprisonment for violent offences and fines for petty offences. The disastrous consequences of this over use have already been discussed in the introductory part of this article.

The Hon'ble Supreme Court in *Ved Prakash v. State of Maharashtra* held that:

"Sentencing an accused is a sensitive exercise of discretion and not mechanical prescription acting on hunch."

Finding alternatives to imprisonment at the sentencing stage can vastly help in solving the issue of the ever growing population in the prisons. It needs to be seen whether an offence is so serious as to warrant a life imprisonment or will recompense and fine serve the purpose. It is common sense that an offender is sentenced to a custodial sentence in order to guarantee a period of protection to the community against such an offender. But there are situations in which the offender is a first time offender or has committed a petty offence. Depending on the nature of offence, the antecedents of the offender, and several such factors, the judge may consider to sentence him to a punishment proportionate to his offence instead of following a straitjacket formula of using imprisonment as the mode of punishment frequently.

It is for the judge or magistrate to examine the gravity of the situation and use his discretion for creating balance between both the sides i.e. victim and the offender. The various alternatives to imprisonment available at the stage of sentencing is a separate subject in itself which can be looked into by the policy makers and requires no mention in detail in this article.

## OPEN PRISONS

All prisoners are not dangerous criminals and not even some of those who have committed serious offences. Open prisons in one form or another have been in existence in India for a long time. In India, there are 44 open prisons and more than half of them exist in the State of Rajasthan (23 in number). Open prisons have developed better in some states of India than in others for a variety of reasons. Prisoners serving life sentence on the basis of their good conduct are shifted to the open prisons.

The Open Prisons restore the dignity of the individual and give a sense of self-confidence and self-reliance by instilling a sense of responsibility in the individual. Several States in India have such open prisons.

The positive effects of open prisons are -

- It lessens the damage to offenders and society

- It reduces the overcrowding in prisons

- It costs far less for the State to have people living in open prison than to pay for their upkeep in the jails and finally

- It inculcates a sense of social responsibility towards family and society

The appreciation of open prison as an effective institution for rehabilitation of offenders have been highlighted by Supreme Court as late as 1979 in *Dharambeer v State of U.P.* the court observed that the institution of open prisons has certain advantages in the context of young offenders who could be protected from some of the well-known vices to which they were subjected to in ordinary jails. However, the concept of open prisons needs to be given more publicity in our country to bring the focus of society to reformed offenders. Apart from agricultural based open prisons it is suggested that there should be open prisons with an industrial / manufacturing base as well. Open Prisons for women should also be encouraged.

