



# Beyond The Walls: A Comprehensive Look At The History And Future Of Open Prisons

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## Synopsis

The institution of prison is an indispensable part of any society, but its sole purpose should not be just to punish offenders. The concept of open prisons is gaining traction as a reformatory approach to eliminate criminals from society and reintegrate them into mainstream life. In India, there are 27 open prisons, which operate on three different categories. The first category includes open farms where inmates do farming and agricultural work assigned to them and live in open areas with other eligible inmates. The second category includes open farms where inmates do farming and agricultural work assigned to them and live in an open farm area with their families and the families of other eligible inmates. The third category includes open camps where inmates work their own trades and occupations and build their own houses where they live with their families.

The aim of this dissertation is to provide a comprehensive understanding of the history and future of open prisons in India. The research will cover the advantages and limitations of India's open prisons, the current state of open prisons in India, the legal framework governing open prisons, and the impact of open prisons on the inmates and the society at large.

The study will employ a mixed-method approach, including both qualitative and quantitative research methods. The qualitative methods will involve conducting in-depth interviews with inmates, prison officials, and experts in the field. The quantitative methods will include analyzing data on the number of inmates in open prisons, their demographics, and the crimes they committed.

The findings of this study will be useful for policymakers, prison officials, and academics interested in understanding the potential of open prisons as a reformatory approach to crime and punishment. The study will contribute to the existing literature on the topic and provide insights into the challenges and opportunities of open prisons in India.

Overall, this dissertation aims to shed light on the potential of open prisons to transform the prison system in India and provide an alternative approach to punishment and rehabilitation.

## About Author -

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Sanjay Sarraf is a practising advocate with a strong interest in criminology, criminal law, forensic science, and the criminal justice system. His academic qualifications include:

- B.A. (Hons.)
- LL.B
- LL.M (Criminology)
- LL.M (Criminal Law)
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- P.G.D. Forensic Science and Related Law
- P.G.D. Intellectual Property Rights
- P.G.D. Criminal Justice
- P.G.C. Human Rights
- P.G.C. White Collar Crime
- P.G.D. Forensic Journalism

In addition to his academic pursuits, he is an accomplished author, having written books on *The Holistic Approach of Criminology*, *the Science of Fingerprints*, and *Beyond the Walls: A Comprehensive Look at the History and Future of Open Prisons*. He has also contributed articles to the enforcement department on how to solve crime. He is committed to social justice and provides pro-bono legal services to the poor. Currently, he is pursuing a PhD and plans to continue developing new theories of criminology while advocating for criminal justice system reformation.

## Preface to the First Edition

Dear esteemed Colleagues,

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I am pleased to announce the release of my first article - "Beyond the Walls: A Comprehensive Look at the History and Future of Open Prisons". I recognize that there may be some areas in this first edition that require improvement. As such, I welcome your feedback and suggestions for future editions.

No society can be a crime-free society; therefore, the institution of prison is indispensable. In this article, I have strived to cover the advantages and limitations of India's open prisons. Of India's 1,328 correctional facilities, 27 are open prisons, which can be divided into three categories. The first category consists of open farms where inmates do farming and agricultural work assigned to them and live in open areas with other eligible inmates. The second category consists of open farms where inmates do farming and agricultural work assigned to them and live in an open farm area with their families and the families of other eligible inmates. The third category consists of open camps where inmates work their own trades and occupations and build their own houses where they live with their families.

Open prisons play a dual purpose of eliminating criminals from society and reformation of offenders under institutional treatment by covering out conditions which in the first place turned them to law violators. Open air prison is one of the reformatory concepts involved by the criminal justice system in attempting to reform prisoners and help them become law-abiding citizens in society.

I have taken great care to ensure the accuracy and quality of the material in this article. I am grateful for the opportunity to share my work with such esteemed colleagues as yourselves. Your thoughts and insights are highly valued and will play a vital role in shaping future editions of this article. I eagerly await your response.

Thank you for your time and consideration, and I look forward to hearing from you soon.

Sincerely,

Adv. Sanjay Sarraf

Mumbai, 11<sup>th</sup> April 2023

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I thank the almighty for providing me with everything that I required in completing this project. During my study on Human Rights, had visited Byculla District Jail, Mumbai got opportunities to discuss with prisoners. I met several times to Shri. M. A. Sayeed, who is now Chairperson of Maharashtra State Human Rights Commission.

During my research, I came to know that Open Prison System of Rajasthan fall among the best prison practices in the country. It is unfortunate that such a unique and successful open prison system has not expanded to the other states of the country and has been subjected to political neglect in its home state.

I have taken efforts in this project but the research would not have been possible without the kind support and help of many individuals and organisations. I would like to extend my sincere thanks to all of them.

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I am highly indebted to Ms. Smita Chokraburttty, (Research Scholar - Open Prison) Former Prison Commissioner, Rajasthan appointed by Hon'ble Mr. Justice K .S. Jhaveri and Mr. Ajit Singh IPS, Director General of Police, Former Director General Prison, Rajasthan for responding my emails and for her reports on Open Prison in Bihar and Rajasthan.

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I would like to thank Dr. Purabi Paul for supporting me through out the work. We have brainstormed and debated for days/hours looking for suggestions and solution. Her encouragement, suggestion and very constructive criticism have contributed immensely to the evolution of my ideas on the project.

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Adv. Sanjay Sarraf

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## **1. Introduction**

Open prisons have emerged as a viable alternative to traditional prisons in recent years, offering a different approach to incarceration that emphasizes rehabilitation and reintegration into society. This dissertation provides a comprehensive examination of the history and future of open prisons, exploring their evolution from early experiments in the late 19th century to their current use in countries around the world. The

dissertation begins by tracing the origins of open prisons and their early development in the United States and Europe. It then explores the key features of open prisons, including their focus on preparing inmates for successful reentry into society, the use of community-based rehabilitation programs, and the importance of building trust between inmates and staff. The dissertation also considers the challenges and criticisms that open prisons have faced over the years, including concerns about public safety, the potential for abuse, and the lack of clear evidence of their effectiveness. It then explores the current state of open prisons around the world, including their use in countries such as Norway, Australia, and India, and their potential for wider adoption. Finally, the dissertation looks to the future of open prisons, considering the potential for further innovation and expansion in this area. It concludes that while open prisons may not be a panacea for all of the problems of the criminal justice system, they offer a promising model for promoting rehabilitation and reducing recidivism, and warrant further exploration and investment.

Open prisons are minimum security facilities that allow convicted prisoners with good behavior to complete their sentences with minimal supervision and perimeter security, often without being locked up in their cells. The first open prison was established in Switzerland in 1891 and they are now present in many countries, including India, which has 77 open prisons. In India, there are three categories of open prisons that involve farming, trades, and occupation-based work, and inmates may live with their families. Open prisons aim to eliminate criminals from society and reform offenders under institutional treatment. However, they also have an adverse psychological impact on inmates and can pose problems for maintaining law and order within the prison. The delay in criminal trials contributes to the high number of undertrial prisoners in closed prisons, and open prisons have been shown to be 78 times cheaper than closed prisons. Despite this, the open prison system has not been expanded to other states in India and has been subjected to political neglect in its home state.

## **2. International Scenario on Prison Reformation and Legislations**

An open prison is any jail in which the prisoners are trusted to complete their sentences with minimal supervision and perimeter security and are often not locked up in their prison cells. Prisoners may be permitted to take up employment while serving their sentence.

*In the UK*, open prisons are often part of a rehabilitation plan for prisoners moved from closed prisons. They may be designated "training prisons" and are only for prisoners considered a low risk to the public.

The idea of an open prison is often criticized by members of the public and politicians. Prisoners in open jails do not have complete freedom and are only allowed to leave the premises for specific purposes, such as going to an outside job.

*In Ireland*, there has been controversy about the level of escape from open prisons, attributed to the use of the prison by the Irish Prison Service to transfer prisoners unsuitable for open conditions but to reduce overcrowding in the closed prisons. The idea of open prisons is to rehabilitate prisoners rather than to punish them.

## 2.1 Prisons - World History

Prisons have only been used as the primary punishment for criminal acts in the last few centuries. Far more common earlier were various types of corporal punishment, public humiliation, penal bondage, and banishment for more severe offenses, as well as capital punishment. All of which occur today.

The concept of incarceration was presented circa 1750 as a more humane form of punishment than the aforementioned corporal and capital punishment. They originally were designed as a way for criminals to participate in religious self-reflection and self-reform as a form of penance, hence the term penitentiary.

Prisons contained both felons and debtors – the latter of which were allowed to bring in wives and children. The jailer made his money by charging the inmates for food and drink and legal services and the whole system was rife with corruption. One reform of the sixteenth century had been the establishment of the *London Bridewell* as a house of correction for women and children. This was the only place any medical services were provided.

### United Kingdom

#### 18th century

During the eighteenth century, British justice used a wide variety of measures to punish crime, including fines, the pillory and whipping. Transportation to The United States of America was often offered, until 1776, as an alternative to the death penalty, which could be imposed for many offenses including pilfering. When they ran out of prisons in 1776 they used old sailing vessels which came to be called *hulks* as places of temporary confinement.

The most notable reformer was John Howard who, having visited several hundred prisons across England and Europe, beginning when he was high sheriff of Bedfordshire, published *The State of the Prisons* in 1777. He was particularly appalled to discover prisoners who had been acquitted but were still confined because they couldn't pay the jailer's fees. He proposed that each prisoner should be in a separate cell with separate sections for women felons, men felons, young offenders and debtors. The prison reform charity, the Howard League for Penal Reform, takes its name from John Howard.

The Penitentiary Act which passed in 1779 following his agitation introduced solitary confinement, religious instruction and a labor regime and proposed two state penitentiaries, one for men and one for women. These were never built due to disagreements in the committee and pressures from wars with France and jails remained a local responsibility. But other measures passed in the next few years provided magistrates with the powers to implement many of these reforms and eventually in 1815 jail fees were abolished.

Quakers such as Elizabeth Fry continued to publicize the dire state of prisons as did Charles Dickens in his novels *David Copperfield* and *Little Dorrit* about the Marshalsea. Samuel Romilly managed to repeal the death penalty for theft in 1806, but repealing it for other similar offences brought in a political element that had previously been absent. The Society for the Improvement of Prison Discipline, founded in 1816, supported both the Panopticon for the design of prisons and the use of the treadmill as a means of hard labor. By 1824, 54 prisons had adopted this means of discipline. Robert Peel's Gaols of 1823 attempted to impose uniformity in the country but local prisons remained under the control of magistrates until the Prison Act of 1877.

## 19th century

The American separate system attracted the attention of some reformers and led to the creation of Millbank Prison in 1816 and Pentonville prison in 1842. By now the end of transportation to Australia and the use of hulks was in sight and Joshua Jebb set an ambitious program of prison building with one large prison opening per year. The main principles were separation and hard labour for serious crimes, using tread wheels and cranks. However, by the 1860s public opinion was calling for harsher measures in reaction to an increase in crime which was perceived to come from the 'flood of criminals' released under the penal servitude system. The reaction from the committee set up under the commissioner of prisons, Colonel Edmund Frederick du Cane, was to increase minimum sentences for many offences with deterrent principles of 'hard

labour, hard fare, and a hard bed'. In 1877 he encouraged Disraeli's government to remove all prisons from local government and held a firm grip on the prison system till his forced retirement in 1895. He also established a tradition of secrecy which lasted till the 1970s so that even magistrates and investigators were unable to see the insides of prisons.

## 1877-1914

The British penal system underwent a transition from harsh punishment to reform, education, and training for post-prison livelihoods. The reforms were controversial and contested. In 1877-1914 era a series of major legislative reforms enabled significant improvement in the penal system. In 1877, the previously localized prisons were nationalized in the Home Office under a Prison Commission. The Prison Act of 1898 enabled the Home Secretary to and multiple reforms on his own initiative, without going through the politicized process of Parliament. The Probation of Offenders Act of 1907 introduced a new probation system that drastically cut down the prison population while providing a mechanism for transition back to normal life. The Criminal Justice Administration Act of 1914 required courts to allow a reasonable time before imprisonment was ordered for people who did not pay their fines. Previously tens of thousands of prisoners had been sentenced solely for that reason. The Borstal system after 1908 was organized to reclaim young offenders, and the Children Act of 1908 prohibited imprisonment under age 14, and strictly limited that of ages 14 to 16. The principal reformer was Sir Evelyn Ruggles-Brise. the chair of the Prison Commission.

Major reforms were championed by The Liberal Party government in 1906–14. The key player was a prisoner in the Boer war in 1899. He escaped after 28 days and the media, and his own book, Winston Churchill when he was the Liberal Home Secretary, 1910–11. He first achieved fame as made him a national hero overnight. He later wrote, "I certainly hated my captivity more than I have ever hated any other in my whole life...Looking back on those days I've always felt the keenest pity for prisoners and captives."<sup>[12]</sup> As Home Secretary he was in charge of the nation's penal system. Biographer Paul Addison says. "More than any other Home Secretary of the 20th century, Churchill was the prisoner's friend. He arrived at the Home Office with the firm conviction that the penal system was excessively harsh." He worked to reduce the number sent to prison in the first place, shorten their terms, and make life in prison more tolerable, and



rehabilitation more likely. His reforms were not politically popular, but they had a major long-term impact on the British penal system.

## **Borstal system**

In 1894-5 Herbert Gladstone's Committee on Prisons showed that criminal propensity peaked from the mid-teens to the mid-twenties. He took the view that central government should break the cycle of offending and imprisonment by establishing a new type of reformatory, that was called *Borstal* after the village in Kent which housed the first one. The movement reached its peak after the first world war when Alexander Paterson became commissioner, delegating authority and encouraging personal responsibility in the fashion of the English Public school: cellblocks were designated as 'houses' by name and had a *housemaster*. Cross-country walks were encouraged, and no one ran away. Prison populations remained at a low level until after the second world war when Paterson died and the movement was unable to update itself. Some aspects of Borstal found their way into the main prison system, including open prisons and housemasters, renamed *assistant governors* and many Borstal-trained prison officers used their experience in the wider service. But in general the prison system in the twentieth century remained in Victorian buildings which steadily became more and more overcrowded with inevitable results.

## **United States**

In colonial America, punishments were severe. The Massachusetts assembly in 1736 ordered that a thief, on first conviction, be fined or whipped. The second time he was to pay treble damages, sit for an hour upon the gallows platform with a noose around his neck and then be carted to the whipping post for thirty stripes. For the third offense he was to be hanged. But the implementation was haphazard as there was no effective police system and judges wouldn't convict if they believed the punishment was excessive. The local jails mainly held men awaiting trial or punishment and those in debt.

In the aftermath of independence most states amended their criminal punishment statutes. Pennsylvania eliminated the death penalty for robbery and burglary in 1786, and in 1794 retained it only for first degree murder. Other states followed and in all cases the answer to what alternative penalties should be imposed was incarceration. Pennsylvania turned its old jail at Walnut Street into a state prison. New York built Newgate state prison in Greenwich Village and other states followed. But by 1820 faith in the efficacy of

legal reform had declined as statutory changes had no discernible effect on the level of crime and the prisons, where prisoners shared large rooms and booty including alcohol, had become riotous and prone to escapes.

In response, New York developed the Auburn system in which prisoners were confined in separate cells and prohibited from talking when eating and working together, implementing it at Auburn State Prison and Sing Sing at Ossining. The aim of this was rehabilitative: the reformers talked about the penitentiary serving as a model for the family and the school and almost all the states adopted the plan (though Pennsylvania went even further in separating prisoners). The system's fame spread and visitors to the U.S. to see the prisons included de Tocqueville who wrote *Democracy in America* as a result of his visit.

However, by the 1860s, overcrowding became the rule of the day, partly because of the long sentences given for violent crimes, despite increasing severity inside the prison and often cruel methods of gagging and restraining prisoners. An increasing proportion of prisoners were new immigrants. As a result of a tour of prisons in 18 states, Enoch Wines and Theodore Dwight produced a monumental report describing the flaws in the existing system and proposing remedies. Their critical finding was that not one of the state prisons in the United States was seeking the reformation of its inmates as a primary goal. They set out an agenda for reform which was endorsed by a *National Congress* in Cincinnati in 1870. These ideas were put into practice in the Elmira Reformatory in New York in 1876 run by Zebulon Brockway. At the core of the design was an educational program which included general subjects and vocational training for the less capable. Instead of fixed sentences, prisoners who did well could be released early.

But by the 1890s, Elmira had twice as many inmates as it was designed for and they were not only the first offenders between 16 and 31 for which the program was intended. Although it had a number of imitators in different states, it did little to halt the deterioration of the country's prisons which carried on a dreary life of their own. In the southern states, in which blacks made up more than 75% of the inmates, there was ruthless exploitation in which the states leased prisoners as chain gangs to entrepreneurs who treated them worse than slaves. By the 1920s drug use in prisons was also becoming a problem. At the beginning of the twentieth century, psychiatric interpretations of social deviance were gaining a central role in criminology and policy making. By 1926, 67 prisons employed psychiatrists and 45 had psychologists. The language of medicine was applied in an attempt to "cure" offenders of their criminality. In fact, little was known about the causes of their behaviour and prescriptions were not much different from

the earlier reform methods. A system of probation was introduced, but often used simply as an alternative to suspended sentences, and the probation officers appointed had little training, and their caseloads numbered several hundred making assistance or surveillance practically impossible. At the same time they could revoke the probation status without going through another trial or other proper process.

In 1913, Thomas Mott Osborne became chairman of a commission for the reform of the New York prison system and introduced a *Mutual Welfare League* at Auburn with a committee of 49 prisoners appointed by secret ballot from the 1400 inmates. He also removed the striped dress uniform at Sing Sing and introduced recreation and movies. Progressive reform resulted in the "Big House" by the late twenties – prisons averaging 2,500 men with professional management designed to eliminate the abusive forms of corporal punishment and prison labor prevailing at the time.

The American prison system was shaken by a series of riots in the early 1950s triggered by deficiencies of prison facilities, lack of hygiene or medical care, poor food quality, and guard brutality. In the next decade all these demands were recognized as rights by the courts. In 1954, the *American Prison Association* changed its name to the *American Correctional Association* and the rehabilitative emphasis was formalized in the 1955 United Nations Standard Minimum Rules for the Treatment of Prisoners.

Since the 1960s the prison population in the US has risen steadily, even during periods where the crime rate has fallen. This is partly due to profound changes in sentencing practices due to a denunciation of lenient policies in the late sixties and early seventies and assertions that rehabilitative purposes do not work. As a consequence sentencing commissions started to establish minimum as well as maximum sentencing guidelines, which have reduced the discretion of parole authorities and also reduced parole supervision of released prisoners. Another factor that contributed to the increase of incarcerations was the Reagan administration's "War On Drugs" in the 1980s. This War increased money spent on lowering the number of illegal drugs in the United States.

Decarceration in the United States includes overlapping reformist and abolitionist strategies, from "front door" options such as sentencing reform, decriminalisation, diversion and mental health treatment to "back door" approaches, exemplified by parole reform and early release into community supervision programs, amnesty for inmates convicted of non-violent offenses and imposition of prison capacity limits. While reforms focus on incremental changes, abolitionist approaches include budget reallocations, prison closures

and restorative and transformative justice programs that challenge incarceration as an effective deterrent and necessary means of incapacitation. Abolitionists support investments in familial and community mental health, affordable housing and quality education to gradually transition and jail employees to jobs in other economic sectors.

## Europe

The first public prison in Europe was *Le Stinche* in Florence, constructed in 1297, copied in several other cities. The more modern use grew from the prison workhouse (known as the *Rasphuis*) from 1600 in Holland. The house was normally managed by a married couple, the 'father' and 'mother', usually with a work master and discipline master. The inmates, or journeymen, often spent their time on spinning, weaving and fabricating cloths and their output was measured and those who exceeded the minimum received a small sum of money with which they could buy extras from the indoor father.

An exception to the rule of forced labor were those inmates whose families could not look after them and paid for them to be in the workhouse. From the later 17th century private institutions for the insane, called the *beterhuis*, developed to meet this need.

In Hamburg a different pattern occurred with the *spinhaus* in 1669, to which only infamous criminals were admitted. This was paid by the public treasury and the pattern spread in eighteenth-century Germany. In France the use of galley servitude was most common until galleys were abolished in 1748. After this the condemned were put to work in naval arsenals doing heavy work. Confinement originated from the *hospitaux généraux* which were mostly asylums, though in Paris they included many convicts, and persisted up till the revolution.

The use of capital punishment and judicial torture declined during the eighteenth century and imprisonment came to dominate the system, although reform movements started almost immediately. Many countries were committed to the goal as a financially self-sustaining institution and the organization was often subcontracted to entrepreneurs, though this created its own tensions and abuse. By the mid nineteenth century several countries initiated experiments in allowing the prisoners to choose the trades in which they were to be apprenticed. The growing amount of recidivism in the latter half of the nineteenth century led a

number of criminologists to argue that "imprisonment did not, and could not fulfill its original ideal of treatment aimed at reintegrating the offender into the community".

Exceptions to this trend included France and Italy between the world wars, when there was a huge increase in the use of imprisonment. The National Socialist state in Germany used it as an important tool to rid itself of its enemies as crime rates rocketed as a consequence of new categories of criminal behaviour. Russia, which had only started to reform its penal and judicial system in 1860 by abolishing corporal punishment, continued the use of exile with hard labor as a punishment and this was increased to a new level of brutality under Joseph Stalin, despite early reforms by the Bolsheviks.

Postwar reforms stressed the need for the state to tailor punishment to the individual convicted criminal. In 1965, Sweden enacted a new criminal code emphasising non-institutional alternatives to punishment including conditional sentences, probation for first-time offenders and the more extensive use of fines. The use of probation caused a dramatic decline in the number women serving long-term sentences: in France the number fell from 5,231 in 1946 to 1,121 in 1980. Probation spread to most European countries though the level of surveillance varies. In the Netherlands, religious and philanthropic groups are responsible for much of the probationary care. The Dutch government invests heavily in correctional personnel, having 3,100 for 4,500 prisoners in 1959.

However, despite these reforms, numbers in prison started to grow again after the 1960s even in countries committed to non-custodial policies.

## **United Nations**

### **Why promote prison reform?**

Central to the arguments to promote prison reforms is a human rights argument - the premise on which many UN standards and norms have been developed. However, this argument is often insufficient to encourage prison reform programmes in countries with scarce human and financial resources. The detrimental impact of imprisonment, not only on individuals but on families and communities, and economic factors also need to be taken into account when considering the need for prison reforms.

## **Human rights considerations**

A sentence of imprisonment constitutes only a deprivation of the basic right to liberty. It does not entail the restriction of other human rights, with the exception of those which are naturally restricted by the very fact of being in prison. Prison reform is necessary to ensure that this principle is respected, the human rights of prisoners protected and their prospects for social reintegration increased, in compliance with relevant international standards and norms.

## **Imprisonment and poverty**

Imprisonment disproportionately affects individuals and families living in poverty. When an income generating member of the family is imprisoned the rest of the family must adjust to this loss of income. The impact can be especially severe in poor, developing countries where the state does not provide financial assistance to the indigent and where it is not unusual for one breadwinner to financially support an extended family network. Thus the family experiences financial losses as a result of the imprisonment of one of its members, exacerbated by the new expenses that must be met - such as the cost of a lawyer, food for the imprisoned person, transport to prison for visits and so on. When released, often with no prospects for employment, former prisoners are generally subject to socio-economic exclusion and are thus vulnerable to an endless cycle of poverty, marginalisation, criminality and imprisonment. Thus, imprisonment contributes directly to the impoverishment of the prisoner, of his family (with a significant cross-generational effect) and of society by creating future victims and reducing future potential economic performance.

## **Public health consequences of imprisonment**

Prisons have very serious health implications. Prisoners are likely to have existing health problems on entry to prison, as they are predominantly from poorly educated and socio-economically deprived sectors of the general population, with minimal access to adequate health services. Their health conditions deteriorate in prisons which are overcrowded, where nutrition is poor, sanitation inadequate and access to fresh air and exercise often unavailable. Psychiatric disorders, HIV infection, tuberculosis, hepatitis B and C, sexually transmitted diseases, skin diseases, malaria, malnutrition, diarrhoea and injuries including self-mutilation

are the main causes of morbidity and mortality in prison. In countries with a high prevalence of TB in the outside community, prevalence of TB can be up to 100 times higher inside the prisons. In most countries HIV infection in prisons is significantly higher than within the population outside prison, especially where drug addiction and risk behaviours are prevalent. Prison staff are also vulnerable to most of the diseases of which prisoners are at risk.

Prisons are not isolated from the society and prison health is public health. The vast majority of people committed to prison eventually return to the wider society. Thus, it is not in vain that prisons have been referred to as reservoirs of disease in various contexts.

### **Detrimental social impact**

Imprisonment disrupts relationships and weakens social cohesion, since the maintenance of such cohesion is based on long-term relationships. When a member of a family is imprisoned, the disruption of the family structure affects relationships between spouses, as well as between parents and children, reshaping the family and community across generations. Mass imprisonment produces a deep social transformation in families and communities.

### **The cost of imprisonment**

Taking into account the above considerations, it is essential to note that, when considering the cost of imprisonment, account needs to be taken not only of the actual funds spent on the upkeep of each prisoner, which is usually significantly higher than what is spent on a person sentenced to non-custodial sanctions, but also of the indirect costs, such as the social, economic and healthcare related costs, which are difficult to measure, but which are immense and long-term.

## **THE BENCHMARKS FOR ACTION IN PRISON REFORM: THE UNITED NATIONS STANDARDS AND NORMS**

**Key among standards and norms that relate directly to prison reform are:**

- United Nations Standard Minimum Rules for the Treatment of Prisoners

- Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment
- Basic Principles for the Treatment of Prisoners
- United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)

### **Other UN instruments relevant to the prison system:**

- Universal Declaration of Human Rights
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Basic Principles for the Treatment of Prisoners
- UN Declaration on the Protection of All Persons from Enforced Disappearance
- Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination Against Women
- Code of Conduct for Law Enforcement Officials
- Basic Principles on the use of Force and Firearms by Law Enforcement Officials
- Safeguards guaranteeing protection of the rights of those facing the death penalty
- UN Recommendations on Life Imprisonment
- Basic principles on the use of restorative justice programs in criminal matters
- Kampala Declaration on Prison Conditions in Africa
- Arusha Declaration on Good Prison Practice



## 2.2 COMPENDIUM OF UNITED NATIONS STANDARDS AND NORMS IN

### CRIME PREVENTION AND CRIMINAL JUSTICE

The Compendium of United Nations standards and norms in crime prevention and criminal justice contains the instruments in the area of crime prevention and criminal justice adopted by the international community in more than sixty years.

Over the years a considerable body of United Nations standards and norms related to crime prevention and criminal justice has emerged, covering a wide variety of issues such as justice for children, the treatment of offenders, international cooperation, good governance, victim protection and violence against women. The standards and norms have made a significant contribution to promoting more effective and fair criminal justice structures in three dimensions. Firstly, they can be utilized at the national level by fostering in-depth assessments leading to the adoption of necessary criminal justice reforms. Secondly, they can help countries to develop subregional and regional strategies. Thirdly, globally and internationally, the standards and norms represent "best practices" that can be adapted by States to meet national needs. The first edition of the Compendium was published in 1992. The second edition was issued in 2006.

The present edition of the Compendium includes a number of new standards and norms that have been developed in the areas of treatment of prisoners, women offenders, legal aid, judicial integrity, justice for children and violence against women, as well as the declarations of the most recent United Nations congresses on crime prevention and criminal justice.

**This updated version of the Compendium has been structured in five parts:**

1. Persons in custody, non-custodial sanctions and restorative justice
2. Justice for children
3. Crime prevention, violence against women and victim issues
4. Good governance, the independence of the judiciary, the integrity of criminal justice personnel and access to legal aid
5. Legal, institutional and practical arrangements for international cooperation

It is hoped that this updated version of the Compendium will contribute to a wider awareness and dissemination of the United Nations standards and norms in crime prevention and criminal justice and, consequently, will reinforce the respect for the rule of law and human rights in the administration of justice.

## **UNODC'S INTEGRATED AND MULTI-DISCIPLINARY APPROACH TO PRISON REFORM STRATEGY**

It is of utmost importance that prison reform is not regarded in isolation from broader criminal justice reform. UNODC believes that effective prison reform is dependent on the improvement and rationalisation of criminal justice policies, including crime prevention and sentencing policies, and on the care and treatment made available to vulnerable groups in the community. Reform of the prison system should therefore always take into account the needs relating to the reform of the criminal justice system as a whole and employ an integrated, multi-disciplinary strategy to achieve sustainable impact. Thus, reform initiatives will usually need to also encompass criminal justice institutions other than the prison service, such as the judiciary prosecution and police service, as relevant.

An integrated approach also takes account of areas that are typically not regarded as part of the "criminal justice system". These include, for example, the development of substance dependence treatment programmes in the community or psycho-social counselling programmes, to which certain offenders may be diverted, rather than being imprisoned, thus ensuring that services in prison are not overstretched, trying to meet the needs of a growing number of prisoners with special needs.

The integrated strategy to prison reform can benefit immensely from the establishment and development of collaboration and partnerships with other UN agencies and other international and national organisations engaged in complementary programmes.

## **THE MATIC AREAS OF WORK IN THE FIELD OF PRISON REFORM AND ALTERNATIVES TO IMPRISONMENT**

UNODC's technical assistance in the area of prison reform covers the following thematic areas:

- pre-trial detention;
- prison management;
- alternative measures and sanctions; social reintegration.

A cross-cutting theme relevant to all prison related interventions is healthcare, including specifically the prevention, management and treatment of HIV/AIDS and drug dependency.

## **Pre-trial detention**

There are three main issues that need to be taken into consideration in the context of pre-trial detention: firstly, pre-trial detention is overused in most countries worldwide and in many developing countries the size of the pre-trial prisoner population is larger than that of the convicted prisoner population. This situation contradicts the provisions in international standards, including ICCPR, that provide for the limited use of pre-trial detention, only when certain conditions are present. Secondly, pre-trial detention is the period most open to abuse in the criminal justice process. Recognizing the particular vulnerability of pre-trial detainees, international human rights instruments provide for a large number of very specific safeguards to ensure that the rights of detainees are not abused, that they are not ill-treated and their access to justice not hindered. Thirdly, although pre-trial detainees should be presumed innocent until found guilty by a court of law, and treated as such, conditions in pre-trial detention are often much worse than those of prisons for convicted prisoners. In addition, the lack of resources for prisons in many low-income countries means that people in detention do not have access to legal advice and assistance, with the result being that they may overstay on remand, and/or not receive a fair trial, further adding to the congestion of prisons. Therefore, improving access to justice, supporting legal and paralegal aid programmes, improving information management and cooperation between courts and prisons, to speed up the processing of cases, as well as assisting with the development of safeguards for pre-trial detainees, such as independent monitoring and inspection mechanisms, comprise important elements of UNODC's work in the field of penal reform.

## **Prison Management**

In order for a prison system to be managed in a fair and humane manner, national legislation, policies and practices must be guided by the international standards developed to protect the human rights of prisoners. Prison authorities have a responsibility to ensure that the supervision and treatment of prisoners is in line with the rule of law, with respect to individuals' human rights, and that the period of imprisonment is used to prepare individuals for life outside prison following release. But often national legislation and rules relating to the management of prisons are outdated and in need of reform. In many countries the prison department is under the authority of police or military institutions and managers and staff have received no

specific training regarding prison management. Staff morale is usually low and effective leadership to drive prison reform is lacking. Information collection and management systems are also very inadequate (or non-existent) in many prison systems worldwide, hindering the development of sound policies and strategies based on reliable, factual data. UNODC can provide much assistance in reforming national legislation, developing training programmes for prison managers to improve their leadership role and staff to apply international standards and norms in their daily practice, and by contributing to the institutional capacity building of prison administrations.

## **Alternative Measures and Sanctions**

Overcrowding is a key concern in almost all prison systems worldwide, while punitive criminal policies, as well as a shortage of social protection services in the community, continue to contribute to the rapid growth of the prison population in many countries. As mentioned earlier, overcrowding is the root cause of many human rights violations in prisons. Solutions to overcrowding need to be explored and implemented in almost all countries in which UNODC is operational.

While overcrowding can be temporarily decreased by building new prisons, practice shows that trying to overcome the harmful effects of prison overcrowding through the construction of new prisons does not provide a sustainable solution. In addition, building new prisons and maintaining them is expensive, putting pressure on valuable resources. Instead, numerous international instruments recommend a rationalization in sentencing policy, including the wider use of alternatives to prison, aiming to reduce the number of people being isolated from society for long periods.

The use of non-custodial sanctions and measures also reflects a fundamental change in the approach to crime, offenders and their place in society, changing the focus of penitentiary measures from punishment and isolation, to restorative justice and reintegration. When accompanied by adequate support for offenders, it assists some of the most vulnerable members of society to lead a life without having to relapse back into criminal behavior patterns. Thus, the implementation of penal sanctions within the community, rather than through a process of isolation from it, offers in the long term better protection for society. Supporting the introduction and implementation of non-custodial sanctions and measures is therefore a key element of UNODC's work in the area of prison reform.

## Social Reintegration

One of the principle objectives of the United Nations in the area of prison reform is to contribute to the successful reintegration of prisoners into society following their release. Social reintegration initiatives should start as early as possible within the criminal justice process in order to have maximum effect. This means that diversion from the criminal justice process (especially of vulnerable groups) to appropriate treatment programmes, non-custodial sanctions, instead of isolation from society and purposeful activities and programmes in prisons, can all be considered as elements of a comprehensive "social reintegration" policy. Interventions to support former prisoners following release from prison, continuum of care in the community for those in need, will all be more effective if the period in prison is used to prepare a prisoner for re-entry to society. This policy requires close coordination between criminal justice institutions and social protection and health services in the community and probation services where they exist. UNODC can offer key support and advice in this area, including supporting the development of social reintegration programmes in prisons and in assisting with the planning and implementation of continuum of care and support in the community.

## Healthcare

Equivalence of healthcare and the right to health is a principle that applies to all prisoners, who are entitled to receive the same quality of medical care that is available in the community. However, this right is rarely realised in prisons, where usually healthcare services are extremely inadequate. Prison health services are almost always severely under-funded and understaffed and sometimes non-existent. Most of the time under the responsibility of the authority in charge of the prisons administration, prison health services work in complete isolation from national health authorities, including national HIV and national TB programmes. Specific women's health needs are rarely addressed.

The right to health includes not only the access to preventive, curative, reproductive, palliative and supportive health care but also the access to the underlying determinants of health, which include: safe drinking water and adequate sanitation; safe food; adequate nutrition and housing; safe health and dental services; healthy working and environmental conditions; health-related education and information and gender equality.

Technical assistance provided by UNODC in this area is based on the premise that penal reform and health in prisons are interrelated, and that an integrated strategy needs to be adopted in addressing the enormous challenge of HIV/AIDS and other transmissible diseases such as tuberculosis (TB) in prison settings. Improved prison management and prison conditions are fundamental to developing a sustainable health strategy in prisons. In addition, prison health is an integral part of public health, and improving prison health is crucial for the success of public health policies.

### **2.3 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.

### **The cost of imprisonment**

Taking into account the above considerations, it is essential to note that, when considering the cost of imprisonment, account needs to be taken not only of the actual funds spent on the upkeep of each prisoner, which is usually significantly higher than what is spent on a person sentenced to non-custodial sanctions, but also of the indirect costs, such as the social, economic and healthcare related costs, which are difficult to measure, but which are immense and long-term.

## **3. Historical Review of Prison Reforms in India**

Bureau of Police Research & Development, Ministry of Home Affairs, Government of India has drafted a policy " National Policy on Prison Reforms and Correctional Administration" in 2007. They had mentioned - Broadly speaking, the existence of prisons in our society is an ancient phenomenon since vedic period where the anti-social elements were kept in a place identified by the rulers to protect the society against crime. Prisons 'were considered as a *'House of Captives'* where prisoners were kept for retributory and deterrent punishment.

*John Locke*, the great English political theorist of seventeenth century expressed that men were basically good but laws were still needed to keep down *'the few desperate men in society'*. The aim of the society as expressed in its criminal law is to safeguard its own existence to maintain order and to make it possible for all citizens to lead a good life, free from molestation of others. The law enforcement agencies have been given the powers by the society to curtail the freedom of its citizens by taking them into custody in connection with their deviant conduct.

Before the 1700's, governments seldom imprisoned criminals for punishment. Instead, people were imprisoned while awaiting trial or punishment. Common punishments at that time included branding, imposing fines, whipping, and capital punishment (execution). The authorities punished most offenders in public in order to discourage other people from breaking the law. Some criminals were punished by being made to row the oars on ships called *galleys*.

However, English and French rulers kept their political enemies in such prisons as the Tower of London and the Bastille in Paris. In addition, people who owed money and defaulted on payments were held in *debtors prisons*. In many such cases, offenders 'families could stay with them and come and go as they pleased. But the debtors had to stay in prison until their debts were settled.

During the 1700's, many people including British Judge *Sir William Blackstone* criticized use of executions and other harsh punishments. As a result, governments turned more and more to imprisonment as a form of punishment.

Early prisons were dark, dirty and overcrowded. They locked all types of prisoners together, including men, women, children, dangerous criminals, debtors and the insane. During the late 1700's, the British reformer *John Howard* toured Europe to observe prison conditions. His book *The State of the Prisons in England*

*and Wales (1777)* influenced the passage of a law that led to the construction of the first British prisons designed partly for reform. These prisons attempted to make their inmates feel penitent (sorry for doing wrong) and became known as **penitentiaries**.

In 1787, a group of influential Philadelphians, mostly Quakers, formed the Philadelphia Society for Alleviating the Miseries of Public Prisons (now the **Pennsylvania Prison Society**). They believed that some criminals could be reformed through hard work and meditation. The Quakers urged that dangerous criminals be held separately from nonviolent offenders and men and women prisoners be kept apart. These ideas became known as the **Pennsylvania System**, and were put into practice in 1790 at **Philadelphia's Walnut Street Jail**. This prison is considered the first prison in the United States.

The **Pennsylvania System** was the first attempt to rehabilitate criminals by classifying and separating them on the basis of their crimes. As a result, the most dangerous inmates spent all their time alone in their cells. In time, however, the system failed, chiefly because overcrowding made such separation impossible.

During the eighteenth century, New York prison officials developed two major systems of prison organization - the **Auburn System** and the **Elmira System**. The **Auburn System**, introduced at Auburn (N.Y.) Prison in 1821, became widely adopted. Under this system, prisoners stayed in solitary confinement at night and worked together during the day. The system emphasized silence. Prisoners could not speak to, or even look at one another. Prison officials hoped that this silence and isolation would cause inmates to think about their crimes and reform. They believed that the prisoners' spirit must be broken before reform could take place. However, the system failed partly because the rigid rules and isolation drove inmates insane.

The contemporary prison administration in India is a legacy of the British Rule. **Lord Macaulay**, while presenting a note to the Legislative Council in India on December 21, 1835, for the first time, pointed out the terrible inhumane conditions prevalent in Indian prisons and he termed it as a **shocking to humanity**. He recommended that a committee be appointed to suggest measures to improve discipline in prisons.

Consequently, on 2<sup>nd</sup> January, 1836, a **Prison Discipline Committee** was constituted by **Lord William Bantick** for this purpose. The committee submitted their report in 1838 to **Lord Auckland**, the then Governor General which revealed prevalence of rampant corruption in the subordinate establishments, the



laxity in discipline and the system of employing prisoners on extramural labour on public roads. The committee recommended more rigorous treatment of prisoners and rejected all notions of reforming criminals lodged in the prison through moral and religious teaching, education or any system of rewards for good conduct.

*Sir John Lawrence*, a renowned jurist, again examined the conditions of Indian prisons in 1864. Consequently *Second Commission of Enquiry* to look into prison management and discipline was appointed by *Lord Dalhousie*. The commission in their report did not dwell upon, the concept of reformation and welfare of prisoners. It, instead, laid down a system of prison regimentation occasioned with physical torture in the name of prison discipline.

However, the commission made some specific recommendations in respect of accommodation, diet, clothing, bedding, medical care of prisoners only to the extent that these were incidental to discipline and management of prisons and prisoners.

A *Conference of Experts* was held in 1877 to inquire into the prison administration in detail. The conference resolved that a Prison Law should be enacted which could secure uniformity of system and to address such basic issues which were to be reckoned for deciding term of sentence. In pursuance to the resolution passed in this conference, a draft Prison Bill was actually prepared but finally postponed due to unfavourable circumstances.

The *Fourth Jail Commission* was appointed by *Lord Dufferin* in 1888 to inquire into the prison administration. This commission reiterated that the uniformity could not be achieved without the enactment of a single Prisons Act. Again, a consolidated Prisons Bill was prepared providing some rigorous prison punishments such as gunny clothings, imposition of irons on hands and feet, penal diet, solitary confinement and whipping. This Bill was circulated to all local Governments by the Home Secretary to the Government of India on 25<sup>th</sup> March, 1893 with a view to obtaining their views. It was later presented to the Governor General in Council and ultimately Prisons Act of 1894 came into existence which is the current law governing management and administration of prisons. It has remained into force for over 112 years including 58 years after our independence. It has hardly undergone any substantial change during all these

years despite lot of new thinking having emerged respecting objectives, management and administration of prisons.

The process of review of prison problems in the country, continued even after the enactment of Prisons Act, 1894. The first ever comprehensive study was launched on this subject with the appointment of *All India Jail Committee (1919-1920)*. It is indeed a major landmark in the history of prison reforms in India and is appropriately called the corner stone of modern prison reforms in the country. For the first time, in the history of prison administration, reformation and rehabilitation of offenders were identified as one of the objectives of prison administration.

The committee made following recommendations: -

- (i) The care of prisoners should be entrusted to the adequately trained staff drawing sufficient salary to render faithful service.
- (ii) The separation of executive/custodial, ministerial and technical staff in prison service.
- (iii) The diversification of the prison institutions i.e. separate jail for various categories of prisoners and a minimum area of 675 Sq. Feet (75 Sq. Yards) per prisoner was prescribed within the enclosed walls of the prison.

It is ironical that the recommendations made by this Committee could not be implemented due to unconducive political environment.

The constitutional changes brought about by the Government of India Act of 1935, which resulted in the transfer of the subject of prisons in the control of provincial governments, further reduced the possibilities of uniform implementation of the recommendations of the **Indian Jails Committee 1919-1920** in the country. However, the period from 1937 to 1947 was important in the history of Indian prisons because it aroused public consciousness and general awareness for prison reforms at least in some progressive States like, West Bengal, Tamil Nadu, Maharashtra etc. Efforts of some of the eminent freedom fighters who had known first hand the conditions in prisons succeeded in persuading the governments of these progressive States to appoint committees to further enquire into prison conditions and suggest improvements in consonance with their local conditions.

**Some of the Committees appointed during the period were:-**

- (i) The Mysore Committee on Prison Reforms, 1940-41;
- (ii) The U.P. Jail Reforms Committee, 1946; and
- (iii) The Bombay Jail Reforms Committee, 1946-48.

**It was around this period that such progressive legislations as :-**

- (i) The Bombay Probation of Offenders Act, 1936;
- (ii) The C.P. and Berar Conditional Release of Prisoners Act, 1936;
- (iii) The U.P. First Offenders Probation Act, 1938, were passed

In the late thirties, the U.P. Government appointed a *Jail Enquiry Committee* and in pursuance of its recommendations, the *first Jail Training School* in India was established *at Lucknow* in 1940 for the training of jail officers and warders. When India gained independence in 1947, the memories of horrible conditions in prisons were still fresh in the minds of political leaders and they, on assumption of power, embarked upon effecting prison reforms. However, the Constitution of India which came into force in 1950 retained the position of the Government of India Act, 1935 in the matter of prisons and kept '*Prisons*' as a State subject by including it in *List II—State List*, of the Seventh Schedule (Entry 4).

The first decade after independence was marked by strenuous efforts for improvements in living conditions in prisons. A number of Jail Reforms Committees were appointed by the State Governments, to achieve a certain measure of humanization of prison conditions and to put the treatment of offenders on a scientific footing. Some of the committees which made notable recommendations on these lines were:-

- (i) The East Punjab Jail Reforms Committee, 1948-49;
- (ii) The Madras Jail Reforms Committee, 1950-51;
- (iii) The Jail Reforms Committee of Orissa, 1952-55;
- (iv) The Jail Reforms Committee of Travancore and Cochin, 1953-55;
- (v) The U.P. Jail Industries Inquiry Committee, 1955-56; and
- (vi) The Maharashtra Jail Industries Reorganization Committee, 1958-59.

While local Committees were being appointed by State Governments to suggest prison reforms, the Government of India invited technical assistance in this field from the United Nations. *Dr. W. C. Reckless*, a U.N. Expert on Correctional Work, visited India during the years 1951-52 to study prison administration

in the country and to suggest ways and means of improving it. His report '*Jail Administration in India*' is another landmark document in the history of prison reforms. He made a plea for transforming prisons into reformation centres and advocated establishment of new prisons.

Some of the salient recommendations made by *Dr. W. C. Reckless* are as under :-

- (i) **Juvenile delinquents** should not be handed over by the courts to the prisons which are meant for adult offenders.
- (ii) A cadre of properly **trained personnel** was essential to man prison services.
- (iii) Specialized training of **correctional** personnel should be introduced.
- (iv) Outdated Prison Manuals be revised suitably and legal substitutes be introduced for short sentences.
- (v) Full time **Probation and Revising Boards** be set up for the after- care services and also the establishment of such boards for selection of prisoners for **premature release**.
- (vi) An integrated Department of Correctional Administration be set up in each State comprising of Prisons, Borstals, Children institutions, probation services and after-care services.
- (vii) An Advisory Board for Correctional Administration be set up at the Central Government level to help the State Governments in development of correctional programmes.
- (viii) A national forum be created for exchange of professional expertise and experience in the field of correctional administration.
- (ix) A conference of senior staff of correctional departments be held periodically at regular intervals.


The year 1952 witnessed a significant break-through in national coordination on correctional work as in that year the *Eighth Conference of the Inspectors General of Prisons* was held after a lapse of 17 years.

In pursuance to the recommendations made by the Eighth Conference of the Inspectors General of Prisons and also by Dr. W. C. Reckless, the Government of India appointed the *All India Jail Manual Committee* in 1957 to prepare a *Model Prison Manual*. The All India Jail Manual Committee was also asked to examine the problems of prison administration and to make suitable suggestions for improvements to be adopted uniformly throughout the country. In pursuance to the recommendations made by Dr. W. C. Reckless and

also by the All India Jail Manual Committee, the *Central Bureau of Correctional Services* was set up under the Ministry of Home Affairs in 1961 to formulate a uniform policy and to advise the State Governments on the latest methods relating to jail administration, probation, after-care, juvenile and remand homes, certified and reformatory schools, Borstals and protective homes, suppression of immoral traffic, etc.;

The *Central Correctional Bureau* observed the year 1971 as "*Probation Year*" all over the country. The purpose was to create a general awareness amongst the principal branches of the criminal justice system, viz., the judiciary, the police, the prosecution and the correctional administration about the use of probation as an effective non-institutional mode of treatment for the convicts.

In 1972, the Ministry of Home Affairs, Government of India, appointed a *Working Group on Prisons* which presented its report in 1973. This Working Group brought out in its report the need for a *National Policy on Prisons*. Its salient features are as under: -

- 
- (i) To make effective use of *alternatives to imprisonment* as a measure of sentencing policy.
  - (ii) Emphasised the desirability of proper *training* of prison personnel and improvement in their service conditions
  - (iii) To *classify* and treat the offenders *scientifically* and laid down principles of follow-up and after-care procedures.
  - (iv) That the development of prisons and the correctional administration should no longer remain divorced from the national development process and the prison administration should be treated as an integral part of the social defence components of national planning process.
  - (v) Identified an order of priority for the development of prison administration.
  - (vi) The certain aspects of prison administration be included in the *Five Year Plans*.
  - (vii) An amendment to the Constitution be brought to include the subject of prisons and allied institutions in the Concurrent List, the enactment of suitable prison legislation by the Centre and the States, and the revision of State Prison Manuals be undertaken.

In 1964, the *Central Bureau of Correctional Services* was transferred from the Ministry of Home Affairs to the newly created Department of Social Security, now known as Department of Social Justice and Empowerment under the Ministry of Human Resource Development. However, the Bureau continued to be attached to the Ministry of Home Affairs for various matters concerning prison administration and reforms. Its Director was latter designated as Ex-officio *Prison Advisor*.

In 1971, the Bureau was reorganized into the *National Institute of Social Defence* to review policies and programmes in the field of *Social Defence*. \

In spite of the fact that the administration and management of prisons falls under the jurisdiction of State Governments and Union Territory Administrations, the Government of India, has, of late, been seriously concerned about the highly unsatisfactory prison conditions obtaining in many parts of the country. The scheme for the modernization of prisons and improvement in the living conditions of prisoners initiated by the Ministry of Home Affairs during 1977-79 was indicative of a growing awareness for providing a thrust towards the development of prisons in keeping with certain minimum norms. This trend took a definite shape when the *Seventh Finance Commission* went into the question of upgrading the standards of *prison administration* on the basis of a comprehensive assessment of the requirements in this regard. \

The *Seventh Finance Commission* in its Report of 1978, on an analysis of the material received from the Ministry of Home Affairs and the Department of Social Welfare in the Government of India and that obtained by it from State Governments, recognized that prisons had been neglected for far too long and that there had been practically no improvement in their physical environments or in the method of handling inmates. Although the Commission did not regard itself competent to lay down the requirements of modernization of prisons and correctional services, it did identify certain basic areas needing urgent attention.

The *Seventh Finance Commission* took a view that priority should be given:-

- (a) To ensure that adequate direct expenditure was incurred on the prisoners;
- (b) To bring improvements in amenities in respect of water supply, sanitary facilities, electrification, etc. and,

- (c) To provide the construction of additional prison capacities in States where these were found short of the minimum requirements.

The *Seventh Finance Commission* considered it necessary that a norm of Rs. 3 per head for diet and Rs. 1 per prisoner for other items like, medicine, clothing etc per day should be a minimum, and that inclusive of prison overheads (not including the headquarters cost of direction and administration) a minimum of Rs. 6 per day per prisoner should be provided for in all the States. Accordingly, the Commission recommended an allocation of Rs. 48.31 crores for the States which were found lagging behind in these respects.

The Government of India convened a *Conference of Chief Secretaries of all the States and Union Territories* on April 9, 1979, in order to assess the gaps in the existing prison management system and to lay down guidelines for standardization of prison conditions throughout the country. This Conference made a detailed examination of the *issues* pertaining to prison administration and on the basis of the consensus arrived at the Conference, the Government of India requested the State Governments and Union Territory Administrations:-

- (i) to revise their prison manuals on the lines of the Model Prison Manual by the end of the year;
- (ii) to appoint Review Committees for the undertrial prisoners at the district and state levels;
- (iii) to provide legal aid to indigent prisoners and to appoint whole-time or part-time law officers in prisons;
- (iv) to enforce existing provisions with respect to grant of bail and to liberalize bail system after considering all its aspects ;
- (v) to strictly adhere to the provisions of the Code of Criminal Procedure, 1973, with regard to the limitations on time for investigation and inquiry;
- (vi) to ensure that no child in conflict with law be sent to the prison for want of specialized services under the Central Children Act, 1960.
- (vii) to have at least one Borstal School set up under the Borstal Schools Act, 1929 for youthful offenders in each State;

- (viii) to create separate facilities for the care, treatment and rehabilitation of women offenders;
- (ix) to arrange for the treatment of lunatics in specialized institutions;
- (x) to provide special camp accommodation under conditions of minimum security to political agitators coming to prisons;
- (xi) to prepare a time bound programme for improvement in the living conditions of prisoners with priority attention to sanitary facilities, water supply, electrification and to send it to the Ministry of Home Affairs for approval;
- (xii) To develop systematically the programmes of education, training and work in prisons;
- (xiii) To strengthen the machinery for inspection, supervision and monitoring of prison development programme and to ensure that the financial provisions made for upgradation of prison administration by the Seventh Finance Commission are properly utilized;
- (xiv) To organize a systematic programme of prison personnel training on State and Regional level;
- (xv) To abolish the system of convict officers in a phased manner;
- (xvi) To mobilize additional resources for modernization of prisons and development of correctional services in prison;
- (xvii) To set up a State Board of Visitors to visit prisons at regular periodicity and to report on conditions prevailing in the prisons for consideration of the State Government;
- (xviii) To examine and furnish views to Government of India on proposal for setting up of the National Board of Visitors.

The Government of India has constituted an *All India Committee on Jail Reforms* under the chairmanship of *Mr Justice A. N. Mulla* in 1980 the committee submitted their report in 1983. This committee examined all aspects of prison administration and made suitable recommendation respecting various issues involved. A total of 658 recommendations made by this committee on various issues on prison management were



circulated to all States and UTs for its implementation, because the responsibility of managing the prisons is that of the State Governments as *Prisons* is a *State* subject under the List II—*State List of the Seventh Schedule (Entry 4)* of the Constitution of India. The Committee has also suggested that there is an immediate need to have a national policy on prisons and proposed a draft *National Policy on Prisons* as per the brief details given as under:-

### **GOALS AND OBJECTIVES**

Prisons in the country shall endeavour to reform and reassimilate offenders in the social milieu by giving them appropriate correctional treatment.

### **MODALITIES**

- (I) Incorporation of the principles of management of prisons and treatment of offenders in the *Directive Principles* of the State Policy embodied in Part IV of the Constitution of India;
- (II) Inclusion of the subject of prisons and allied institutions in the *Concurrent List* of the Seventh Schedule to the Constitution of India; and
- (III) Enactment of uniform and comprehensive legislation embodying modern principles and procedures regarding reformation and rehabilitation of offenders.
- (IV) There shall be in each State and Union Territory a *Department of Prisons and Correctional Services* dealing with adult and young offenders – their institutional care, treatment, aftercare, probation and other non-institutional services.
- (V) The State shall endeavour to evolve proper mechanism to ensure that no *undertrial prisoner* is unnecessarily detained. This shall be achieved by speeding up trials, simplification of bail procedures and periodic review of cases of undertrial prisoners. Undertrial prisoners shall, as far as possible, be confined in separate institutions.
- (VI) Since it is recognized that imprisonment is not always the best way to meet the objectives of punishments the government shall endeavour to provide in law new *alternatives to imprisonment* such as community service, forfeiture of property, payment of compensation to victims, public censure, etc., in addition to the ones

already existing and shall specially ensure that the Probation of Offenders Act, 1958, is effectively implemented throughout the country.

- (VII) Living conditions in every prison and allied institution meant for the custody, care, treatment and rehabilitation of offenders shall be compatible with *human dignity* in all aspects such as accommodation, hygiene, sanitation, food, clothing, medical facilities, etc. All factors responsible for vitiating the atmosphere of these institutions shall be identified and dealt with effectively.
- (VIII) In consonance with the goals and objectives of prisons, the State shall provide appropriate facilities and professional personnel for the classification of prisoners on a scientific basis. Diversified institutions shall be provided for the segregation of different categories of inmates for proper treatment.
- (IX) The State shall endeavour to develop the field of *criminology* and *penology* and promote *research* on the typology of crime in the context of emerging patterns of crime in the country. This will help in proper classification of offenders and in devising appropriate treatment for them.
- (X) A system of *graded custody* ranging from special security institutions to open institutions shall be provided to offer proper opportunities for the reformation of offenders according to the progress made by them.
- (XI) Programmes for the *treatment* of offenders shall be individualized and shall aim at providing them with opportunities for diversified education, development of work habits and skills, change in attitude, modification of behaviour and implantation of social and moral values.
- (XII) The State shall endeavour to develop *vocational training* and *work programmes* in prisons for all inmates eligible to work. The aim of such training and work programmes shall be to equip inmates with better skills and work habits for their rehabilitation.

- (XIII) Payment of *fair wages* and other *incentives* shall be associated with work programmes to encourage inmate participation in such programmes. The incentives of leave, remission and premature release to convicts shall also be utilized for improvement of their behaviour, strengthening, of family ties and their early return to society.
- (XIV) Custody being the basic function of prisons, appropriate *security arrangements* shall be made in accordance with the need for graded custody in different types of institutions. The management of prisons shall be characterized by firm and positive discipline, with due regard, however, to the maintenance of **human rights** of prisoners. The State recognizes that a prisoner loses his right to liberty but maintains his *residuary rights*. It shall be the endeavour of the State to protect these residuary rights of the prisoners.
- (XV) The State shall provide *free legal aid* to all needy prisoners.
- (XVI) Prisons are not the places for confinement of children. *Children* (under 18 years of age) shall in no case be sent to prisons. All children confined in prisons at present shall be transferred forthwith to appropriate institutions, meant exclusively for children with facilities for their care, education, training and rehabilitation. Benefit of *non-institutional* facilities shall, whenever possible, be extended to such children.
- (XVII) *Young offenders* (between 18 to 21 years) shall not be confined in prisons meant for adult offenders. There shall be separate institutions for them where, in view of their young and impressionable age, they shall be given treatment and training suited to their special needs of *rehabilitation*.
- (XVIII) *Women offenders* shall, as far as possible, be confined in separate institutions specially meant for them. Wherever such arrangements are not possible they shall be kept in *separate annexes* of prisons with proper arrangements. The staff for these institutions and annexes shall comprise of women employees only. Women

prisoners shall be protected against all exploitation. Work and treatment programmes shall be devised for them in consonance with their special needs.

(XIX) ***Mentally ill prisoners*** shall not be confined in prisons. Proper arrangements shall be made for the care and treatment of mentally ill prisoners.

(XX) Persons courting arrest during non-violent ***socio-political- economic agitations*** for declared public cause shall not be confined in prisons along with other prisoners. ***Separate prison camps*** with proper and adequate facilities shall be provided for such non-violent agitators.

(XXI) Most of the persons sentenced to life imprisonment at present have to undergo at least 14 years of actual imprisonment. Prolonged incarceration has a degenerating effect on such persons and is not necessary either from the point of view of individual's reformation or from that of the protection of society. The term of ***sentence for life*** in such cases shall be made flexible in terms of actual confinement so that such a person may not have necessarily to spend 14 years in prison and may be released when his incarceration is no longer necessary.

(XXII) ***Prison services*** shall be developed as a professional career service. The State shall endeavour to develop a well-organised **prison cadre** based on appropriate job requirements, sound training and proper promotional avenues. The efficient functioning of prisons depends undoubtedly upon the personal qualities, educational qualifications, professional competence and character of prison personnel. The status, emoluments and other service conditions of prison personnel should be commensurate with their job requirements and responsibilities. An ***All India Service*** namely the ***Indian Prisons and Correctional Service*** shall be constituted to induct better qualified and talented persons at higher echelons. Proper ***training*** for prison personnel shall be developed at the national, regional and state levels.

(XXIII) The State shall endeavour to secure and encourage ***voluntary participation*** of the ***community*** in prison programmes and in ***non-institutional*** treatment of offenders

on an extensive and systematic basis. Such participation is necessary in view of the objective of ultimate rehabilitation of the offenders in the community. The government shall open avenues for such participation and shall extend financial and other assistance to voluntary organizations and individuals willing to extend help to prisoners and ex-prisoners.

(XXIV) Prisons are hitherto a closed world. It is necessary to open them to some kind of positive and constructive public discernment. Selected *eminent public-men* shall be authorised to visit prisons and give independent report on them to appropriate authorities.

(XXV) In order to provide a forum in the community for continuous thinking on problems of prisons, for promoting professional knowledge and for generating public interest in the reformation of offender, it is necessary that a *professional non-official* registered body is established at the national level. It may have its branches in the States and Union Territories. The Government of India, the State Governments and the Union Territory Administrations shall encourage setting up of such a body and its branches, and shall provide necessary financial and other assistance for their proper functioning.

(XXVI) Probation, aftercare, rehabilitation and follow-up of offenders shall form an integral part of the functions of the Department of Prisons and Correctional Services.

(XXVII) The development of prisons shall be planned in a systematic manner keeping in view the objectives and goals to be achieved. The progress of the implementation of such plans shall be continuously monitored and periodically evaluated.

(XXVIII) The governments at the Centre and in the States / Union Territories shall endeavour to provide *adequate resources* for the development of prisons and other allied services.

(XXIX) Government recognizes that the process of reformation and rehabilitation of offenders is an integral part of the total process of social reconstruction, and,

therefore, the development of prisons shall find a place in the *national development plans*.

(XXX) In view of the importance of uniform development of prisons in the country the Government of India has to play an effective role in this field. For this purpose the Central Government shall set up a high status *National Commission on Prisons* on a permanent basis. This shall be a specialized body to advise the Government of India, the State Governments and the Union Territory Administrations on all matters relating to prisons and allied services. Adequate funds shall be placed at the disposal of this Commission for enabling it to play an effective role in the development of prisons and other welfare programmes. The Commission shall prepare an annual national report on the administration of prisons and allied services, which shall be placed before the Parliament for discussion.

(XXXI) As prisons form part of the criminal justice system and the functioning of other branches of the system – the police, the prosecution and the judiciary have a bearing on the working of prisons, it is necessary to effect proper coordination among these branches. The government shall ensure such *coordination* at various levels.

(XXXII) The State shall promote *research* in the correctional field to make prison programmes more effective.

The draft of the proposed *National Policy on Prisons*, quoted above, would require some changes in view of the developments that have taken place in the intervening period. For instance, the present committee is of the opinion that the enactment of a uniform and comprehensive legislation on prisons would be possible within the existing provisions of the Constitution of India, as India is a party to the International Covenant on Civil and Political Rights, 1966.

The question of inducting alternatives to imprisonment such as community service, forfeiture of property, payment of compensation to victims, public censure, etc involves certain amendments in the substantive law. The enactment of the Juvenile Justice (care and protection of children) Act, 2000, has raised the upper

age limit of children to be kept away from prisons up to the 18 years in case of boys as well, so as to bring parity with girls.

The suggestion for making sentence for life, even for those covered under section 433- A Cr.P.C., flexible in terms of actual confinement also requires amendment to the Code of Criminal Procedure, 1973. Similarly, the issues relating to the establishment of an All India Service, namely the Indian Prisons and Correctional Service, bringing Probation, Aftercare, Rehabilitation and follow-up of offenders within the functions of the Department of Prisons and Correctional Services and the setting-up of a high level National Commission on Prisons on a permanent basis requires a thorough review of the existing policy.

Thereafter, Government of India has constituted another committee on 26<sup>th</sup> May, 1986, namely, **National Expert Committee on Women Prisoners** under the chairmanship of **Justice Krishna Iyer** who has submitted its report on 18<sup>th</sup> May, 1987. This report has also been circulated to all States for taking necessary follow-up action.

The Government of India has shown serious concern over the growing threats to the security and discipline in prisons posing a challenge as how to make prisons a safe place. Consequently, the Ministry of Home Affairs, Government of India has constituted a **All India Group on Prison Administration-Security and discipline** on 28<sup>th</sup> July, 1986 under the chairmanship of **Shri R.K. Kapoor** who submitted their report on 29<sup>th</sup> July, 1987.

In pursuance to the recommendations made by the All India Committee on Jails Reforms, the Government of India identified **Bureau of Police Research & Development (BPR&D)** as a nodal agency at the national level in the field of Correctional Administration on November 16,1995 with specific charter of duties as given under:-

- (i) Analysis and study of Prison statistics and problems of general nature affecting Prison Administration.
- (ii) Assimilation and dissemination of relevant information to the States in the field of Correctional Administration.

- (iii) Coordination of Research Studies conducted by Regional Institutes of Correctional Administration (RICAs) and other Academic/Research Institutes in Correctional Administration and to frame guidelines for conducting research studies/surveys in consultation with State Governments.
- (iv) To review Training Programmes keeping in view the changing social conditions, introduction of new scientific techniques and other related aspects in the field of correction administration.
- (v) To prepare uniform Training Modules, including courses, syllabi, curriculum etc. for providing training at various levels to the Prison Staff in the field of Correctional Administration.
- (vi) Publication of reports, newsletters, bulletins and preparation of Audio Visual aids etc. in the field of Correctional Administration.
- (vii) To set up an Advisory Committee to guide the work relating to Correctional Administration.

In pursuance to the directions given by the Hon'ble Supreme Court in a case of *Ramamurthy Vs. State of Karnataka*, 1996, the Government of India has constituted *All India Model Prison Manual Committee* in November, 2000 under the chairmanship of Director General of BPR&D to prepare a *Model Prison Manual* for the Superintendence and Management of Prisons in India in order to maintain uniformity in the working of prisons throughout the country. This manual has been circulated to all States/UTs for adoption after the acceptance by Government of India in January, 2004. It would not be out of place to mention here that the draft national policy on prisons as proposed by the All India Committee on Jail Reforms which is enumerated in the preceding account was given due consideration by this committee while preparing the Model Prison Manual under reference.

Government of India has constituted a high powered committee under the chairmanship of Director General, BPR&D for drafting a *national policy paper on Prison Reforms and Correctional Administration* on 1<sup>st</sup> December, 2005 with following terms of reference :-

- (I) To review the present status of the legal position and suggest amendments if required on the prison related laws enacted by the Centre and States.



- (II) To review the recommendations made by various Committees & cull out tangible recommendations which are required to be implemented by the Centre and the States.
- (III) To review the status of implementation of these recommendations with reference to the following: -

**(a) Physical conditions of prisons**

- (iv) Overcrowding and Congestion
- (v) Hygienic conditions
- (vi) Other Basic amenities

**(b) Condition of prisoners**

- (i) Undertrials
- (ii) Convicts
- (iii) Detainees

**(c) Correctional Administration**

- (i) Programme for welfare of convicts/undertrials
- (ii) Rehabilitation after release
- (iii) Involvement of Community

**(d) Prison Personnel**

- (i) Overall development of Prison Personnel
- (ii) Training

- (e) Any other issues related to modernization of prisons and correctional administration.

The Committee deliberated upon these identified terms of reference in its various meetings and workshops held in the BPR&D Headquarters and also in various regional workshops. The draft recommendations on these terms of reference have been circulated among all the States/UTs and a copy of the same was sent to the MHA with a view to obtaining their views and suggestions to finalize this draft policy paper in order to evolve national consensus by involving NGOs and other concerned social organizations who are actively involved in prison management issues. In addition to it, BPR&D also placed draft policy paper in the meeting of Advisory Committee on Prison Reforms held on 3<sup>rd</sup> November, 2006 for discussion to make this document more viable. Finally, BPR&D finalized draft national policy.

### 3.1 Prisons in India

Prisons serve as an arm of criminal justice system to punish the deviant behavior of a miscreant. Prisons, and their administration, is a state subject covered by item 4 under the State List in the Seventh Schedule of the Constitution of India. The management and administration of prisons falls exclusively in the domain of the State governments, and is governed by the Prisons Act, 1894 and the Prison manuals of the respective state governments. Thus, the states have the primary role, responsibility and authority to change the current prison laws, rules and regulations. The Central Government provides assistance to the states to improve security in prisons, for the repair and renovation of old prisons, medical facilities, development of borstal schools, facilities to women offenders, vocational training, modernization of prison industries, training to prison personnel, and for the creation of high security enclosures. Today prisons serve mainly three purposes, which may be described as custodial, coercive and correctional. Prison as a place of correction historically is developing in conception.

Earlier prisons served only the custodial function, where an alleged offender could be kept in lawful custody until he could be tried and if found guilty, punished. The Digest of Justinian, in Roman law, established the custodial principle with the statement that “prison is for confinement, not for punishment”. The coercive function means that imprisonment may be used to command a person to comply with an order made by the Court of law, whether civil or criminal; if he complies, he is released.

Prison establishments in India exist at three levels; the taluka level, district level, and central (sometimes called zonal/range) level. The jails in these levels are called Sub Jails, District Jails, and Central Jails respectively. In general, the infrastructure, security, and prisoner facilities such as medical, educational and rehabilitation are progressively better from Sub jail to Central Jail. The other types of jail establishments are Women Jails, Borstal Schools, Open Jails and Special Jails. The following table shows the number of jails and available capacity across India as on 31 December 2019.

### 3.2 Open Prisons in India

Special kind of jails that provides opportunities of employment and living a life in the open to the convicted prisoners. Open jails are special Jails that exclusively confines only convicted prisoners. Convict Prisoners with good behaviour, satisfying certain norms prescribed in the prison

rules are lodged in open prisons. Minimum security is kept in such prisons and prisoners are engaged in agricultural activities.

Only 17 States have reported about the functioning of open jails in their jurisdiction. Amongst these States, Rajasthan has reported the highest number of 39 open jails followed by Maharashtra (19), Madhya Pradesh(6), Gujarat ,Kerala, Tamil Nadu and West Bengal (3 each) The remaining 10 States – Andhra Pradesh, Assam, Bihar, Himachal Pradesh, Jharkhand, Karnataka, Odisha, Punjab, Telangana and Uttarakhand have one open jail each. The States Arunachal Pradesh, Chhattisgarh, Goa, Haryana, Jammu & Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura & Uttar Pradesh and all the UTs do not have any Open Jail in their State/UT. (Table 1.1).

An open prison can be understood to mean any penal establishment in which the prisoners serve their sentence with minimal supervision and perimeter security, and are not locked up in prison cells. The concept is based on principles of self-discipline and “trust begets trust” which, if managed properly, can reform the human resource. The philosophy on the basis of which the open prison exists is reflected in the two dictums of Sir Alexander Paterson. First, a man is sent to prison as punishment and not for punishment. Second, one cannot train a man for freedom unless conditions of his captivity and restraints are considerably relaxed.

The Model Prison Manual (BPR and D 2003) classifies open prison institutions in India into three types:

1. Semi-Open Training Institutions
2. Open Training Institutions/ Open Work Camps
3. Open Colonies

These institutions are graded in the increasing order of liberty granted to inmates and their potential for reformation and reintegration into the society. All these institutions have a properly demarcated area beyond which inmates are not allowed to go.

Semi-Open Training Institutions are generally attached to the closed prisons just beyond the enclosed perimeter and are relatively more under security surveillance. Those prisoners who show reformation potential are made eligible for further transfer to open prisons and colonies.

Open Training Institutions/Work Camps are started in places where activities, like digging canals, water channels, construction of dams, roads, government buildings and prison buildings, projects of land reclamation, land development and bringing uncultivated land under cultivation, soil conservation and afforestation, can be organised.

In Open Colonies, inmates are allowed to bring their family members. Inmates and their family members are given opportunities to work in agriculture or allied fields or in such cottage industries or other allied suitable means of livelihood as can be conveniently organised. Wages paid to the inmates and family members are at par with outside wages. The inmates are to maintain themselves and their families with the wages earned by them in the colony.

Minimum standards, as prescribed for the closed institutions, regarding accommodation, equipment, sanitation, hygiene, medical services, diet and welfare services, are maintained. Wages at these places are higher than those at the closed prisons. Extra concessions like remission, leave and review are granted to the inmates of these open institutions. There are no restrictions on the prisoners in respect of reading materials and are allowed to pursue studies through open universities. A programme that is suitable for inmate's training is organised and cultural and vocational facilities are also provided.

In independent India, the first ever open-air camp was set up and attached to the Model Prison at Lucknow in 1949. The state of Uttar Pradesh further established an open prison camp in 1953 for the construction of a dam over Chandraprabha river near Varanasi. During the 1950s, open prison camps were set up at various places such as Chakiya, Naugarh, and Shahgarh. In Rajasthan, the first open prison camp was set up in Sanganer in 1963. These camps were popularly called Sampurnanand camps after the reformist politician Sampurnanand who in his capacity as chief minister of Uttar Pradesh in the 1950s and as governor of Rajasthan in the 1960s vigorously promoted the idea (Paranjpe 2001).

These were early examples of the open model where prisoners were allowed to engage in agriculture, forestry, cottage industry and public utilities related works. They were paid wages in lieu of their labour. The inmates were called "mazdoor" instead of convicts.

With a view to appreciate the usefulness of open prisons as a correctional measure of treatment of offenders, it shall be pertinent to look at the functioning of some of the successful open prisons of India.

### **Anantapur, Andhra Pradesh**

The open prison campus is spread over 1,427 acre located on the outskirts of Anantapur. Depending on their good conduct and completion of two-thirds of their sentence, closed prison inmates are moved to open prisons. It is based on the trust that they will not be chained and nor will they escape. The Himalaya Drug Company's corporate social responsibility initiative here is to grow a medicinal herb: Alpha Alpha. The prisoners grow the perennial crop and supply the dried herb to the company earning a suitable price for it. The pharmaceutical giant helps with the seeds, packaging and transportation of the dried herbs. The convicts also grow cucumber, brinjal, mangoes, amla, neem, jowar, etc. They get hands-on experience in agriculture and can use this skill to earn their livelihood once they are out of jail.

### **Shri Sampurnanand Khula Bandi Shivir, Sanganer, Rajasthan**

This open camp, located roughly 25 km from Jaipur and spread over four hectares, is unique in that it allows convicts to live with their families. The camp, with a low boundary wall, has about 150 prisoners including 10 women. It is manned by just two guards. The convicts build their own houses and pay for use of water and electricity. They are allowed to go out to work between 6 am and 7 pm, within a 10-km radius. Their children attend nearby schools. Prisoners engage in a wide variety of jobs; some teach in neighbouring schools, others are daily wage earners and labourers. It has a strict screening system. Those who have committed heinous offences, crimes against the state, drug smugglers, and habitual offenders are not selected. All the inmates are required to have served at least a third of their sentences, including remission, in an ordinary jail before being eligible for transfer to this camp (Info Change News and Features 2004).

### **Nettvketheri, Kerala**

Situated on nearly 300 acres in the foothills of the Western Ghats, this open prison houses murderers with no bars or fences. The guards carry no guns. One is as much pleased as is surprised to see that the atmosphere is peaceful and relaxed. Every convict begins his sentence in a closed prison, and those who exhibit good behaviour are transferred to the open prison. The inmates work on the prison's 200-acre rubber plantation, tapping rubber, preparing rubber sheets, or cultivating rice paddies. Each inmate works four to six hours a day and gets wages. The sale of rubber brings in revenues that are more than enough to cover annual expenses for running the prison, and the excess goes back to the Kerala state government. Inmates get to spend one month out of six with their families. There is also a special five-day leave granted in the event of a family member's death, wedding, or other important occasion. The continuing involvement with their

home and community allows the family to share the burden of reform with the state. The open prisoner's family involvement also allows the criminal to gradually heal the community's wounds associated with their crime (Merkel 1994).

### **Superiority of Open Prisons over the Conventional Form of Incarceration**

In a plethora of judgments, the Supreme Court of India has laid down the contours of the rights and entitlements of the prisoners which must be taken into consideration when dealing with various aspects of prison administration. The same are succinctly summarised in the following three principles (BPR and D 2003):

- (i) A person in prison does not become a non-person.
- (ii) A person in prison is entitled to all human rights within the limitations of imprisonment.
- (iii) There is no justification in aggravating the suffering already inherent in the process of incarceration.

In *Ramamurthy vs State of Karnataka* (1997), the Supreme Court had explicitly observed that open prisons represent one of the most successful applications of the principle of individualisation of penalties with a view to social readjustment.

Prof. (Dr.) Khushal Vibhute (2015) is of the opinion that the vocational activities by the inmates of open prisons not only provide opportunities to engage in fruitful pursuits during the term of sentence but also make them learn skills that enable them to follow a vocation on release. Moreover, the gainful work at the open jails keeps their inmates mentally occupied and thereby desist them from turning out the devil's workshop. It gives them self-confidence and self-esteem. It also goes a long way in developing a responsive and respectable attitude in the inmates towards society (Borah 2018: 66–74).

Open prisons are reminiscent of the Gandhian Ashrams where the emphasis was on shared communal living on cooperative basis along with efforts for development of moral character, which in turn has great reformatory and emancipatory potential.

There is a common belief that if undertrials are sent to open prison, they will escape. But the study found that the prisoners did not escape even when they were kept in the open without a security barricade.

Open prisons also hold the possibility of diminishing the growing incidence of recidivism of prisoners. Growing incidence of recidivism is attributed to the post-release frustration of prisoners because of their inability to reintegrate in the society. This stems from social stigma attached to the convicts, lack of employment skills, mere completion of prison sentence without any moral reformation, etc. Open prisons can employ a larger share from the budgetary resources on better prison reformation programmes.

The prisoners can be further made to earn their livelihood by employing them in rural public works which will also indirectly help in the conservation of natural resources. It is a win-win for the prisoners and the community at large. In *Dharmbir vs State of Uttar Pradesh (1979)*, the apex court observed that open prisons have certain advantages in the context of young offenders who could be protected from some of the well-known vices to which young inmates are subjected to in conventional jails. Having been neglected by their families, old age prisoners find it difficult to fend for themselves upon release as they get accustomed to a life in prison, dependent on care by fellow inmates. Open prisons can help these prisoners in transitioning to a normal life. Many families are devastated when their sole breadwinners are sentenced to long periods of imprisonment. Open prisons actively encourage prison visits in initial stages and even allow families to stay with prisoners and together earn livelihood.

In times like these, prisoners may be granted special emergency parole. Shifting of prisoners to an open prison is also appropriate. States need many more open prisons as there is evidence to suggest that these institutions are a cost-effective and humane alternative. The release of such prisoners may be considered and residents of open prisons may also be granted parole.

### **3.3 Challenges in Implementation**

The expectations, immediately post-independence, of successful implementation of the idea of open correctional institutions uniformly across the states, have been tempered if the latest Prison Statistics of India report Published by National Crime Records Bureau 31st December 2019, The 1,350 prisons in the

country consist of 617 Sub Jails, 410 District Jails, 144 Central Jails, 86 Open Jails, 41 Special Jails, 31 Women Jails, 19 Borstal School and 2 Other than the above Jails. Among all the states and union territories, only 17 have open jails. Rajasthan has 31 out of a total of 77 open prisons in India. West Bengal has the highest occupancy rate (114.53 %), while Andhra Pradesh has the lowest rate (15.33 %). Only two states, Maharashtra and Kerala, have created capacity for female inmates in open prisons. Despite the lower number of open prisons, Maharashtra has the highest capacity for inmates in its open prisons (Table 1). Table 1: Capacity, Inmates Population and Occupancy Rate of Open Jails as on 31 December 2019

### 3.4 Ancient and medieval

The concept of modern prison in India originated with the Minute by TB Macaulay in 1835. A Prison Discipline Committee was appointed which submitted its report on 1838. The committee recommended increased rigorousness of treatment while rejecting all humanitarian needs and reform of prisoners. Following the recommendations of the Committee, 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 punishment. In 1864, the Second Commission of Inquiry into Jail Management and Discipline made similar recommendations as the 1838 Committee. In addition, this Commission made some specific suggestions regarding accommodation for prisoners, improvement in diet, clothing, bedding and medical care.

In 1888, the Fourth Jail Commission was appointed. On the basis of its recommendations, a consolidated prison bill was formulated. Provisions regarding jail offences and punishment were specially examined by a committee of experts on Jail Management. In 1894, the draft bill became law with the assent of the Viceroy. It is this Act which forms the basis for the present day jail management and administration in India. This Act has hardly undergone any substantial changes since its inception. However, the process of review of prison problems in India continued. 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 prison.

The Government of India Act 1935 resulted in the transfer of the subject of jails from the Central List to the control of Provincial Governments and henceforth reduced the possibility of



uniform implementation of a prison policy at the national level. Thus, State Governments have their own rules and regulations for the day to day administration of prisons, maintenance of prisoners, and prescribing procedures.

The penal policy in post-revolutionary America was revolved on the question “how prisons could be organised to reduce the chance that the offender would repeat their criminal activity. This approach expressed a definite attitude towards human beings that they are modifiable for the better if given the proper opportunity.” During the eighteenth century mainly two prison reformers, namely, John Howard and Jeremy Bentham shared both a revulsion against traditional punishment and expressed that institutions could be built that would rehabilitate criminals and prevent crime. During late eighteenth century many institutions attempted to test John Howards vision through practical trials. But these experiments failed in reshaping the prisoners. In spite of revived ideology of reformation of prisoners in the custodial institutions, in practice, reforms and rehabilitation plans did not fulfil the expectation of those who thought to implement a system of individualised treatment. But after pioneering effort in this area, i.e., Witzwill establishment in Switzerland in 1891. Internationally it was well accepted that, a person in prison does not become a non-person, is entitled to all human rights within the limitation of imprisonment and there is no justification for aggravating the suffering already inherent in the process of incarceration. International Covenant on Civil and Political Rights is the core international treaty on the protection of the rights of prisoners. India ratified the Covenant in 1979 and is bound to incorporate its provision into domestic law and state practice. It provides that, “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of human person” Apart from civil and political rights, economic and social human rights are set up in International Covenant on Economic, Social and Cultural Rights, which states that prisoners have a right to the highest attainable standard of physical and mental health. The United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955, although not legally binding, provides guidelines of international and domestic law for prisoners and other persons in custody which are as follows:

1. There shall be no discrimination on grounds of religion, race, colour, sex, and language, political or other opinion.

2. Men and women should be detained in separate institutions.
3. Due consideration should be given to the separation of different categories of prisoners.
4. Separate residence should be provided for the young and child prisoners from adult prisoners.

Universal Declaration of Human Rights, 1948 also provides that, “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. United Nation Rules for Treatment of Women Prisoners and Non-Custodial Measures for Women Offender, emphasizes the need to change the laws according to the needs of women prisoners because the rules adopted 50 years ago, did not, however, draw sufficient attention to women’s particular needs. With the increase in the number of women prisoners worldwide, the need to bring more clarity to considerations that should apply to the treatment of women prisoners has acquired importance and urgency.

### 3.5 Modern era

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

### Types of prisons

Prison establishments in India exist at three levels—the taluka level, district level, and central (sometimes called zonal/range) level. The jails in these levels are called Sub Jails, District Jails, and Central Jails respectively. In general, the infrastructure, security, and prisoner facilities such as medical, educational and rehabilitation are progressively better from Sub jail to Central Jail. The other types of jail establishments

are Women Jails, Borstal Schools, Open Jails and Special Jails. The following table shows the number of jails and available capacity across India as on 31 December 2019.

## Central jail

The criteria for a jail to be categorised as a Central Jail varies from state to state. However, the common feature observed throughout India is that prisoners sentenced to imprisonment for a long period (more than two years) are confined in the Central Jails, which have larger capacity in comparison to other jails. These jails also have rehabilitation facilities.

Delhi has the highest number of 16 Central Jails followed by Madhya Pradesh having 11, Maharashtra, Punjab, Rajasthan and Tamil Nadu with 9 each. Karnataka has 8 Central Jails, Gujarat has 4 Central Prisons. Arunachal Pradesh, Meghalaya, Andaman and Nicobar Islands, Dadra and Nagar Haveli, Daman and Diu & Lakshadweep do not have any Central Jails.

## District jail

District jails serve as the main prisons in states and union territories where there are no Central Jails. States which have considerable number of District Jails are Uttar Pradesh(57), Madhya Pradesh(39), Bihar(31), Maharashtra(28), Rajasthan(24), Assam (22), Karnataka (19), Jharkhand (17) and Haryana (16), Gujarat (11), Kerala (11), West Bengal (12), Chhattisgarh (11), Jammu & Kashmir and Nagaland (10 each).

## Sub jail

Sub jails are smaller institutions situated at a sub-divisional level in the States. 9 states have reported comparatively higher number of sub- jails revealing a well-organized prison set-up even at lower formation. These states are Maharashtra (100), Andhra Pradesh (99), Tamil Nadu (96), Madhya Pradesh (72), Karnataka (70), Odisha (73), Rajasthan (60), Telangana and West Bengal (33 each). Odisha had the highest capacity of inmates in various Sub-Jails.

## Open jail

Open jails are minimum security prisons. Only convicted prisoners with good behaviour satisfying certain norms prescribed in the prison rules are admitted in open jails. Minimum security is kept in such prisons and prisoners are engaged in agricultural activities. P.T. Chacko Home Minister of Kerala Introduced First Open Jail In India Nettukaltheri Near Neyyar Trivandrum on 28 August 1962. Seventeen states have

functioning open jails in their jurisdiction. Rajasthan reported the highest number of 29 open jails. There are no open jails in any of the union territories at the end of 2019.

## **Special jail**

Special jails are maximum security prisons for the confinement of a particular class or particular classes of prisoners. Prisoners housed in special jails are generally been convicted of offences such as terrorism, violent crimes, habitual offenders, serious violations of prison discipline, and inmates showing tendencies towards violence and aggression. Kerala has the highest number of special jail 16. Provision for keeping female prisoners in these special jails is available in Tamil Nadu, West Bengal, Gujarat, Kerala, Assam, Karnataka and Maharashtra.

## **Women's jail**

Women's jails are prisons that exclusively house female prisoners. Women's jails may exist at the sub-divisional, district and central (zone/range) level. There were 20 Women's Jails across India with a total capacity of 5,197 and an occupancy rate of 60.1% as on 31 December 2019. Due to the limited capacity of Women's Jails, most female prisoners are housed at other types of jails. As on 31 December 2019, around 83.12% of all female prisoners in India were incarcerated at jails other than a Women's Jail. Maharashtra has 5 women's jails. Kerala and Tamil Nadu each have 3 offense for women in India.

## **Borstal School**

Borstal Schools are a type of youth detention centre and are used exclusively for the imprisonment of minors or juveniles. The primary objective of Borstal Schools is to ensure care, welfare and rehabilitation of young offenders in an environment suitable for children and keep them away from contaminating atmosphere of the prison. The juveniles in conflict with law detained in Borstal Schools are provided various vocational training and education with the help of trained teachers. The emphasis is given on the education, training and moral influence conducive for their reformation and prevention of crime.

Nine States namely, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Maharashtra, Punjab, Rajasthan, Tamil Nadu and Telangana have borstal schools in their respective jurisdictions. Tamil Nadu had the highest capacity for keeping 678 inmates. Himanchal Pradesh and Kerala are the only states that have the capacity

to lodge female inmates in 2 of their Borstal Schools. There are no borstal schools in any of the UTs at the end of 2019.

## Other jails

Jails that do not fall into the categories discussed above, fall under the category of Other Jails. Three states—Karnataka, Kerala and Maharashtra—have 1 other jail each in their jurisdiction. No other state or union territory has any other jail at the end of 2019. The capacity of inmates (male and female) reported by these three States in such jails was highest in Karnataka (250) followed by Kerala (142), Goa (45) and Maharashtra (28).

## Types of prisoners

A "criminal prisoner" is defined as any prisoner duly committed to custody under the writ, warrant or order of any court or authority exercising criminal jurisdiction, or by order of a court-martial. All other prisoners are considered "civil prisoners". Prison inmates lodged in Indian jails are categorised as convicts, undertrials and detainees. A convict is a "criminal prisoner under sentence of a Court or Court-martial". An undertrial is a person who has been committed to judicial custody and against whom a criminal trial has been initiated by a competent authority (trial is in process and not yet disposed off). A detainee is any person detained in prison on the orders of the competent authority under the relevant preventive laws. As on 31 December 2019, there were 135,683 convicts, 293,058 undertrial inmates and 3,089 detainees in India.

## Types of offences

Among convicts, the highest number of inmates are serving sentences for convictions of murder (51.86%), rape (7.66%), offences under the NDPS Act (5.73%), attempted murder (5.30%), dowry deaths (3.88%), and theft (2.84%) as on 31 December 2016. The overwhelming majority of convicts, around 87.82%, are convicted of offences under the Indian Penal Code, while 12.05% are convicted under special and local laws. Among undertrials, the highest number of inmates are being held under charges of murder (22.14%), rape (8.71%), attempted murder (8.03%), theft (8.94%), offences under the NDPS Act (5.88%), and dowry deaths (4.43%) as on 31 December 2019. Around 80.73% of undertrials are charged with offences under the Indian Penal Code, while 19.25% are charged with violating special and local laws. About 2.8% of convicts admitted to jails across India in 2019 were repeat offenders.

## Occupancy rate

One of the primary reasons for the overcrowding of prisons is the pendency of court cases. As on March 31, 2019, more than 3 crore cases are pending in various courts, and two of every three prison inmates in the country are under trials. The 4,19,623 prisoners of 2019, for example, included 2,82,076 under trials, or 67% , according to NCRB data. Some other causes for big pretrial population are corruption, role of police, prosecutors, and judiciary. Indian police system is heavily understaffed and underpaid. It contributes to high detainees population since there are less officials for accused prisoners to accompany them to court. So, their date for hearing keeps getting pushed back. Prosecutors in India are also substantially burdened. There are many vacant assistant posts, but no incentive has been made to fill those posts to fast track the process. Judiciary department also contributes to such extensiveness of pre-trial detainees. There is a back log of 30 million cases in India. With so many cases to handle, the number of judges in India is comparatively very low. Even though for some of them bail is approved, they still cannot get out because they do not have the money or resources to payout the bail. Many of detainees are also uneducated and completely unaware of their rights. About 71% of pre-trial detainees are illiterate and do not even have a high school diploma.

### 3.7 Future of Open Prison in Present Scenario

Open prisons refer to the prisons that involve minimum security and is mainly dependent on the self-discipline of the inmates. The rules of these prisons are less stringent as compared to the rules of the other prisons. For this reason, they are also known as open air camps, prisons without bars or minimum security prison. These promote one of the major principles of punishment known as the 'Reformative Theory 'where instead of severely punishing the convict, an opportunity is provided to reform oneself and get into the mainstream life.

#### General Features of Open Prisons

- **Objectives:** As stated in the Nelson Mandela Rules (UN Standard Minimum Rules for the Treatment of Prisoners), these prisons are created with the objective of providing most favourable condition for

rehabilitation of some selected prisoners as there is no physical security provided against escape and inmates are required to maintain some self-discipline.

- **Eligibility:** Although the eligibility criteria vary from state to state, one principal and universal rule is that the inmate must be a convict and such person must have stayed in controlled jail for at least five years in order to have evidence over his or her good conduct. These are not open for under trial prisoners. Even the life convicts who have showed good conduct can be transferred to semi-open or open prisons.

### Issues with Open Prisons

While open prisons seem to be useful in some areas, it has some disadvantages too.

- Since some prisoners are allowed to set up their livelihood in and around the prisons and also stay with their family, they later refuse to move out of the place as it became a cost-free shelter for them in a prime location. There were other reasons for staying in also, as they get emotionally attached to the place. They also want stability in the education of their children, all of which will be affected if they relocate.
- The undertrial prisoners, who are often falsely implicated into cases and have to go through the ordeals of the police and courts do not have access to these prisons. Rather, they are more in need of such prisons as it will provide a conducive environment for confession, inquiry and also reformation. This is specially in case of undertrial women, sick and juveniles who are more vulnerable to abuse.

India has 63 open jails with a capacity of 5,370, enough to house 1.28 per cent of the 419,623 prisoners across the country. However, 30 per cent of their seats are unutilised, the *Hindustan Times* reported on December 12, 2017. While Rajasthan tops with 29 open prisons, Maharashtra has 13, Kerala and Tamil Nadu have three each, and Gujarat and West Bengal have two each, according to Prison Statistics 2015. The fact remains that overcrowding is a pressing issue involving the “violation of human rights”, to quote the Supreme Court. In 2015, the prison occupancy rate exceeded 200 per cent in Dadra and Nagar Haveli (276.7

per cent), Chhattisgarh (233.9 per cent) and Delhi (226.9 per cent), according to NCRB data. Prisons in another 13 states were full beyond capacity.

In December 2017, the Supreme Court asked states to establish an open prison in each district based on a 2017 report that detailed the success of Rajasthan's open jail system. It followed up this suggestion with an order on May 8, 2018, asking states to "try and utilise the capacity of these open prisons"-- which number 63 and have a capacity of 5,370, but have 30 per cent seats unutilised adding that states should consider increasing the capacity of existing open prisons and "seriously consider the feasibility of establishing open prisons in as many locations as possible".

Commissioned by the Rajasthan State Legal Services Authority and released on National Law Day November 26 in 2017, the report showed that open prisons "reduce the burden on the exchequer", "reduce overcrowding in prisons" and "strengthen the social fabric by mainstreaming estranged individuals who are in conflict with the law", to quote Justice Kalpesh Satyendra Jhaveri, executive chairperson of the authority, who commissioned the report. He is now the chief justice of the Odisha High Court.

### **Open jails and prisoner behaviour**

Overall, 1 in 45 prisoners in Rajasthan's open prisons absconded from parole or escaped, while the all-India figure for closed prisons is 1 in 481, as per 2015 prison data. Chakraburty's report attributed most of the escapes from open prisons to "problems related to procuring parole and remission" in other words, due to prisoners' failure to furnish a bail bond, or due to adverse reports by police personnel willing to err on the side of caution.

"Administrative issues regarding parole are a common problem in prisons across India, and should be addressed," said R.K. Saxena, former inspector general of prisons, Rajasthan, and the director of the 1982-83 Justice Mulla Committee on Prison Reforms. "Parole is a prisoners' right, a conditional release and an opportunity for prisoners to assimilate into society."

The report made several suggestions that would improve parole administration and thereby lower the number of prisoners recorded as having escaped. These are: Reducing the bond amount; encouraging personal bonds instead of requiring guarantors (unless a prisoner misbehaves); considering a prisoner's



behaviour alone based on social welfare department statements instead of police reports for the second parole onwards.

The police, on their part, could be sensitised on the role of open prisons in prisoner reform so that they make unbiased investigation reports when parole applications come up.

## Modern idea of reformation

As a result of growth in the scientific study of individual, his social relationships and analysis of the criminal behaviour by the psychologists, the modern penologists consider reformatory theory as the best way to handle crime. The reformatory theory of punishment insists on reformation of offenders through individualisation. The theory works on a strict notion that even if an offender commits a crime, he does not cease to be a human being. Therefore, an effort must be made to reform the person during the period of his/her incarceration.

Hans Gross and Hugo Munsterberg in their much-referred works on the psychology of a person in criminal jurisprudence say that any procedure of solitary confinement or vindictive discipline will invariably result not in reformation but in further deterioration of an already imperfectly developed personality. We should be greatly concerned whether they come out soured and embittered against the society for having placed them there or full of hope and new courage for the future because we have afforded them ample opportunity to improve their condition during incarceration.

It was realized that imprisonment may only be appropriate for a certain category of offenders, as imprisonment had a drastic effect on some offenders who instead of becoming useful citizens become tough and frustrated criminals with rather enhanced competence and will to commit crimes. Thus, open and semi-open prisons, parole, probation, etc., have proved far more useful for such offenders. Justice V.R. Krishna Iyer, who has delivered incredible judgments in the human rights jurisprudence, once said:

*“the cultural roots of India with ‘Valmiki’, the Greatest Poet with a history of robbery past and such instances of conversion from criminality to nobility fully corroborate with the correctional philosophy advocated by radical penologists. Every saint has a past and every sinner a future. The technology of rehabilitation is the divinity already in man.”*

The main or dominant purpose of the punishment, if not the sole purpose is reforming the criminal and redirecting him into society as an honest citizen. Therefore, modified prison conditions and practices are

needed as preparation for release, during transitional periods of parole or initial reintegration to ensure continued successful adjustment.

## **Open prison system possible in near future**

After initiating a semi-open prison system in Tihar Jail in previous year, the authorities are now mulling the next step – making it an ‘open jail’, where inmates can actually go out of the complex for work and return to it every evening. Tihar officials say the semi-open jail decision got a very good response. The conduct of many convicts improved as they hoped to get selected under the system.

Tihar spokesperson Sunil Gupta had told “In the near future, we might send a proposal to make it an open jail system. There is always scope for moving ahead.” The open jail system has been working successfully across India. Some 28 prisons in the country follow the open jail system, and most states have at least one of them. “Convicts in open jails are in a transition phase where they make themselves ready for their release,” Gupta says many open jails allows low-risk convicts to go outside in the city and work there and then return to jail premises. “As an initiative to reform convicts, open jails give them the freedom to move around freely during the day and earn a living in accordance with their skills set.”

At an open jail in Rajasthan, the authorities have acquired agricultural land where inmates are allowed to build a temporary home, stay with their family members and carry out farming or raise poultry. They move freely across the fields and live a normal life.

In Bihar's Buxar jail, convicts can stay with their family members in a one- room apartment, and take up work outside the prison according to their skill.

## **Open prisons can be reformed**

In a hearing, the Supreme Court has followed up the matter with a transparently positive intent, seeking to enforce the rights of women and children in Indian prisons. It had earlier asked all the states to study the recommendations made by Smita Chakraborty, an independent researcher on prison systems in India, and file their responses within four weeks to the Union Ministry of Home Affairs (MHA) on the matter. The

Supreme Court had also asked all state governments to submit their responses regarding the possibility of setting up open prisons in their respective states.

Chakraburty's had earlier interviewed 428 prisoners in 15 open prisons of Rajasthan after travelling across the state for seven months. She had also interviewed 30,000 prisoners in 58 prisons of Bihar, studying jail conditions, apart from prisons in other states. She was appointed honorary prison commissioner to study the Open Prison System by the Rajasthan State Legal Services Authority (RSLSA). She has suggested setting up of a minimum of two open prisons in each of the 600 districts in India. If the states agree, then India has the possibility of having a completely different prison system in the world.

### Recommendations -

1. Each of 600 districts in India should have a minimum of two open prisons.
2. Open prisons cut down the cost of the closed prison system by more than 70 per cent.
3. Cost per prisoner in Jaipur Central Jail's closed prison is Rs 7, 094 per month.
4. Cost per prisoner in the Sanganer Open prison, near Jaipur, is only Rs 500 per month. There are 400 prisoners in the Sanganer Open Prison.
5. Open prisons require only one staff per 80 prisoners.
6. Pregnant women, women with no support system, women with children, or disability, can live a healthy and productive life in open prisons.
7. Open prisons can be made anywhere, even next to the boundary walls of the closed prisons. Multi-storied housing complexes can be constructed in a limited space. Even in villages and forest areas, modest clay huts can be constructed and prisoners can do agricultural work or create small scale alternative craft sectors.
8. Open prisons are based on trust. Prisoners leave for work in the morning and come back in the evening. They live with their families. If they default or indulge in crime or violence inside or

outside the prison, they will be sent back to the closed prison. Hence, they choose to not break the law.

9. Among the several success stories in Rajasthan, the Sanganer Open Prison close to Jaipur has been an unprecedented accomplishment. There has reportedly been no instance of any violation of law till date. Even Tihar Jail in Delhi has started an open prison which has been a resounding success. There are plans to open a petrol pump run by prisoners in Delhi. DG-prisons in Sanganer and Delhi have played a highly positive and proactive role in backing the idea of open prisons. The idea has been so successful that when the terms of some prisoners ended in Sanganer, they refused to leave the open prison, and only did so after being persuaded. The 29 open prisons in Rajasthan have been symbols of human dignity and responsibility over the years. That is why the Rajasthan High Court has taken serious and positive cognisance of the recommendations by Chakraburty.

Justice KS Jhaveri, executive chairman of the Rajasthan State Legal Services Authority and the second senior-most judge in the Rajasthan High Court, endorsed report submitted in November 2017. The report was published and brought to the public domain on November 20 - National Law Day. The chief justice of Rajasthan launched the report.

The RLSA has forwarded the report to all DG-prisons of all the states requesting perusal of the recommendations made in the report and considering its implementation across the country. The Supreme Court has given favourable observations regarding the report.

Prison reforms in India have not emerged as part of the social movement, but have necessarily resulted from the worst conditions of treatment faced by political prison sufferers during their detention. The prison authorities have repeatedly begun lobbying and made every possible attempt to ensure that prison life's rigours are mitigated and that prisoners are handled humanely. Prisons are not places that are natural. The inmates are without freedom and personal relationships with friends and family. This has always been a contentious issue whether the prison as an institution should be used to rehabilitate and train prisoners for everyday life. There are quite a lot of criminals who otherwise are well-conducted and of respectable class

of society, but because of momentary impulsiveness, provocation and circumstances they fall prey to criminality. Another class of prisoners is otherwise innocent, but must suffer the harshness of prison life as a result of the error of justice. It's obviously difficult for such people to adapt to the jail around them and find life most painful and disgusting in the prison.

It is the real aim of sending criminal prisoners, by instilling in them distaste for crime and violence, that they become decent and legal people. However, the prison authorities are seeking in real action to transform inmates by using intimidation and compulsive techniques. As a result, the changes in inmates are temporary and last only until they are in jail and are attracted to crime once they are released. That is why the current trend is to give the prisoners greater importance in order to be able to reinstate them into regular community life. This goal can be achieved by probation and parole. The sincerity, devotion and tact of jail officials also contribute to the rehabilitation of the offender.

Before India got its independence Britishers were known to put Indians behind bars where they tortured Indian freedom fighters. Even after 73rd years of independence the prison system has not changed a lot. They are still treated with inhuman activities, unsanitary living conditions in jails and are often compared to animals; this caused many losses of lives in the prison.

Open prisons were developed to rehabilitate prisoners who had almost completed their sentence. In the earliest open prisons developed in the US in the 19th century, prisoners nearing release were sent to work as labourers to evaluate their behaviour.

Earlier imprisonment was renowned as a simple form of penal punishment but the system of minimum security in the open prison settings were considered modern form of punishment. Many measures have been taken to lift the insufferable condition as well as redden prison administration.

The subject of open prison was largely discussed in the first United Nation Congress On Prevention of Crime And Treatment of Offenders held in Geneva 1955. Second meeting was held in London 1960.

### **3.8 No Uniform framework to govern Open Jails**

A uniform framework to govern Open Jails is also lacking. The subject of “*prisons and other institutions of a like nature*” in India forms part of the State List. Accordingly, the state governments are expected to come up with detailed rules and guidelines regarding the administration of Open Jails. However, in order to ensure some uniformity in these rules, the government came up with Model Prison Rules, 2016, in which an entire chapter has been devoted for Open Jails. However, these provisions are only illustrative in nature and therefore states continue to administer these jails in their own way.

In absence of a uniform framework, the selection procedure of eligible inmates for Open Jails becomes quite ambiguous. Some strange provisions have been introduced by various states. In Rajasthan Prisoners Open Air Camp Rules, 1972, prisoners who are unmarried are not permitted to shift to these Jails. Introducing marriage as a pre-condition has no relation with the objective behind establishing these Jails. Under the Haryana Prisoners Open Air Camp Rules as well, a prisoner is not considered eligible to reside in Open Jails if he is not having any family. It is important to note that permitting prisoners to financially help their family is not the sole objective for these Jails. The crucial point to consider is the correctional potential of these institutions for the prisoners who have consistently shown discipline behind the closed prisons. Denying a prisoner this opportunity, just because he is not having any family, is in no way fulfilling this purpose. These provisions are good examples of how states are unable to understand the intention behind establishing these institutions.

Another important issue is the biased attitudes of states in selecting only male prisoners for Open Jails. As of now, only four states [Jharkhand, Kerala, Maharashtra and Rajasthan] are having female prisoners in Open Jails. There are 13 states having the necessary facilities for these Jails but only male prisoners are residing in them. Even if safety of the female prisoners is the concern, then progressive steps can be taken to establish separate open prisons for women, like Women’s Open Prison in Kerala or Yerawada Open Jail for Women in Pune. But denying women the opportunity to shift to these jails is clearly against Article 14 of the Constitution as there is no *reasonable justification* which allows states to select only male prisoners. This whimsical arbitrariness on the part of various states is inconsistent with the provisions for Open Jails

in the Model Prison Rules, 2016. This calls for bringing a uniform framework which is *binding* on all the states and union territories. The recommendation of the All India Committee on Jail Reforms, 1980-83 [Vol. I, Part III, Para 4.34.2] to bring the subject of prisons and allied institutions within the concurrent list, can be helpful for this purpose as that will allow Centre to legislate and come up with a uniform framework.

### **Open Jails: The Unexplored Alternative**

According to the data provided by National Crime Records Bureau (NCRB), there are only 77 Open Jails across the country at the end of 2018 and these are present only in 17 states. Even in these 17 states, the occupancy rate is 66.6%. This situation persists even when the Central/District prisons in our country are highly overcrowded. As on 31st December 2018, the occupancy rate was 119% in Central Jails and 132.8% in District Jails. Thus, not only the Central/District Jails are heavily over-utilised but at the same time, Open Jails, which can serve as an effective alternative for housing harmless prisoners, are under-utilised and highly inadequate in number.

### **4. Prison Laws in India**

The system of prison administration in our country is more than 200 years old. Prison is a State subject under List-II of the Seventh Schedule in the Constitution. The management and administration of Prisons falls exclusively in the domain of the State Governments, and is governed by the Prisons Act, 1894 and the Prison Manuals of the respective State Governments. Thus, States have the primary role, responsibility and power to change the current prison laws, rules and regulations. Important statutes which have a bearing on the regulation and management of prisons in the country are:

1. The Indian Penal Code, 1860.
2. The Prisons Act, 1894.
3. The Prisoners Act, 1900.
4. The Identification of Prisoners Act, 1920.

5. Constitution of India, 1950
6. The Transfer of Prisoners Act, 1950.
7. The Representation of People Act, 1951.
8. The Prisoners (Attendance in Courts) Act, 1955.
9. The Probation of Offenders Act, 1958.
10. The Code of Criminal Procedure, 1973.
11. The Mental Health Act, 1987.
12. The Juvenile Justice (Care & Protection) Act, 2000.
13. The Repatriation of Prisoners Act, 2003.
14. Model Prison Manual (2016).

### **National Documents on Prison Administration**

At the national there are number of legislations touching directly or indirectly administration of the prisons and reformation of prisoners. Some of the important legislations are as under:

### **Constitutional Provisions**

Constitution of India nowhere expressly provides any provision for the protection of prisoners or prison justice, but certain basic rights have been guaranteed in part III of Indian Constitution which are available to the prisoners as well because a prisoner is treated as a 'person' in the prison.

**Article 14** of Constitution of India says:

“The state shall not deny to any person equality before law or the equal protection of laws within the territory of India.”

Thus, Article 14 contemplated that like should be treated alike, and also provided the concept of reasonable classification. This article is very useful guide and basis for the prison authorities to determine various categories of prisoners and their classifications with the object of reformation.

Indian Constitution guarantees six freedoms to all the citizens of India. Among these freedoms there are certain freedoms which the prisoners cannot enjoy because of the very nature of these freedoms, such as,



“freedom of movement”, “freedom to residence and to Settle” and “freedom of profession”. But there are other freedoms under this article which a prisoner can enjoy even behind bars, viz., “freedom of speech and expression” & “freedom to become member of an association”.

Moreover, constitution of India provides various other provisions though cannot directly be called as prisoner’s rights but may be relevant. Among them are Article 20 (1&2), Article 21, and Article 22 (4-7).

## **The Prisons Act, 1894**

Prisons Act, of 1894 is the first legislation regarding prison regulation in India. Commenting upon the Prisons Act, of 1894, Dr. Amarendra Mohanty in her book Prison system in India observed the following:

“This Act was largely based on deterrent principles reflected mainly the British policy on the subject. The legislators took little pains to look into the other side of the problem. They were concerned more with the prison working than with treatment of the prisoners. This Prisons Act remained unchanged for last more than one hundred years except very minor change.”

Among the various other provisions under the Prisons Act, 1894, the following sections are related with the reformation of prisoners in one-way or the other.

- Accommodation and sanitary conditions for prisoners.
- Provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison.
- Provisions relating mental and physical state of prisoners.
- Provisions relating to the examination of prisoners by qualified Medical Officer.
- Provisions relating to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and undertrial prisoners.
- Provisions relating to treatment of undertrials, civil prisoners, parole and temporary release of prisoners.

## The Prisoners Act, 1990

For the purpose of prison reformation and prison justice under this Act, following sections are relevant here to mention:

- That all reference to prisons or the imprisonment or confinement shall be construed as referring also to reformatory schools to detention therein.
- That it is the duty of Government for the removal of any prisoner detained under any order or sentence of any court, which is of unsound mind to a lunatic asylum and other place where he will be given proper treatment
- That any court which is a High Court may in case in which it has recommended to Government the granting of a free pardon to any prisoner, permit him to be at liberty on his own cognizance.

## The Transfer of Prisoners Act, 1950

This act was enacted for the transfer of prisoners from one state to another for rehabilitation or vocational training. This Act is also helpful for transfer of prisoners from over-populated jails to less congested jails within the state.

## The Prisoners (Attendance in Courts) Act, 1955

This Act contains provisions authorizing the removal of prisoners to a civil or criminal court for giving evidence or for answering to the charge of an offence. Thus, apart from the substantive prison laws, the Government of India appointed a National Expert Committee on women prisoners (1968- 87) under the chairmanship of Justice Krishna Iyer to examine the conditions of women prisoners. The committee among other things recommended the following suggestions particularly towards reformation and rehabilitation of women prisoners.

- In women's rehabilitation, employment training has a pivotal role. Consequently, work in prison has to be given such potential economic worth and utility that all women in custody are willing to engage in work programmes.
- Training of women prisoners in an area of great relevance to correctional work and to the process of restoration of dignity of the women offender.
- Probation, Parole and other non-institutional modalities of corrective treatment shall be widely used in case of women offenders.
- Moreover, at National Conference on Human Rights of Prisoners on 14th Nov. 1995, consensus was emerged to work out the draft law on prisons. A Core Group has prepared a Draft Bill namely, the Indian Prisons Act, 1995 which was circulated to State Governments for their consideration and observation and also to Ministry of law. But unfortunately Bill is still pending under consideration of the Government of India.

#### **4.1 PROBLEMS RELATED TO INDIAN PRISONS**

Despite the relatively low number of persons in prisons as compared to many other countries in the world, there are some very serious problems in prisons across India. These are: overcrowding, prolonged detention of undertrials, unsatisfactory living conditions, staff shortage and poor training, corruption and extortion, inadequate social reintegration programmes, poor spending on healthcare and welfare, lack of legal aid and allegations of indifferent and even inhuman approach of prison staff among others. On some occasions, such as the blinding of prisoners in Bhagalpur situation also attracted great attention.

The murder of a woman life convict in the , the stark human rights Byculla women's prison in Mumbai in June 2017 has brought the focus back on custodial violence, especially the vulnerability of inmates to authoritarian behaviour.

Jail administration in India being an important part of the criminal justice system has suffered neglect and lack of recognition. A lot has been talked about the police, a little less about the courts and almost nothing about prisons and prisoners. The problem of prison administration needs to be highlighted to focus public attention on this very vital sphere of social concern. It is nearly 30 years since the submission of the report

of the All India Committee on Jail Reforms (1980-83) headed by Justice A.N. Mulla. One may ask why the recommendations of the committee have not been followed and implemented in letter and spirit. There is little significant improvement on an all India basis.

The main reason often cited by the centre not being able to implement the recommendations of the Mulla Committee is that prison is a state subject. This only shows that if there is political will, there shall be no difficulty at the centre taking an active and direct interest in prison administration.

After analyzing different dimensions of prison laws and prison administration, one can lay down the following major problem areas, which afflict the prison system and need priority attention.

1. Delay in trials in the courts has assumed very serious proportions. Even though problem has been highlighted by the Mulla Committee, National Police Commission and through Public Interest Litigation (in the *Hussainara Khattun's case*) there has been no relief at all. Delays commences at the investigation stage itself. In many cases, charge sheets are filed by the police very late leading to a long chain reaction. On the other hand courts are also not without blame. Even though law requires that trials should be conducted from day to day till completed, in practice this rarely happens. Cases are adjourned for a couple of months at a time, which further aggravates delay.
2. Overcrowding itself leads to unsatisfactory living conditions. Although several jail reforms outlined earlier have focused on issues like diet, clothing and cleanliness, unsatisfactory living conditions continue in many prisons around the country. A special commission of inquiry, appointed after the 1995 death of a prominent businessman in India is high-security Tihar Central Jail, reported in 1997 that 10,000 inmates held in that institution endured serious health hazards, including overcrowding, "appalling" sanitary facilities and a shortage of medical staff. The National Police Commission pointed out that 60% of all arrests were either unnecessary or unjustified. This has resulted in overcrowding and accounts for 43.20% of the expenditure of jails.
3. Extortion by prison staff and its less aggressive corollary guard corruption is common in prisons around the world. Given the substantial power that guards exercised over inmates

these problem are predictable, but the low salaries that guards are generally paid severely aggravate them. In exchange for contraband or some special treatment inmates supplement guard salaries with bribes.

4. The arrangement for facilitating communication between prisoners and their relatives, friends and legal advisors require attention. Many of these aspects have been drafted within the Mulla Committee Report and deserve immediate implementation.
5. Inadequate rehabilitative programmes and vocational training facilities is another problem of Indian prisons. Even if there are few rehabilitative programmes they are just outdated.
6. Apart from above mentioned problems of Indian prisons there are other problems also which include lack of legal aid, health problem, homosexual abuses, drug abuse, and prison violence.

## **THE PAKWASA COMMITTEE**

After independence, various Committees were appointed to improve the condition of prisons in India. The Pakwasa Committee in 1949 suggested the system of utilizing prisoners as labour for road work without any intensive supervision over them. It was from this time onwards that a system of wages for prisoners for their labour was introduced. Subsequently, certain liberal provisions were also introduced in jails manuals by which well-behaved inmates were rewarded with remission in their sentence.

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 reforms. 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 Inspectors General 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.

## **MODEL PRISON MANUAL**

The Model Prison Manual 1960 is the guiding principle for prison management in India. On the lines of the Model Prison Manual 1960, the Union Ministry of Home Affairs, 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 certain principles.

## THE MULLA COMMITTEE

In 1980 the Government of India set-up a Committee on Jail Reforms under the Chairmanship of Justice A. N. Mulla. The Mulla Committee submitted its report in 1983.

Some of the prominent recommendations of the Mulla committee are:

- Improving prison condition by making available proper food, clothing, sanitation,
- The prison staff to be properly trained and organized into different cadres. Setting up an All India Service called the Indian Prisons & Correctional Service.
- After-care, rehabilitation and probation to be an integral part of prison service.
- The press and public to be allowed inside prisons and allied correctional institutions periodically, so that the public may have first-hand information about the conditions of prisons and be willing to co-operate in rehabilitation work.
- Undertrials in jails to be reduced to bare minimum and they be kept away from convicts. Undertrials constitute a sizable portion of prison population. Their number to be reduced by speedy trial and liberalization of bail provisions.
- The Government may make an effort to provide adequate financial resources.

## THE KRISHNA IYER COMMITTEE

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

## SUBSEQUENT DEVELOPMENTS

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

uniformity 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 Prison Management Bill (The Prison Administration and Treatment of Prisoners Bill, 1998) was circulated to replace the Prisons Act 1894 by the Government of India to the States but this Bill is yet to be finalized.

Meanwhile, a Model Prison Manual was prepared in 2003 by evolving national consensus on relevant issues relating to prison reforms in India and circulated to all State Governments for guidance. With the passage of time and after having gained a better understanding of ground realities, a need was felt to revise and update the Manual to reflect the developments of the past decade. In the meantime, the Supreme Court had also issued several directions. An expert committee was constituted in 2014 to revamp the Model Prison Manual prepared in 2003. The expert committee extensively reviewed the model prison manual and came up with a draft Model Prison Manual in 2016. The Model Prison Manual 2016 was finalized with the approval of the Home Ministry and circulated to all States and Union Territories for their guidance. The new manual aims at bringing uniformity in laws, rules and regulations governing prison administration and management of prisoners all over the country. Its key features include an emphasis on prison computerization, special provisions for women prisoners, focus on after care services, prison inspections, rights of prisoners sentenced to death, repatriation of foreign prisoners, enhanced focus on prison correctional staff, to name a few.

The Supreme Court, in the matter of *Suo Moto Writ Petition (Civil) No. 406/2013* titled *Re: Inhuman Condition Prevailing in 1382 prisons in India*, asked the Centre and all States to implement its directions on prison reforms including filling up of vacancies of jail staff across the country and devise a scheme to audit their accounts. Besides, an assessment was made by the Bureau of Police Research and Development (BPR&D) on the financial requirements of the States depending on their prison population and available capacity etc. and a non-plan scheme involving a total outlay of Rs 1800 crore to be implemented over a period of five years from 2002-03 to 2006-07 was launched with the approval of Cabinet which was later extended upto 31.3.2009.

## **RECENT MEASURES BY THE CENTRAL GOVERNMENT:**

The Union Home Ministry, issued an advisory on prison reforms adopted at the 5th National Conference of heads of prisons of States and Union Territories, 2019.

## 4.2 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 these provisions into its domestic laws and state practices. The International Covenant on Economic, Social and Cultural Rights (ICESR) states that prisoners have a right to the highest attainable standards of physical and mental health. Apart from civil and political rights, the so called second generation economic, social and 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 juvenile delinquents away from 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).

### International Scenario on Prison Reformation

There are various important International documents on prison administration though not directly related to reformation of prisoners but very much concerned with prison justice and indirectly called for recognition of the inherent quality of prisoners as human family and protection from tyranny and oppression. Some of those international documents are as under:

### Universal Declaration of Human Rights

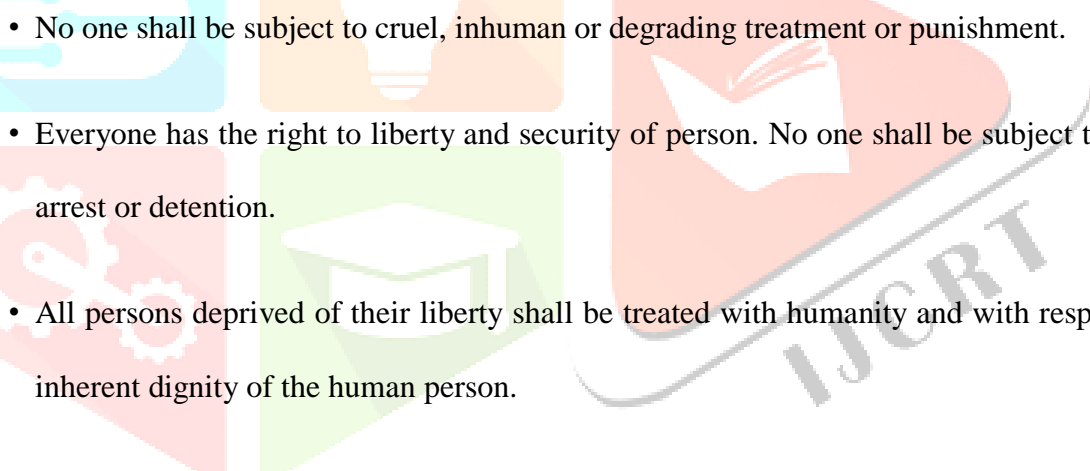
In 1948 a movement was started in the United Nations in the form of Universal Declaration of Human Rights which was adopted in the General Assembly of the United Nations. This organic document is also called as Human Rights Declaration. This important document provides some basic principles of administration of justice. Among the important provisions in the document following are as follows:



- No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- Everyone has the right to life, liberty and security of person.
- No one shall be subjected to arbitrary arrest, detention or exile.
- Every one charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

## **The International Covenant on Civil and Political Rights, 1966**

The International Covenant on Civil and Political Rights remains the core international treaty on the protection of the rights of prisoners. Following relevant provisions of the covenant are as:

- 
- No one shall be subject to cruel, inhuman or degrading treatment or punishment.
  - Everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention.
  - All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
  - No one shall be imprisoned merely on a ground of inability to ful-fill a contractual obligation.

## **Declaration on Protection from Torture, 1975**

On 9<sup>th</sup> December, 1975 United Nations General Assembly by consensus adopted a Declaration on Protection from Torture. Various important provisions relevant herein are as under:

- Any act of torture or other cruel inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the universal declaration of human rights.

- No state may permit or tolerate torture or other cruel, inhuman, degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, human or degrading treatment or punishment.

## **The European Convention on Human Rights (1953-69)**

Another important International document is European Convention on Human Rights. This Convention has its own history in the importance of human rights. Some of the important provisions of this convention are as under:

- Every one's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by the law.
- No one shall be subject to torture or to inhuman treatment or degrading treatment or punishment.
- Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release be ordered if the detention is not lawful.
- Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

## **Standard Minimum Rules for the Treatment of Prisoners**

Amnesty International in 1955 formulated certain standard rules for the treatment of prisoners. These rules form certain basic principles of law in most of the democratic countries of the world. Some important relevant rules are as under:

- One of the important rules embodied is the principle of equality, that there shall be no discrimination on grounds of race, sex, colour, religion, political or other opinion, national or social origin, property, birth or other status among prisoners.

- Men and women shall so far as possible and practicable be detained in separate institution, in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separated.
- There must be complete separation between civil prisoners detained for the debt etc. and persons imprisoned by reason of criminal offence; young prisoners should be kept separate from the adult prisoners.
- Corporal punishment, punishment by placing in dark cells, and all cruel, inhuman degrading punishments shall be completely prohibited.
- There shall be available the services of at least one qualified Medical Officer who shall also have some knowledge of psychiatry.
- Young untried prisoners should be kept separate from adults and shall in principle be detained in separate institutions.

## **Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

United Nations General Assembly adopted and opened for signature and ratification, a document called Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Various important provisions of the convention are as under:

- Each state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
- No state party shall expel, return or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.
- Each state party shall ensure that all acts of torture are offences under its criminal law.
- Each state party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to

any form of arrest, detention or imprisonment in any territory under its jurisdiction with a view to preventing any cases of torture.

- Each state party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.

As per above provisions, it seems Convention is a solid organic document with full teeth to prevent the acts of torture or inhuman treatment. But, unfortunately, India till now has not ratified this organic document.

Thus, it can be said that the basic requirements of human dignity and conditions necessary for prisoners to return to normal life are common in all above mentioned International documents.

## 5. Role of Judiciary in the Administration of Prison Justice

Rights without remedies are useless. Indian judiciary mostly Supreme Court plays a vibrant and active role in the reformation and administration of prisons. One can say that till eighties Indian judiciary adopted status quo jurisprudence and showed a lack of appreciation and concern by its “hand-off” approach to the operations of prisons. It was in 1974 when Apex Court came up with new prison jurisprudence. In a major breakthrough Court in *D.B.M. Patnaik’s case*, asserted that the mere detention does not deprive the convicts of all the fundamental rights enshrined in our Constitution. Supreme Court again in 1977 in *Hiralal’s case* stressed for the rehabilitation of prisoners and reformation of prisons. This judicial wave continued. In Sunil Batra’s case which is taken as a milestone in the field of prison justice and rights of the prisoners in India, Court held that “the fact that a person is legally in prison does not prevent the use of Habeas Corpus to protect his other inherent rights”. In *Prem Shankar Shukala’s case*, Court observed that no person shall be hand-cuffed, fettered routinely for convince of the custodian’s escort. Supreme Court again in *R.D. Upadhyay’s case* has held that right to fair treatment and right of judicial remedy are pre-requisites of administration of prison justice. In *Hussain Ara Khatun’s case* Court adopted a dynamic and constructive role with regard to prison reforms. Court apart from other things stressed on the improvements of the conditions of the prisons in India.

Therefore, this vibrant role of Indian Judiciary shows the change of attitude towards the rights of prisoners and reformation of prisons by treating prisons as correctional rehabilitative institutions.

## 5.1 Creative Role of Indian Judiciary in Enlarging and Protecting Human Rights

Former Attorney for India, Mr. Soil Sorabjee has mentioned in report that when a person proclaims that his country is a democracy I request him to send me the leading newspapers in his country. If there is fulsome praise of the government and hardly any criticism I realise that democracy is absent in the country. Another request I make is to supply me a few law reports containing judgments in connection with freedom of expression and freedom of the press. If the judgments extol the virtues of judicial restraint and are full of praise for the government and hardly give relief to persons who complain of violation of their fundamental rights, it is apparent that the claim of democracy is myth, not reality.

Our country suffers from many ills and there are constant violations of Fundamental Rights of citizens by the executives. Fortunately the judiciary in our country has adopted a creative role in protecting and also enlarging fundamental rights.

Fundamental rights occupy pride of place in Part III of our Constitution. Fundamental rights are enforceable against the State and its manifold instrumentalities, and also against bodies and institutions in which there is

One manifestation of the creative role of the Indian judiciary, is that Fundamental rights, which are not specifically mentioned in Part III of the Constitution, have been spelt out and deduced on the theory that certain unenumerated rights are implicit in the enumerated guarantees.

Let me give some illustrations. Our Constitution does not specifically guarantee freedom of the press as a fundamental right. In several decisions of the Supreme Court freedom of the press has been held to be implicit in the guarantee of freedom of speech and expression and has thus acquired the status of a fundamental right by judicial interpretation. The Supreme Court, by interpretation of the free speech guarantee, has also deduced the right to know and the right of access to information, by reasoning that the concept of an open government directly emanates from the right to know, which is implicit in the guarantee of free speech and expression.

The right to travel abroad and return to one's country has been spelt out from the expression "personal liberty" in Article 21 of the Constitution. Inhuman and degrading punishment or treatment, the Court has evolved this guarantee from other provisions of the Constitution. The right to privacy has also been spelled out and based on the inherent human right to be left alone.

The expression "life" in Article 21 has received expansive interpretation. The Court ruled that "life" does not connote merely physical or animal existence but embraces something more, namely "the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head". Based on this interpretation the Supreme Court has ruled that the right to live with human dignity encompasses within its ambit, the protection and preservation of an environment free from pollution of air and water. Health and sanitation have been held to be integral facets of the right to life.

Guaranteed fundamental rights are not absolute. They can be reasonably restricted in the public interest. The question of whether the restriction imposed is reasonable or unreasonable, excessive or disproportionate has to be determined by an independent judiciary exercising the power of judicial review. This delicate judicial task of striking the balance requires understanding not merely of the legal and constitutional provisions but of the prevalent economic and sociological forces and the contemporary mores of society. The endeavour of the judiciary in India has been to achieve an acceptable accommodation of royal road to achieve such accommodation. Courts have on occasions not struck the balance right.

The first wave of human rights came around the late eighteenth century, which witnessed the drafting of the US Bill of Rights and the French Declaration of the Rights of Man. Both were primarily concerned with guaranteeing liberty against state tyranny and against religious persecution. The second wave was generated because of the atrocities committed by the Nazis before and during the Second World War. The present new wave of rights focuses upon the values of dignity and equality. It has been aptly described as a search for certain basic values to guide human behaviour. Dignity is the moral and intellectual source of human rights.

The Vienna Declaration on Human Rights in June 1993 explicitly recognised that "all human rights are universal, indivisible and interdependent and interrelated". This has put to rest the controversy regarding the superiority of one set of rights over the other. However, at the operational level in developing countries,

socio-economic rights would have priority in matter of enforcement. For example, if the choice were between a new television tower, which would enhance freedom of communication resources would tilt the choice in favour of the latter.

The most remarkable craftsmanship displayed by the Supreme Court in promoting human rights has been to incorporate into fundamental rights some of the Directive Principles, such as those imposing an obligation on the state to provide a decent standard of living, a minimum wage, just and humane conditions of work, and to raise the level of nutrition and public health. This has been achieved by placing a generous interpretation on the expression 'life' in Article of the Constitution.

Access to justice is recognised as a basic human right. In order to achieve this, it is necessary that the doctrine of *locus standi* should not be rigid. Our Supreme Court has liberalised this rule of standing in public law and ruled that where judicial redress is sought for legal injury done to indigent and disadvantaged persons, who, on account of economic disabilities are unable to approach the courts themselves, any member of an action on their behalf.

A mere declaration of invalidity of an executive order or an administrative decision that has resulted in the violation of a person's fundamental rights would not provide a meaningful remedy. The International Covenant of Civil and Political Rights (ICCPR) provide that "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation" [see Article 9(6)]. The Indian Constitution contains no such explicit provision. Nonetheless the Supreme Court has, in some cases, ordered payment of compensation by the State as a remedy in public law. The National Commission to Review the Working of the Constitution (NCRWC) has recommended that right to compensation for violation of a person's life or liberty be made an enforceable fundamental right by an express provision in the Constitution. This salutary recommendation has not yet been fully implemented.

Based on the expansive interpretation of life the Supreme Court has appreciably contributed to environmental protection. It has ruled that the right to live with human dignity encompasses within its ambit, the protection and preservation of an environment free from pollution of air and water, and sanitation, without which life cannot be enjoyed, and that a hygienic environment is an integral facet of the right to healthy life. In its efforts to prevent environmental degradation the Court has ordered certain measures to a pre-treatment process, to be achieved by setting up approved primary treatment plants. The Court was

conscious that the closure of tanneries □□□ □□□□□ □□□□□ □□□□□□□□□□□□ □□□ “life, health and ecology have greater importance to the people”.

Another field in which the Supreme Court has made a remarkable contribution is in cases of custodial violence. It is a notorious fact that in India torture is rampant in police cells and police stations. The Court has ruled that in case of death or injuries suffered whilst a person was in police custody, the burden will lie with the authorities to establish that the death or injuries occurred owing to natural causes. The Court has awarded monetary compensation as a remedy in public law in cases of torture and □□□□□ on persons found guilty of causing death, and made the amount payable to the heirs of the deceased. The underlying rationale is that there must be meaningful remedies for violations of fundamental rights. And one of the effective and telling ways by which violations of fundamental rights can be prevented is to mulct its violators with the payment of monetary compensation.

Another important judicial contribution has been in the field of prisoners' rights. Massive violation of human rights takes place in prisons and detention centres. In most cases it is hardly visible. The Court has ruled that a prisoner is not denuded of his or her basic human rights upon incarceration although the exercise of these rights may be circumscribed by the very nature of imprisonment. The Court frowned upon solitary unconstitutional unless it is imperative in the interest of security. Recently the Court ruled that no prisoner can be asked to do labour free of wages. It is not only the legal right of the workman to have wages for work done; it is a social imperative with ethical compulsion.

Freedom of expression and freedom of the press have received generous protection from the Courts. The underlying rationale of this judicial approach is that freedom of the Press embraces a variety of rights. The right guaranteed is not merely the individual right of the proprietor of the newspaper, or that of the editor or the journalist. It includes within its compass the collective right of the community, the right of citizens to read and to be informed, to impart and receive information. In essence it is the right of the people of India to know about the functioning of the government and the working of public institutions, which would enable them to make informed choices in discharge of their civic and political duties.

In the beginning the Supreme Court had adopted an illiberal attitude towards censorship on the ground of obscenity. Its decision in *Ranjit Udeshi* that D.H. Lawrence's novel *Lady Chatterly's Lover* was obscene was an aberration. The Supreme Court has recently been less illiberal and ruled that neither nudity nor



vulgarity can necessarily be equated with obscenity. If a reference to sex by itself in any novel is considered to be obscene □□□ □□□ □□ □□ will be unable to read any novel and will have to read only books that are purely religious. The Court has deprecated censorship imposed in order to protect the pervert or to assuage the susceptibilities of the over-sensitive. According to the Court's rulings "the standards we set for our censors must make a substantial allowance in favour of freedom. They must be so framed that we are not reduced to a level where the protection of the least capable and the most depraved amongst us determines what the morally healthy cannot view or read". The liberalization of the rule of *locus standi* □ has fostered the development of Public Interest Litigation (PIL).

Recourse can be had to PIL also for the enforcement of the rights of a determinate class or group of people who are directly injured by the act or omission complained of but who are unable to approach the court on account of indigence, illiteracy or social or economic disabilities. For example, young children working in factories under conditions detrimental to their health or inmates of asylums living in sub-human conditions. The Court's role in PIL has drawn severe criticism. Indignant critics charge that some orders passed by the courts in PIL are tantamount to government by the judiciary and that the Courts are running and, in effect, ruining the country. What is forgotten is that it is the notorious tardiness of legislatures and the inertia, almost bordering on callousness, of the executive branch that provide a proper occasion for judicial intervention. When continued derelictions of statutory and constitutional obligations and gross violations of human rights by public authorities are brought to the notice of the Court, it cannot fold its hands and refuse to act. Unlike the executive or the legislature, the judiciary can neither prevaricate nor procrastinate. It must respond promptly.

It is true that PIL has been abused in some cases and has degenerated into publicity interest litigation, private interest litigation and political interest litigation. At times it has become an instrument of blackmail and □□□ the construction of the factory of a rival industrialist for alleged violations of municipal laws and regulations. Courts have severely deprecated the misuse of PIL and imposed heavy costs in some such cases. However, abuse of PIL is no ground for its abolition or for placing unreasonable fetters on it. Abuse of process is as ancient as legal ingenuity. A good judicial jockey in the saddle can effectively curb the misuse of PIL.

It must not be forgotten that thanks to PIL, numerous under-trial prisoners languishing in jails for inordinately long periods have been released; persons treated like serfs and held in bondage have secured freedom and have been rehabilitated; inmates of care homes and mental asylums have been restored their humanity; and the conditions for workers in stone quarries and brick kilns, and young children working in hazardous occupations have undergone a humanizing change. Fundamental rights have become living realities, to some extent, for at least some illiterate, indigent and exploited segments of Indian humanity. Juristic activism in the arena of environmental and ecological issues and accountability in the use of hazardous technology has been made possible and has yielded to approach the courts and has provided opportunities for vindicating the Rule of Law. All things considered judicial activism in PIL has greatly contributed to the protection and promotion of human rights.

After briefly surveying the scene what honest appraisal can be made of the overall role of our judicial sentinels in India about the performance of their solemn duty of protecting and promoting human rights?

A fair assessment would be that despite occasional aberrations of the judicial process our judiciary has been a good sentinel on the *qui vive* in the protection of the fundamental rights of our people. Despite frustration with the legal and judicial system because of costs and inordinate delays be appointed in a matter of national importance the public demand is for a judge to head the Commission. The most heartening feature is that Courts have started taking human suffering seriously and are responding to it with sensitivity. On the whole our judiciary has upheld the Rule of Law, sustained constitutional values and made human rights meaningful. And that is no mean achievement in a country with such a vast population.

### **Role of Judiciary in Protecting the Rights of Prisoners**

Judiciary in every country has an obligation and a Constitutional role to protect Human Rights of citizens. As per the mandate of the Constitution of India, this function is assigned to the superior judiciary namely the Supreme Court of India and High courts. The Supreme Court of India is perhaps one of the most active courts when it comes into the matter of protection of Human Rights. It has great reputation of independence and credibility. The independent judicial system stems from the notion of the separation of powers where the executive, legislature and judiciary form three branches of the government. This separation and consequent independence is key to the judiciary's effective in upholding the rule of law and human rights.

Since every society has a judicial system for the protection of its law-abiding members, it has to make provisions of prisons for the law breakers. But it doesn't mean that the prisoners have no rights. The prisoners also have their rights. The Supreme Court of India, by interpreting Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoner's rights to maintain human dignity. Any violation of this right attracts the provisions of Article 14 of the Constitution, which enshrines right to equality and equal protection of law. In addition to this, the question of cruelty to prisoners is also dealt with, specifically by the Prison Act, 1894 and the Criminal Procedure Code (CRPC). Any excess committed on a prisoner by the police authorities not only attracts the attention of the legislature but also of the judiciary. The Indian judiciary, particularly the Supreme Court, in the recent past, has been very vigilant against violations of the human rights of the prisoners. The Supreme Court and the High Courts have commented upon the deplorable conditions prevailing inside the prisons, resulting in violation of prisoner's rights. Prisoners' rights have become an important item in the agenda for prison reforms. The need for prison reforms has come into focus during the last three to four decades.

### **Prisoners and the Human Rights**

The Supreme Court of India in the recent past has been very vigilant against encroachments upon the Human Rights of the prisoners. Article 21 of the Constitution of India provides that "No person shall be deprived of his life and Personal Liberty except according to procedure established by law". The rights to life and Personal Liberty is the back bone of the Human Rights in India. Through its positive approach and Activism, the Indian judiciary has served as an institution for providing effective remedy against the violations of Human Rights. By giving a liberal and comprehensive meaning to "life and personal liberty," the courts have formulated and have established plethora of rights. The court gave a very narrow and concrete meaning to the Fundamental Rights enshrined in Article 21. In A.K.Gopalan's case, the court had taken the view that each Article dealt with separate rights and there was no relation with each other i.e. they were mutually exclusive. But this view has been held to be wrong in Maneka Gandhi case and held that they are not mutually exclusive but form a single scheme in the Constitution, that they are all parts of an integrated scheme in the Constitution. In the instant case, the court stated that "the ambit of Personal Liberty by Article 21 of the Constitution is wide and comprehensive. It embraces both substantive rights to Personal Liberty

and the procedure prescribed for their deprivation” and also opined that the procedures prescribed by law must be fair, just and reasonable.

In the following cases namely Maneka Gandhi, Sunil Batra (I), M.H.Hoskot and Hussainara Khatoon, the Supreme Court has taken the view that the provisions of part III should be given widest possible interpretation. It has been held that right to legal aid, speedy trial, right to have interview with friend, relative and lawyer, protection to prisoners in jail from degrading, inhuman, and barbarous treatment, right to travel abroad, right live with human dignity, right to livelihood, etc. though specifically not mentioned are Fundamental Rights under Article 21 of the Constitution. Thus, the Supreme Court of India has considerably widened the scope of Article 21 and has held that its protection will be available for safeguarding the fundamental rights of the prisoners and for effecting prison reforms. The Supreme Court of India has developed Human Rights jurisprudence for the preservation and protection of prisoner's Right to Human Dignity. The concern of the Apex judiciary is evident from the various cardinal judicial decisions. The decisions of the Supreme Court in Sunil Batra was a watershed in the development of prison jurisprudence in India.

### **Rights against Solitary Confinement and Bar Fetters**

The courts have strong view against solitary confinement and held that imposition of solitary confinement is highly degrading and dehumanizing effect on the prisoners. The courts have taken the view that it could be imposed only in exceptional cases where the convict was of such a dangerous character that he must be segregated from the other prisoners. The Supreme Court in Sunil Batra (1) considered the validity of solitary confinement. The Supreme Court has also reacted strongly against putting bar fetters to the prisoners. The court observed that continuously keeping a prisoner in fetters day and night reduced the prisoner from human being to an animal and such treatment was so cruel and unusual that the use of bar fetters was against the spirit of the Constitution of India.

### **Rights against Inhuman Treatment of Prisoners**

Human Rights are part and parcel of Human Dignity. The Supreme Court of India in various cases has taken a serious note of the inhuman treatment on prisoners and has issued appropriate directions to prison and

police authorities for safeguarding the rights of the prisoners and persons in police lock-up. The Supreme Court read the right against torture into Articles 14 and 19 of the Constitution. The court observed that “the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14”. In the *Raghubir Singh v. State of Bihar*, the Supreme Court expressed its anguish over police torture by upholding the life sentence awarded to a police officer responsible for the death of a suspect due to torture in a police lock-up. In *Kishore Singh VS. State of Rajasthan* the Supreme Court held that the use of third degree method by police is violative of Article 21.

The decision of the Supreme Court in the case of *D.K. Basu* is noteworthy. While dealing the case, the court specifically concentrated on the problem of custodial torture and issued a number of directions to eradicate this evil, for better protection and promotion of Human Rights. In the instant case the Supreme Court defined torture and analyzed its implications.

### **Right to have Interview with Friends, Relatives and Lawyers**

The horizon of Human Rights is expanding. Prisoner’s rights have been recognized not only to protect them from physical discomfort or torture in person, but also to save them from mental torture. The Right to Life and Personal Liberty enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to have interview with the members of one’s family and friends is clearly part of the Personal Liberty embodied in Article 21. Article 22 (I) of the Constitution directs that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice. This legal right is also available in the code of criminal procedure under section 304. The court has held that from the time of arrest, this right accrues to the arrested person and he has the right of choice of a lawyer. In a series of cases the Supreme Court of India considered the scope of the right of the prisoners or detainees to have interviews with family members, friends and counsel. In *Dharmbir vs. State of U.P* the court directed the state Government to allow family members to visit the prisoners and for the prisoners, at least once a year, to visit their families, under guarded conditions.

In *Hussainara Khatoon vs. Home Secretary*, Bihar, the Supreme Court has held that it is the Constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of

reasons such as poverty, indigence or incommunicado situation, to have free legal services provided to him by the state and the state is under Constitutional duty to provide a lawyer to such person if the needs of justice so require. If free legal services are not provided the trial itself may be vitiated as contravening the Article 21.

In *Sheela Barse vs. State of Maharashtra*, the court held that interviews of the prisoners become necessary as otherwise the correct information may not be collected but such access has got to be controlled and regulated. In *Jogindar Kumar vs. State of U.P.*, the court opined that the horizon of Human Rights is expanding and at the same time, the crime rate is also increasing and the court has been receiving complaints about violation of Human Rights because of indiscriminate arrests. The court observed that there is the right to have someone informed.

### Right to Speedy Trial

The speedy trial of offences is one of the basic objectives of the criminal justice delivery system. Once the cognizance of the accusation is taken by the court then the trial has to be conducted expeditiously so as to punish the guilty and to absolve the innocent. Everyone is presumed to be innocent until the guilty is proved. So, the quality or innocence of the accused has to be determined as quickly as possible. It is therefore, incumbent on the court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed and the accused persons are not indefinitely harassed. It is pertinent to mention that "delay in trial by itself constitute denial of justice" which is said to be "justice delayed is justice denied". It is absolutely necessary that the persons accused of offences should be speedily tried so that in cases where the bail is refused, the accused persons have not to remain in jail longer than is absolutely necessary. The right to speedy trial has become a universally recognized human right.

The main procedure for investigation and trial of an offence with regard to speedy trial is contained in the code of criminal procedure. The right to speedy trial is contained under section 309 of Cr.PC. If the provisions of Cr.PC are followed in their letter and spirit, then there would be no question of any grievance. But, these provisions are not properly implemented in their spirit. It is necessary that the Constitutional guarantee of speedy trial emanating from Article 21 should be properly reflected in the provisions of the code. For this purpose in *A.R.Antulay vs. R.S.Nayak*, the Supreme Court has laid down following

propositions which will go a long way to protect the Human Rights of the prisoners. In the instant case the Apex Court held that the right to speedy trial flowing from Article 21 of the Constitution is available to accused at all stages like investigation, inquiry, trial, appeal, revision and retrial.

## **Right to Legal Aid**

Though, the Constitution of India does not expressly provide the Right to Legal Aid, but the judiciary has shown its favour towards poor prisoners because of their poverty and are not in a position to engage the lawyer of their own choice. The 42nd Amendment Act, 1976 has included Free Legal Aid as one of the Directive Principles of State Policy under Article 39A in the Constitution. This is the most important and direct Article of the Constitution which speaks of Free Legal Aid. Though, this Article finds place in part-IV of the Constitution as one of the Directive Principle of State Policy and though this Article is not enforceable by courts, the principle laid down there in are fundamental in the governance of the country. Article 37 of the Constitution casts a duty on the state to apply these principles in making laws. While Article 38 imposes a duty on the state to promote the welfare of the people by securing and protecting as effectively as it many a social order in which justice, social, economic and political, shall inform all the institutions of the national life. The parliament has enacted Legal Services Authorities Act, 1987 under which legal Aid is guaranteed and various state governments had established legal Aid and Advice Board and framed schemes for Free Legal Aid and incidental matter to give effect to the Constitutional mandate of Article 39-A. Under the Indian Human Rights jurisprudence, Legal Aid is of wider amplitude and it is not only available in criminal cases but also in civil, revenue and administrative cases.

In *Madhav Hayawadan Rao Hosket vs. State of Maharashtra*, a three judges bench (V.R.Krishna Iyer, D.A.Desai and O.Chinnappa Reddy, JJ) of the Supreme Court reading Articles 21 and 39-A, along with Article 142 and section 304 of Cr.PC together declared that the Government was under duty to provide legal services to the accused persons.

## **Rights against Handcuffing**

In *Prem Shanker vs. Delhi Administration* the Supreme Court added yet another projectile in its armoury to be used against the war for prison reform and prisoner's rights. In the instant case the question raised was whether handcuffing is constitutionally valid or not? The Supreme Court discussed in depth the hand cuffing

jurisprudence. It is the case placed before the court by way of Public Interest Litigation urging the court to pronounce upon the Constitution validity of the “hand cuffing culture” in the light of Article 21 of the Constitution. In the instant case, the court banned the routine hand cuffing of a prisoners as a Constitutional mandate and declared the distinction between classes of prisoner as obsolete. The court also opined that “hand cuffing is prima-facie inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring to inflict “irons” is to resort to Zoological strategies repugnant to Article 21 of the Constitution”.

### **Narco Analysis/Polygraph/Brain Mapping**

In *Selvi Vs State of Karnataka*, (2010), the Supreme Court has declared Narcoanalysis, Polygraph test and Brain Mapping unconstitutional and violative of human rights. This decision is quite unfavourable to various investigation authorities as it will be a hindrance to furtherance of investigation and many alleged criminals will escape conviction with this new position. But the apex court further said that a person can only be subjected to such tests when he/she assents to them. The result of tests will not be admissible as evidence in the court but can only be used for furtherance of investigation. With advancement in technology coupled with neurology, Narcoanalysis, Polygraph test and Brain mapping emerged as favourite tools of investigation agencies around the world for eliciting truth from the accused. But eventually voices of dissent were heard from human rights organizations and people subjected to such tests. They were labelled as atrocity to human mind and breach of right to privacy of an individual. The Supreme Court accepted that the tests in question are violative of Article 20 (3), which lays down that a person cannot be forced to give evidence against himself. Court also directed the investigation agencies that the directives by National Human Rights Commission should be adhered to strictly while conducting the tests. These tests were put to use in many cases previously, Arushi Talwar murder Case, Nithari killings Case, Abdul Telagi Case, Abu Salem Case, Pragya Thakur (Bomb blast Case) etc. being ones which generated lot of public interest.

### **5.2 COVID-19 in Prisons: SC Intervention Must Ensure the Centre Exercises Its Responsibility**

American Supreme Court judge Sonia Sotomayor wrote last year in one of her judgments: “It has long been said that a society’s worth can be judged by taking stock of its prisons. That is all the truer in this pandemic,



where inmates everywhere have been rendered vulnerable and often powerless to protect themselves from harm.”

India's Supreme Court echoes Justice Sotomayor's concern by periodically taking up the case for decongesting prisons to emphasise its commitment to human rights jurisprudence. Unfortunately, the case calendar satisfies itself with this objective, rather than strive to achieve results which can restore trust among the intended beneficiaries.

*In Re: Contagion of Covid 19 Virus in Prisons is a suo motu writ petition*, first heard by the Supreme Court on March 16 last year by a bench comprising the then Chief Justice of India (CJI), S.A. Bobde and Justice L. Nageswara Rao. Considering that the bench on its own took note of the situation in the prisons even before the declaration of the nationwide lockdown, and with only 107 persons contracting the virus across the country, it was a prescient intervention.

Another bench comprising the current CJI, N.V. Ramana, and Justices Rao and Surya Kant heard the case on Friday after a gap of ten months, and issued a slew of directions. But is the Supreme Court anywhere close to achieving the purposes of its intervention?

There are 1,339 prisons in the country, and approximately 466,084 inmates inhabit such prisons, the order issued by the Supreme Court on March 16 last year said. According to the National Crime Records Bureau (NCRB), the occupancy rate of Indian prisons is at 117.6% and in states such as Uttar Pradesh and Sikkim, the occupancy rate is as high as 176.5% and 157.3%, respectively.

The Supreme Court noted that prison inmates are highly prone to contagious viruses, as the rate of ingress and egress in prisons is very high, especially since persons (accused, convicts, detenus etc.) are brought to the prisons on a daily basis. Apart from them, several correctional officers and other prison staff enter the prisons regularly, and so do visitors (kith and kin of prisoners) and lawyers. Therefore, there is a high risk of transmission of COVID-19 virus to the prison inmates. For the reasons mentioned above, our prisons can become fertile breeding grounds for incubation of COVID-19, the court noted.

On March 16, 2020, the court appreciated the efforts of director general of prisons, Kerala and Tihar jail, Delhi for testing, screening and isolating cases before permitting the entry of new inmates. All the 17,500 inmates of Tihar jail were checked for the virus and it was found that none displayed any symptoms relating

to COVID-19, the bench observed. After emphasising the need for social distancing, the bench directed that prison specific readiness and response plans must be developed in consultation with medical experts. A monitoring team must be set up at the state level to ensure that the directives issued with regard to prison and remand homes are being complied with scrupulously, the bench ordered on the next day of hearing, on March 23, 2020.

## **Maharashtra's Prisons Are Feeling the Brunt of a Crisis That Could Have Been Averted**

Despite several directions from the Supreme Court and high court to decongest its overcrowded prisons in view of the COVID-19 pandemic, the state government has neglected the issue. On April 16, a Nagpur jail official made a hurried call to Madhubani district in Bihar, to inform 52-year-old Kamal Ansari's family of his deteriorating health condition. Breaking down on the call, Ansari's wife told the prison doctor, "Bacha lo unhe, unke chote chote bache hai (Please save him, he has young kids)".

Ansari, a convicted prisoner on death row, had been hospitalised on April 9 after he showed signs of pneumonia. His condition had rapidly worsened and he soon had to be put on ventilator support. The family, however, was informed about Ansari's health only seven days after he was hospitalised. He died on April 19.

Ansari had been in jail since 2006. He was arrested and later convicted for involvement in the serial train blasts that took off in Mumbai on July 11, 2006. The case has since been embroiled in several twists and turns and loopholes have been pointed in the police investigations from time to time. Even after the conviction, Ansari and others have maintained they have been wrongly implicated in the case.

We do not know if Ansari's death could have been prevented. As a convict on death row, he could not have availed any benefits – parole or emergency bail as prescribed by the guideline issued by the Supreme Court in the wake of the onset of the COVID-19 pandemic in March last year. But if the state had taken the apex court's order in a suo-motu petition from last year seriously, the ongoing crisis in Maharashtra's 60 prisons could definitely have been averted.

Ansari's family was only informed close to 10 hours after his death. They have accused the prison authorities of negligence. "While in custody, the prisoner is completely dependent on the authorities to make

arrangements. Family members could do nothing. And the delay in making treatment available killed my father,” Ansari’s daughter Mariyam says.

According to the prison department, two prisoners, including Ansari, and one prison staffer have died in the state since the second wave began gathering pace in April. Several prisoners had died last year too.

## **Prisoners neglected**

Although Maharashtra continues to top in the country in the number of vaccinations administered (1.61 crore as of May 1) in the country, prisoners have been neglected. Responding to a suo motu petition on conditions of prisons, advocate general Ashutosh Kumbhakoni, representing the state government, told the Bombay high court that the state’s prisons lack both allocation of vaccines and trained staff to administer them. As a result, only very few prisoners got vaccinated.

The total prison capacity of Maharashtra’s jails is 24,032. As of March 31 this year, 35,124 prisoners were languishing across different Central and district prisons. In April, the number must have further increased. This alarmingly high number – 11,000 more than the actual capacity or 146% occupancy – continues even after the state was directed to work towards decongesting prisons over a year ago.

Last year, following the Supreme Court’s order, and a series of deaths and unchecked spread of the viral infection in jails, the then home minister Anil Deshmukh was compelled to act towards decongesting prisons. The three-member high power committee, set up after the Supreme Court’s direction, had directed the release of over 10,000 prisoners. While this number wouldn’t have been sufficient, it was a small positive step towards managing the highly under-equipped prison structure.

But even as the prisoners - a large section of whom were pretrial detainees were released, the state continued to arrest people at a much higher pace. By August, the process of screening and releasing prisoners was abruptly stopped; no reasons given. By the year end, prison population was back where it had started over 35,000 prisoners.

And now, right at the onset of the second wave, clusters and hotspots have emerged in most prisons. Data released last week showed that close to 250 prisoners and 170 prison officials have tested positive for the coronavirus. Of them, around 40 were in Byculla women’s jail, the only designated prison for women in the state.

Cultural and anti-caste activist Jyoti Jagtap, who was arrested last year for her alleged role in the Elgar Parishad case, is among those who have been infected and has been kept at a temporary centre. Her lawyers have been struggling to establish contact with her to know her medical condition. The temporary set-ups lack basic telephone facilities and many prisoners' families have complained of their inability to check on the health and well-being of those incarcerated. Meanwhile, advocate and academic Sudha Bharadwaj, arrested in the same case and Jagtap, has started showing symptoms.

### **Bombay high court's suo-moto observations**

As per media report about the sharp rise in cases in prisons, the Bombay high court picked up the matter suo-motu. A division bench of Chief Justice Dipankar Datta and Justice Girish S. Kulkarni is presiding over the case. Senior lawyer and the state convenor of the People's Union for Civil Liberties, Mihir Desai, who had approached the court last year, has been appointed *amicus curiae* (friend of the court) in the ongoing petition. The court has so far dealt with a plethora of issues – from overcrowding, vaccination drive to facilities that are to be made available in prisons. For instance, the Taloja Central prison, which houses over 3,500 prisoners (at 166 % occupancy), has only three ayurvedic doctors. None of them, according to the Maharashtra Prison Rules amended in 2015, are qualified; yet the prisoners have no one else to turn to. This, the high court pointed, sums up the condition of all 60 prisons in the state.

### **5.3 Judicial Approach - Landmark Judgements-**

*Mohd. Giasuddin v. State of Andhra Pradesh* in this case Supreme Court observed that an atmosphere should be created in jails which can help in changing the social behavior of the criminals. Our prisons should be correctional houses, not the iron aching the soul. In jails there should be atmosphere of self respect and fraternal touch. Talent of the inmates should not be allowed to be rusted in jails. Inmates should not be assigned monotonous or degrading work and must be paid a reasonable fraction of remuneration by way of wages for the work done. It was specifically mentioned in this case that prisoners do not lose their fundamental rights when they enter in jail.

*In Sunil Batra v. Delhi Administration* in relation to prisoner's rights court held that prisoners are prisoners

and not animals and punish the deviant guardians of the prison system where they go berserk and defile the dignity of the human inmate. It was also held that prison houses cannot be held at bay by jail officials. When a prisoner is traumatized our constitution suffers a shock. Kishore Singh and others v. State of Rajasthan in this case it was observed by the court that it is the duty of the Session's judge to use their judicial authority and should supervise over sentences and the conditions of their incarceration so that violation of the prisoners freedom can be avoided.

**D.B.M Patnaik v. State of Andhra Pradesh** In this case the inmate was a Naxalite. He was put to quarantine and was subjected to inhuman treatment. A three judge bench held that resort to oppressive measures to curb the political belief could not be permitted at any cost. It was observed by court that "the subtle form of punishment to which convicts and under trial prisoners are subjected to offends the letter and spirit of our constitution and even the convicts are entitled to precious rights guaranteed under Article 21 of the constitution".

**In Charles Sobraj v. Delhi Administration** in this case it was observed by the court that this court would interfere even in the prison administration when constitutional rights and statutory prescription are transgressed to the injury of a prisoner.

The Report of Royal Commission, 1949-53 also mentioned that "imprisonment itself is the penalty and it is not the function of the prison authorities to add further penalties day by day by punitive condition of discipline labor and diet".

**In Sanjay Suri and others v. Delhi Administration** and others taking the reform oriented approach court pointed out that efforts must be made to generate a sense of humanism in the officials and those in the ranks below them. So that prisoners should have direct contact with those officials in getting round to right approach in life. **Vikram Deo Singh Tomar v. State of Bihar** [12] in this case court directed for the renovation of the building of the care home so as to provide the provide amenities to inmates like adequate water, electricity, blanket, proper clothing and it was also directed to home superintendent to ensure doctor's visit to these care homes daily.

**In Rakesh Kaushik v. B.I Vig Supt. Central Jail, New Delhi and Others** it was held that "the jail administration has conscientious responsibility for the decency and dignity for the correctional obligation

and social hygiene in the prison houses. If the jail administration fails in discharge of their duty then the court should act as an activist instrument of jail justice”.

*In State of Gujarat v. Hon'able Court of Gujarat* regarding the work in prison court finally laid down position in this case that it is lawful to employ the prisoners sentenced to rigorous imprisonment to do hard labour whether he consents to do it or not and it is imperative that the prisoners should be paid equitable wages for the work done by him, to determine the quantum of equitable wages the state concerned shall constitute a wage fixation body for making recommendations.

### **Need for reform**

*In Sunil Batra v. Delhi Administration* and Others V. R. Krishna Iyer J. pronounced that “prisoners have enforceable liberties, devalued may be but not demonetised and under our basic scheme, Prison Power must bow before Judge Power, if fundamental freedoms are in jeopardy”. In this case it was further mentioned that “No prisoner can be personally subjected to deprivation not necessitated by the fact of incarceration and the sentence of court. All other freedoms belong to him – 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 joys of self-expression, to acquire skills and techniques and all other fundamental rights tailored to the limitations of imprisonment”.

## **6. Forensic Science as a tool for Justice Delivery**

This chapter describes a study that focused on the freeing of the innocent persons initially convicted and imprisoned but later released through post-conviction forensic use and technology. Which clearly establishes that from initial stage when any person alleged then only Forensic Science should be used before framing any charges and verdict passed by the Courts. Then, we can help to reform our Judicial system as well as closed and open Jails.

Forensic science is the application of science to those civil and criminal laws that are enforced by governmental agencies like police, CID, etc. In a criminal justice system. Forensic science deals with the application of methodology and knowledge of various aspects of science to legal matters. It involves the use of multiple disciplines such as chemistry, physics, computer science, biology and engineering for evidence analysis. For instance, biology is used to establish the source of an unidentified suspect, physics to understand the pattern of a blood spatter, and chemistry is used to understand the composition of drugs. The most necessary operate of scientific investigation is to convert suspicion certainty of either guilt or innocence.

## **ROLE OF FORENSIC SCIENCE IN THE CRIMINAL Justice System**

Without forensic science, the criminal investigation is incomplete because if the investigation completes without forensic science than criminals can never be convicted without or unless an eyewitness is present. While law enforcement agencies and detectives are involved in the collection of evidence, be it digital or physical, it is the duty of forensic science to deal with the analysis of those pieces of evidence in order to establish those facts which can be admissible in the court of law. Thus, in a world devoid of forensic science, thieves, murderers, rapists, and drug traffickers would be roaming freely on the streets.

### **6.1 Convicted by Juries, Exonerated by Science**

The National Institute of Justice, a component of the Office of Justice Programs, is the research and development agency of the U.S. Department of Justice published case studies in use of DNA Evidence to Establish innocence after trial namely "Convicted by Juries, Exonerated by Science " in which they covered 28 cases which were solved after conviction.

They mentioned in report that "By highlighting the importance and utility of DNA evidence, this report presents challenges to the scientific and justice communities. The research agenda must also enable criminal justice practitioners to understand and to make appropriate use of the rapidly advancing and increasingly available technology. The National Institute of Justice (NIJ) commissioned this study to encourage discussion of the challenges to the scientific and justice communities presented by DNA evidence."

As the 28 cases collected in this report demonstrate, when we subject new scientific techniques such as DNA typing to special admissibility rules. In all 28 cases, without the benefit of DNA evidence, the triers of fact had to rely on eyewitness testimony, which turned out to be inaccurate.

## 6.2 Profiles of DNA Exculpatory Cases

### Gilbert Alejandro (Uvalde County, Texas)

**Factual background.** On the evening of April 27, 1990, a woman in her fifties came home and was attacked from behind by a man. The man placed a pillow over her head and sexually assaulted her. He then fled the house. The woman could not describe the man except for basic physical size. She also noted that the man was wearing some kind of cap, a gray T-shirt, and dark-colored shorts. The police canvassed the area and questioned three men, one of whom was wearing clothes matching the victim's description. The police did not detain them. The victim picked out Alejandro from his photograph in a mug book.

In October 1990 Gilbert Alejandro was convicted of aggravated sexual assault by an Unvalued County jury. He was sentenced to 12 years in prison.

**DNA results.** In July 1990 the original DNA tests done in this case—the ones Zain testified were inculpatory—were inconclusive. A Restriction Fragment Length Polymorphism (RFLP) test performed by the Bexar County crime laboratory on October 3, 1990, excluded Alejandro as the source of the semen left on the victim's nightgown. The district court also reported that an additional test was done on December 19, 1990, after the trial, and it too excluded Alejandro. According to the district court's findings of fact, Fred Zain knew of these exculpatory results and failed to report them to anyone.

**Conclusion.** As a result of the findings of fact by the district court, the court of criminal appeals overturned Alejandro's conviction and released him to stand trial again without Zain's testimony. The district attorney, however, declined to prosecute the case. On September 21, 1994, Alejandro was re-leased from electronic monitoring and all charges were dismissed. Alejandro served 4 years of his sentence. On June 27, 1995, he was awarded \$250,000 in a civil suit against Bexar County.



## **Kirk Bloodsworth (Baltimore, Maryland)**

**Factual background.** On July 25, 1984, a 9-year-old girl was found dead in a wooded area. She had been beaten with a rock, sexually assaulted, and strangled. Kirk Bloodsworth was convicted on March 8, 1985, of sexual assault, rape, and first-degree premeditated murder. A Baltimore County judge sentenced Bloodsworth to death.

**DNA results.** The FSA report, issued on May 17, 1993, stated that semen on the autopsy slide was insufficient for testing. It also stated that a small semen stain had been found on the panties.

The report indicated that the majority of DNA associated with the epithelial fraction had the same genotype as the semen due to the low level of epithelial cells present in the stain. It was an expected result, according to the report. Finally, the report concluded that Bloodsworth's DNA did not match any of the evidence received for testing. FSA did, however, request a fresh sample of Bloodsworth's blood for retesting in accord with questions about proper labeling on the original sample.

On June 3, 1993, FSA issued a second report that stated its findings regarding Bloodsworth's DNA were replicated and that he could not be responsible for the stain on the victim's underwear.

**Conclusion.** On June 25, 1993, the FBI conducted its own test of the evidence and discovered the same results as FSA. In Maryland, new evidence can be presented no later than 1 year after the final appeal. Prosecutors joined a petition with Bloodsworth's attorneys to grant Bloodsworth a pardon. A Baltimore County circuit judge ordered Bloodsworth released from prison on June 28, 1993. Maryland's governor pardoned Bloodsworth in December 1993. Bloodsworth served almost 9 years of the second sentence, including 2 years on death row.

## **Mark Diaz Bravo (Los Angeles County, California)**

**Factual background.** On February 20, 1990, a patient at the psychiatric hospital where Bravo worked claimed she had been raped in an alcove earlier that afternoon. During the course of police

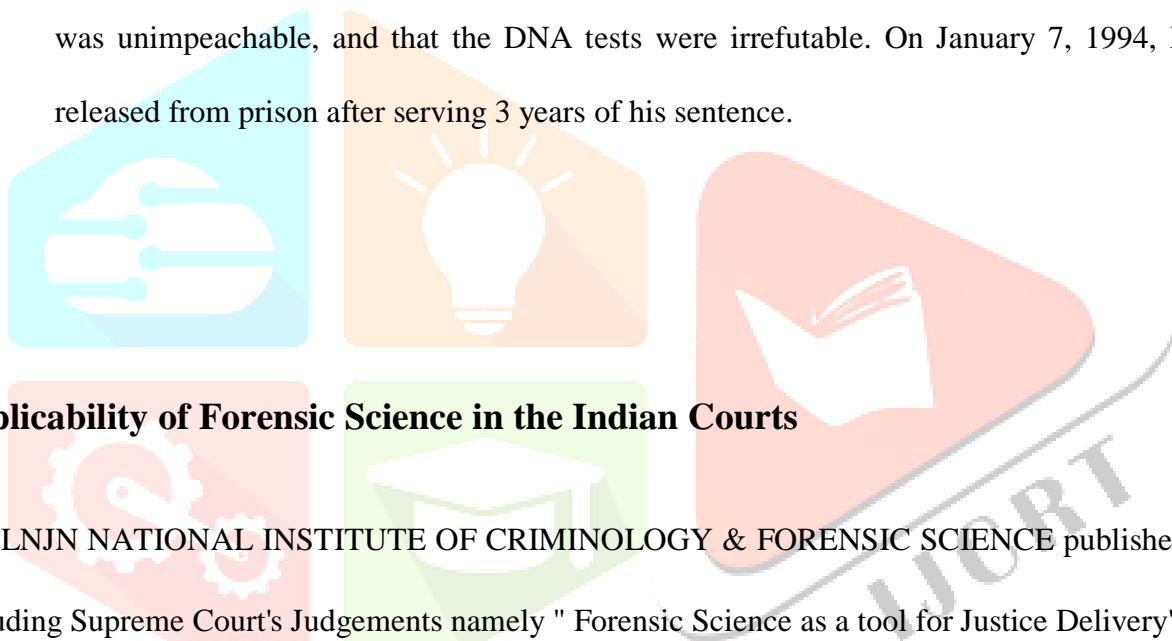
interviews, she named several different people as her assailant. One of those she named was Bravo.

She later stated she was sure Bravo was the attacker.

A Los Angeles County jury found Mark Diaz Bravo guilty of rape in 1990. He was sentenced by the court to a prison term of 8 years.

**DNA results.** Prosecutors received a report from Cellmark Diagnostics on December 24, 1993, stating that none of the tested semen had DNA that matched Bravo's.

**Conclusion.** On January 4, 1994, Bravo's lawyer filed a writ of habeas corpus. A Los Angeles County Superior Court judge ordered Bravo to be released on January 6, 1994. The judge stated that Bravo had not received a fair trial, that the victim had recanted her testimony, that Bravo's alibi was unimpeachable, and that the DNA tests were irrefutable. On January 7, 1994, Bravo was released from prison after serving 3 years of his sentence.



## Applicability of Forensic Science in the Indian Courts

The LNJN NATIONAL INSTITUTE OF CRIMINOLOGY & FORENSIC SCIENCE published a reports including Supreme Court's Judgements namely " Forensic Science as a tool for Justice Delivery". In which they discussed few cases wherein the Hon'ble Supreme Court has discussed the application and scope of Forensic Science as ahead-

### **Tomaso Bruno and Anr. vs State of Uttar Pradesh (2015) 7 SCC 178**

**Background---**The case concerned an appeal wherein appellant convicted for the murder of an Italian national during visit to Varanasi. The defence counsel relied on the absence of several pieces of digital evidence such as CCTV footage and SIM card details to argue that prosecution failed to prove case beyond reasonable doubt.

**Observation---** Supreme Court has observed that advancement of information technology and scientific temper must pervade the method of investigation as scientific and electronic evidence can be a great help to an investigating agency so is Electronic evidence relevant to establish facts. Electronic evidence was held to be admissible subject to safeguards adopted by the Court about the authenticity of the same.

### **Dharam Deo Yadav vs State of U.P. (2014) 5 SCC 509**

**Background** □ A 22 years old tourist namely Diana from New Zealand was murdered in Varanasi. DNA sample from the skeleton matched with her father blood sample. On the basis of circumstantial evidence accused was convicted

**Observation----** The Supreme Court before pronouncing judgment has explained the crime scene management and the importance of forensics science. The court in the judgment has emphasized the need to adopt scientific methods in crime detection to save the judicial system from low conviction rates. Further highlighted a need to strengthen forensic science for crime detection .

It said as far as the present case was concerned, the DNA sample from the skeleton matched with the blood sample of the father of the deceased. All the sampling and testing was done by experts whose scientific knowledge and experience were not doubted in these proceedings. It was of the opinion that therefore, the prosecution succeeded in showing that the skeleton recovered from the house of the accused was that of Diana.

### **Sushil Kumar vs State (N.C.T of Delhi ) (2014) 4 SCC 317**

**Background ----**In this case Sushil Sharma murdered his wife Naina by firing bullets and thereafter attempted to burn her body in a tandoor. Police recovered revolver and blood-stained clothes and sent them to forensic test. The blood sample of parents was taken. The DNA report confirmed that the charred body was of their daughter Naina Sahni

**Observation---**This case is based on circumstantial evidence alone. Here, the DNA evidence plays an important role in identifying the charred body of the deceased Naina Sahni. The Supreme Court discussed the importance of forensic experts report .

Beside above, The area of Forensic Science in India has, yet, not been amalgamated, many other time, neither choose, nor the professional person or the intensive, promising potentialities of the science and also the fusion of latest technologies, methodologies, modalities and research.

The Committee on Reforms of Criminal Justice System additionally indicated that the current level of application of Forensic Science in crime investigation is somewhat low within 5-6% of the registered crime cases being spoken the FSLs and Finger Print Bureau place together.

## **7. Open Prison Questionaries - Based on details study and vision of Hon'ble Mr. Justice K .S. Jhaveri and Ors.**

In 2017, Rajasthan State Legal Services Authority, has conducted a detailed study on the Open Prison System of Rajasthan and the Parole Practices prevalent in the State. It has been a vision of Hon'ble Mr. Justice K.S. Jhaveri, Executive Chairman, Rajasthan State Legal Services Authority, Judge Rajasthan High Court, to understand the unique and successful Open Prison System of Rajasthan. He wanted to improve and expand the open prison system to the others states of the country. Therefore, Ms. Smita Chakraburty, Independent Researcher ( Prison Expert), was appointed the Honorary Prison Commissioner to conduct the study.

### **Hon'ble Mr. Justice K.S. Jhaveri, Rajasthan**

I would like to add that Open Prisons are hope for the prisoners. It encourages reform in the inmate and leads to social reintegration of the prisoner. Open Prisons reduces the burden on the exchequer. It reduces over-crowding in prisons and leads to strengthening of the social fabric, by main streaming the estranged individual who is in conflict with the law. The system also reduces the stress on administration which is in the interest of the all concerned. Thus in public interest, it is earnestly submitted, that the Open Prison System of Rajasthan be emulated across the country.

## **Mr. Ajit Singh IPS, Director General of Police, Former Director General Prison, Rajasthan**

In the Open Prison of Rajasthan, the prisoners stay with their families. They earn a living to support themselves and for doing so they are allowed to go outside the prison during the day. Living with the family provides the inmate with emotional and social support and earning a livelihood, re-instills a sense of self worth in them. The movement outside the confines of the prison coupled with free interaction within the society, helps break social inhibitions on the part of the prisoner and remove the reservations towards the prisoners, on the part of the member of the society.

Open Prisons, are a solution to some of problems in our prison system. It is humane system and it does not place burden on the exchequer. In my opinion such a system needs to be encouraged and encouraged and expanded across the country.

### **Mr. R. K. Saxena, Former Deputy Superintendent of Jails**

He was Lecturer in Psychology at Agra university College. First Direct recruited through Rajasthan Public Service Commission as Deputy Superintendent of Jails and posted in the year 1963. He rose to the position of Inspector General of Prisons Rajasthan. In the later years he was taken up as Director in the All India jail Reforms Committee, Popularly known as Justice Mulla Committee.

Open Prison is also a prison and a prisoner I under obligation to return to the prison in the evening within a set frame of time. The prisoners cannot go home at will even from an Open Prison. The prisoners has to ask for parole and only when s/he has been granted parole can the prisoner go home. The parole process is time consuming. This in a moment of an emotional crisis for the prisoner it is best if the Jail Superintendent steps in and aids his parole procedure by granting an emergency parole. But for the Superintendent to remain updated about each prisoner's personal condition is a task of patience., faith and bonding. Which is why Open Prison should not have more than 200 prisoners in a single campus. More number of prisoners make it difficult to understand individuals, their needs and their personality types.

A convicted prisoner is not a written off person from the society. The convicted prison who has been sentenced to 10-20 years of imprisonment has to then return to the society. It is the duty and obligation of

the Jail functionaries to return the inmate to the society as a functional responsible individual. This is unfortunately not trained or taught to the prison officials. Prison officials when put on duty in an Open Prison, get exposed to the life and family of the prisoner. When the staff/official return on duty of the closed prison after a few months, s/he comes with a change in perspective. Open prison has deep sociological and psychological impact on both the prisons and the prison institution. Open Prison System must be encouraged. It humanises the prison system as whole.

### **Smita Chabraborty - Independent Researcher**

Ms. Smita Chakraborty, is a reputed Independent Researcher, specialising on Prison Studies. She was previously commissioned to inspect all the prisons of Bihar by Hon'ble Mr. Justice V.N. Sinha (now retd.), the Executive Chairman of the Bihar State Legal Services Authority (BSLSA). She has conducted a detailed study by inspecting all the 58 prisons of Bihar and submitted her report after speaking to 30070 prisoners. Her report - Prison of Bihar, was widely acknowledged across the country. She mentioned in her report stating that - "Open Prisons System of Rajasthan fall among the best prison practices in the country. It is cost effective, it leads to social reintegration of the prisoners, it leads to reduction in prison over-crowding, rate of recidivism is negligible under this system and most importantly it is humane system, which upholds the right to life and dignity of the prisoner. A comparative study between the Jaipur Central Jail and the Sanganer Open Prison show that the open prison is 78 times cheaper than the closed prison. This the Open Prison System benefit both the prisoner and the Administration". Perhaps, the best possible solution to the problems that presently plague the prison system of the country, would be to set up a minimum of 2 open prison in each district of the country. Which means 1200 open prisons spread across 600 districts. The purpose of putting an undertrial prisoner in jail is not for punishment but solely for the purpose of restricting them from destroying any material evidence against them. Whereas, the purpose of putting convicts in jails is as a means of punishment and reformation. They cannot be compared in that aspect. Open prisons will only be beneficial.

### **Questions were asked in the interviews to Ms. Smita Chakaraborty**

#### **Why should open prisons remain shut for undertrial prisoners?**

Many suggest that a way to reduce overcrowding in jails is by allowing undertrial prisoners to be shifted to open-air prisons. At this juncture, it is noteworthy to recall the reason why an accused is remanded during the trial. An accused is kept in judicial custody if it is likely that he or she could commit a serious crime, interfere with the investigation, or fail to turn up in court. Letting them stay in open prisons defeats the very purpose of judicial remand. Of course, there is overcrowding of prisons due to a large number of under-trial prisoners remaining in prisons for an indefinite amount of time, but that problem can only be addressed by having speedy disposal of cases and not shifting them to open-air prisons.

### **What about social acceptability to open prisons?**

In Sanganer, when it started, the locals filed a complaint with the government and then chief secretary asked Saxena for a solution. He then suggested that let the prisoners go out and let outsiders also come to prison. At that time, there was a doctor and the locals would come visit him for treatment.

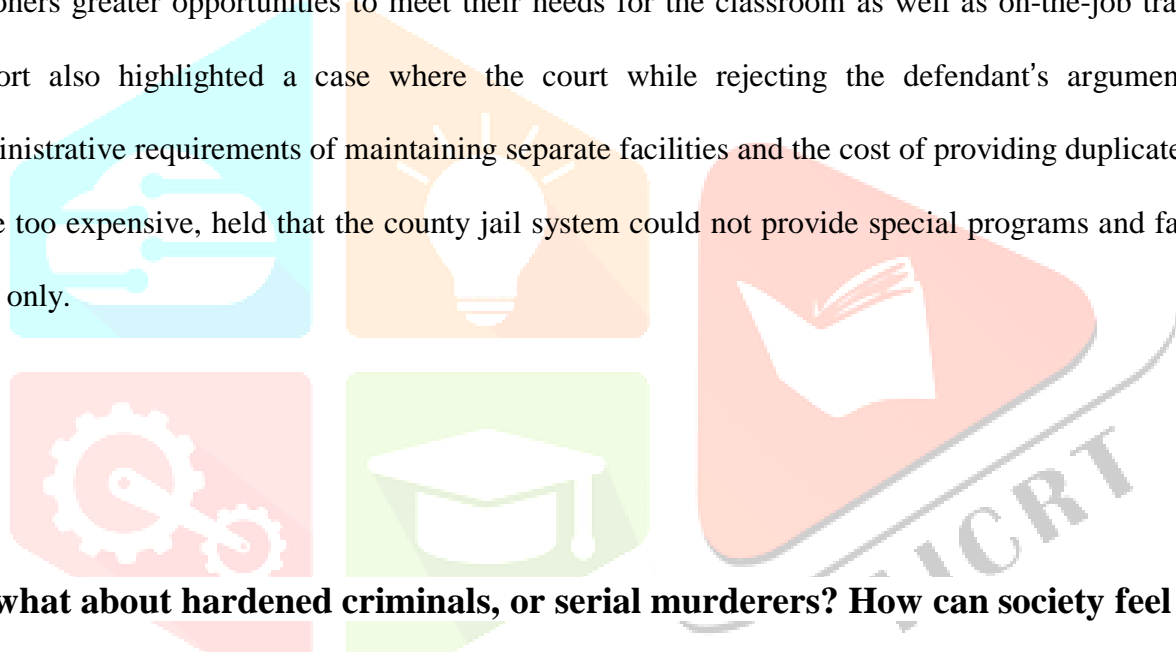
Prisoners in Sanganer, some of whom have been convicted for murder, work as security guards, domestic help, barbers, daily wagers, accountants, teachers, auto drivers, among others. There are some big restaurants in Sanganer which are being run by former prisoners. Also, a factory has been set up by a former prisoner. These all people employ former prisoners so there is a sort of social acceptability.

### **Why aren't female inmates given equal opportunity to be shifted to open prisons?**

In India, women prisoners were allowed to be transferred to open prisons only as recently as 2010. Yerawada open prison in Pune is the first prison set up for women whereas such jails were already present for men since the 1950s. In many states, they are still considered ineligible for shifting to open-air prisons. According to the NCRB report, out of 63 open prisons that were present in 2015, only 4 were for women. The many States like Maharashtra, Tamil Nadu, etc., in their Prison Manuals or through separate legislation have expressly excluded women prisoners and term them ineligible to be transferred to open prisons. This prohibition shows the kind of discrimination shown towards women within the prison for availing the chance of rehabilitation. The basis of giving an opportunity to move to open prison is good to conduct. It is a motivation for prisoners to perform better in order to get rid of the conditions of closed prison. It is unthinkable why female inmates would be deprived of such an opportunity. Such arbitrary rules tend to

simply harden the women inmates making them more rebellious towards the society for treating them unequally.

As per 2018 reports, females constitute only 4.1% of the prison population. Less attention to women prisoners is probably due to the comparatively lesser female population in the prisons. However, a small number, lack of proper administrative, etc., cannot be a valid defence for such discrimination. Such discrimination is not just faced in India but in many places around the world. It was recognized in a report to the Congress of the US by the Comptroller General way back in 1980 that women in correctional institutions are not provided comparable services, educational programs, or facilities as men prisoners. It was observed that a wider range of men's prison facilities and their proximity to communities provided male prisoners greater opportunities to meet their needs for the classroom as well as on-the-job training. The Report also highlighted a case where the court while rejecting the defendant's argument that the administrative requirements of maintaining separate facilities and the cost of providing duplicate programs were too expensive, held that the county jail system could not provide special programs and facilities for men only.



**So what about hardened criminals, or serial murderers? How can society feel safe and protected if they are allowed to live in open prisons?**

Open prisons should be inclusive spaces for reform for first time offenders, those who have done petty crimes, accidental offenders, including undertrials. They are given the option after a record of good conduct in closed prisons. In the Sanganer Open Prison, those accused of murder too are living and earning a livelihood, peacefully, while sharing collective spaces with other families. Some of them are even employed as security guards, implying that they have been accepted by the mainstream society for their record of good conduct.

Indeed, unlike Scandinavian countries which have created humane and dignified spaces of creative and productive reforms for prisoners, India still has a long way to go when it comes to providing a non-discriminatory, healthy and sensitive space for reform in our over-crowded prisons, where scores of poor



undertrials, including women, can't even seek bail or legal remedies. Often they are condemned behind prison walls eternally, exiled and forgotten by the society, including their families and relatives. In that context, the positive response of the apex court, the Rajasthan High Court, the MHA, and prison officials, for the creation of a parallel world of prison reforms, is landmark.

Surely, India is ready for radical and humane prison reforms, including open prisons. The wheels of change are moving.

## **Other Question before the Hon'ble Supreme Court**

**Is India, where justice comes faster than death and jails are forever crowded, ready for open prisons across its 600 districts?**

In a hearing the past week, the Supreme Court has followed up the matter with a transparently positive intent, seeking to enforce the rights of women and children in Indian prisons. It had earlier asked all the states to study the recommendations made by Smita Chakraborty, an independent criminologist and researcher on prison systems in India, and file their responses within four weeks to the Union Ministry of Home Affairs (MHA) on the matter. The MHA was asked to hold a conference with the director generals of prisons of all the states in the country in the first week of February. The Supreme Court had also asked all state governments to submit their responses regarding the possibility of setting up open prisons in their respective states.

Supreme Court of India in *Sunil Batra v Delhi Administration* stated that -

*“Are prisoners persons? Yes, of-course. To answer in the negative is to convict the nation and the Constitution of dehumanisation and to repudiate the world legal order, which now recognises rights of prisoners in the International Covenant on Prisoners Rights to which our country has signed assent”.*

Women prisoners also deserve an equal chance for rehabilitation like their male counterparts. Supreme Court has recognized the right of every prisoner to live a life with dignity. By not giving women inmates a chance to reformation and rehabilitation, the States are acting in violation of their right to equality, life, and liberty guaranteed under the Constitution.

## 7. Observation

**Why is it that despite the obvious advantages the idea of open prisons in the years immediately after independence, the implementation leaves much to be desired?**

All prisoners are not dangerous criminals and not even some of those who have committed serious offences. Although the states in India, on their part, have set up numerous enquiry and reform committees since independence, they have somehow lacked the political will to see through the reforms in their totality. This could be due to public indifference to the plight of prisoners who are often seen as criminal's incapable of moral and social reform.

Lack of uniformity across states is a major challenge in the establishment and management of open prisons. The inability of the central government to ensure uniform standards and reforms in prison administration across the states is often attributed to a lack of legislative initiative. The subject matter of prisons and allied matters comes under the legislative domain of the states under List II of the Seventh Schedule of the Constitution of India.

The success of the open prison concept is contingent on availability of large areas of land around the closed prisons to serve as natural perimeters within the boundaries of which inmates are required to engage in varied activities for sustenance. This is rather difficult in the current Indian context due to growing land scarcity.

More often than not, the social stigma attached to convicts frustrates any efforts at rehabilitation through open prisons because society still remains unconvinced about any genuine reformation in convicts/ex-convicts and is reluctant to employ them in productive activities or engage in social intercourse with them. Open prisons exemplify trust between the state machinery and the convicts. But whether this trust also gets established between the society and the convicts/ex-convicts is the primary question.

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 opens prisons. The positive effects of open prisons are -

1. It lessens the damage to offenders and society
2. It reduces the overcrowding in prisons
3. 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
4. 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.

### **The Unexplored Alternative**

In the last couple of months, various steps have been taken by the Central and State governments to decongest the overcrowded Central/District prisons in light of the ongoing COVID-19 pandemic. A number of prisoners, who were sentenced for seven years or less for non-heinous crimes were released on parole and interim bail after a suggestion of the Supreme Court in this regard. The COVID-19 pandemic has once again brought up the issue of highly over-crowded prisons in the country. It is high time now to discuss some meaningful reforms that can be implemented to deal with this problem. One such significant step can be to use the potential of Open Jails. These jails not only serve as a brilliant method to reform the selected prisoners but can also contribute towards unclogging the Central/District prisons in the country.

### **Concept and Advantages**

In simple words, an Open Jail is like a campus for prisoners without bars and locks. The intention behind establishing these jails is to put into practice the modern ideology of reformation and rehabilitation of prisoners. Those prisoners, who have completed a major portion of their sentence with good conduct, are given an opportunity to spend the rest of their time in these Jails and live a near-normal life. An opportunity is also provided to the prisoners to undertake fruitful employment in day time. These prisoners, after spending a long time in closed prisons, are trusted to take their freedom very seriously and not indulge in any form of violence again. However, this shift to Open Jails is not irrevocable and prisoners can be sent back to closed prisons in case of any misconduct, though only a handful of such incidents have been reported.

### **Under-utilisation of Open Jails**

According to the data provided by National Crime Records Bureau (NCRB), there are only 77 Open Jails across the country at the end of 2018 and these are present only in 17 states. Even in these 17 states, the occupancy rate is 66.6%. This situation persists even when the Central/District prisons in our country are highly overcrowded. As on 31st December 2018, the occupancy rate was 119% in Central Jails and 132.8% in District Jails. Thus, not only the Central/District Jails are heavily over-utilized but at the same time, Open Jails, which can serve as an effective alternative for housing harmless prisoners, are underutilized and highly inadequate in number.

### **No Uniform framework to govern Open Jails**

A uniform framework to govern Open Jails is also lacking. The subject of "*prisons....and other institutions of a like nature*" in India forms part of the State List. Accordingly, the state governments are expected to come up with detailed rules and guidelines regarding the administration of Open Jails. However, in order to ensure some uniformity in these rules, the government came up with Model Prison Rules, 2016, in which an entire chapter has been devoted for Open Jails. However, these provisions are only illustrative in nature and therefore states continue to administer these jails in their own way.

In absence of a uniform framework, the selection procedure of eligible inmates for Open Jails becomes quite ambiguous. Some strange provisions have been introduced by various states. In Rajasthan Prisoners Open Air Camp Rules, 1972, prisoners who are unmarried are not permitted to shift to these Jails. Introducing marriage as a pre-condition has no relation with the objective behind establishing these Jails. Under the Haryana Prisoners Open Air Camp Rules as well, a prisoner is not considered eligible to reside in Open Jails if he is not having any family. It is important to note that permitting prisoners to financially help their family is not the sole objective for these Jails. The crucial point to consider is the correctional potential of these institutions for the prisoners who have consistently shown discipline behind the closed prisons. Denying a prisoner this opportunity, just because he is not having any family, is in no way fulfilling this purpose. These provisions are good examples of how states are unable to understand the intention behind establishing these institutions.

Another important issue is the biased attitudes of states in selecting only male prisoners for Open Jails. As of now, only four states [Jharkhand, Kerala, Maharashtra and Rajasthan] are having female prisoners in Open Jails. There are 13 states having the necessary facilities for these Jails but only male prisoners are residing in them. Even if safety of the female prisoners is the concern, then progressive steps can be taken to establish separate open prisons for women, like Women's Open Prison in Kerala or Yerawada Open Jail for Women in Pune. But denying women the opportunity to shift to these jails is clearly against Article 14 of the Constitution as there is no *reasonable justification* which allows states to select only male prisoners. This whimsical arbitrariness on the part of various states is inconsistent with the provisions for Open Jails in the Model Prison Rules, 2016. This calls for bringing a uniform framework which is *binding* on all the states and union territories. The recommendation of the All India Committee on Jail Reforms, 1980-83 [Vol. I, Part III, Para 4.34.2] to bring the subject of prisons and allied institutions within the concurrent list, can be helpful for this purpose as that will allow Centre to legislate and come up with a uniform framework.

### **Implementation of Supreme Court's guidelines**

In the case of *In re Inhuman Conditions in 1382 Prisons*, Supreme Court directed in its order dated 12/12/2017 that Ministry of Home Affairs and the Director General of all states and Union territories must

look at the feasibility of establishing open prisons. Another order was passed on 08/05/2018, where the Supreme Court discussed the issue of underutilization of Open Jails. All the State Governments & Union Territories were directed not just to utilize the existing capacity of these Jails but also to consider the feasibility of establishing Open Jails in *as many locations as possible*.

This was not the first time when Supreme Court promoted these institutions. In 1996 as well, in ***Rama Murthy v. State of Karnataka***, Supreme Court directed to establish “more and more open prisons”, starting with the District Headquarters of the country. Court even noted that the managerial problems associated with the establishment of Open Jails are not insurmountable in light of the greater good which these Jails can provide. The importance of these jails to tackle overcrowding in closed prisons was also noted by National Human Rights Commission (NHRC) in a couple of its annual reports [1994-95 (Para 4.17), 2000-01 (Para 3.68)]. Back in 1980 as well, the All India Committee on Jail Reforms [Vol. I, Part VIII, Para 19.33.8] recommended to establish Open Jails in each state and union territory.

During my visit to Mumbai Central Prison, Arthar Road Jail, Byculla Women's Jail and Dongri Children's Home Mumbai, I found numerous irregularities inside the Jails. There are several undertrial and convicted prisoners under incarceration claimed that they did not commit crime, despite they have been convicted by the Court, they did not get fair trial and only based on eye witness court passed the verdict and they have been incarcerating. I felt that if case could be reopened then based on Forensic Science we can fight for them for justice.

A comprehensive data collected and published by TATA trust which provide cogent picture of prison system and ranking in India.

## 9. Suggestions

### Rehabilitation, reform and correction

"Reform" here refers to reform of the individual, not the reform of the penal system. The goal is to "repair" the deficiencies in the individual and return them as productive members of society. Education, work skills, deferred gratification, treating others with respect, and self-discipline are stressed. Younger criminals who

have committed fewer and less severe crimes are most likely to be successfully reformed. "Reform schools" and "boot camps" are set up according to this model. One criticism of this model is that criminals are rewarded with training and other items which would not have been available to them had they not committed a crime. I strongly believe that if we improve the condition of closed prisons and use Scientific approach then definitely condition of Open prisons can be improved.

## Improving Conditions in Overcrowded Prisons

- *Prison overcrowding is a major contributor to problems including*
- *reduced staff morale*
- *security and control difficulties*
- *increased health and wellbeing problems for staff and inmates*
- *increased levels of conflict and violence*
- *failure of rehabilitation resulting in increased re-offending*

While building or expanding prison capacity can reduce overcrowding there are things that can be done to improve conditions in overcrowded prisons.

Actually solving prison and jail overcrowding requires a firm commitment from the government and cooperation within the justice system. The Centre stands ready to assist governments and justice officials who choose to do this, by:

- suggesting practical measures to significantly reduce prison populations
- offering examples of governments that have done so
- demonstrating how restorative justice can help reduce prison populations
- providing long-distance or on-site consultation

**Security** - Overcrowded prisons are more difficult to manage and frequently plagued by increased conflict and violence. Often the movement of prisoners is restricted as a means of controlling the situation. Unfortunately this adds to the stress and hostility felt by inmates.

### 1. Reduce Idleness

Reduce inmate idleness by increasing opportunities for exercise, sports, cultural and religious activities. Active inmates are less likely to feel stressed and hostile.

## 2. Classify Prisoners

Classify and house prisoners according to their level of risk. Lower risk groups require less security and can be managed on a lower security basis.

**Health** - As toilet, sanitation, and cooking facilities become inadequate to serve a growing prison population, the health of staff and inmates is at risk, making it more difficult to control contagious diseases.

## 3. Improve Sanitation

Organize and train inmates in preventative health care including basic sanitation, food preparation and personal hygiene.

## 4. Grow Food

Involve low risk inmate labour to cultivate vegetable gardens, raise livestock (e.g., cattle, sheep, pigs, perhaps poultry) to provide additional and more varied food for the prison. This will improve nutrition and also provide inmates with meaningful activity.

Overcrowded prisons are more difficult to manage humanely and effectively. As need for living space increases the space available for educational, recreational, cultural, and religious activities is often reduced or entirely eliminated.

## 5. Use Volunteers

Conditions - Prison overcrowding is an entrenched problem and solutions require careful work and strong political will. Some of the creative measures taken to address this problem have included:

Increase the involvement of volunteers, community groups and NGOs to provide meaningful programmes for prisoners. Even where space is limited the involvement of volunteers contributes to improved morale and reduces inmate idleness.

## 6. Train Staff

Train staff members in basic relational skills including effective communication, building respectful and humane relationships, anger management and conflict mediation. This will improve both staff and inmate morale.



**Non Sentenced Prisoners** - Prison overcrowding is sometimes caused by a slow court system and as a result the number of remand or non-sentenced prisoners increases substantially. Some non-sentenced prisoners may not have appeared in court due to lack of legal representation and others may be eligible for bail.

## 7. Review Cases

Reduce the number of non-sentenced prisoners by establishing a process for lawyers, prosecutors and judges to review the legal status of individual detainees and make appropriate recommendations to the court.

## 8. Speed Release

Govt. should organize volunteer lawyers or paralegal volunteers to help inmates prepare for bail hearings and thus reduce the amount of time they may have to wait for their cases to be heard.

**Sentenced Prisoners** - Many persons who have been sentenced to prison do not represent a real danger or threat to the community. The court has ordered them imprisoned because few other meaningful alternatives for punishment exist. Effective alternatives can be used to reduce the prison population.

## 9. Increase Alternatives

Convene a meeting with judges, politicians, community leaders, lawyers and other relevant groups to discuss the use of alternative community-based punishments rather than prison for non-dangerous offenders. Consider holding the meeting at the jail or prison to expand awareness of existing conditions.

## 10. Use Furloughs

Unless there are legal obstacles, permit trustworthy prisoners to leave during the day or weekends for employment, family visitation or community service activities.

## 11. Adequate resources

Prisons should be supplied to the adequate funds so that they can properly cater there infra structural needs, carry on various rehabilitation and correctional activities and make suitable addition to these programmes with time.

12. **Media's Role:** There should be regular visits by the media and press to study the condition of the inmates and these reports should be published and the plight of prisoners should be highlighted by media. The reason for this is that even there is no public opinion regarding these matters and it is the duty of media to form a public opinion in these matters.
13. **Institutional Publication:** There should be some institutional publication in every correctional system in which inmates should be allowed to express themselves freely. This would improve their ability to express themselves and the loopholes or drawback in the jail administration would also be brought forth to the light.
14. **Role of Social Worker's Visit:** A oversee visiting committee consisting personalities across various fields like social workers, media, academicians should be constituted. This committee should be empowered to visit jail and see the conditions of inmates there and oversee other reformatory activities going on in a correctional home.
15. **Role of Initiative System:** There should be initiative system in the prison for the good behavior like reduction in sentence leading to early release, giving job to the prisoners in the jail staff.
16. **Strict implementation of Bail Provisions:** The provision bail no Jail should be implemented in letter and spirit.
17. **Reformatory Activities:** There should be promotion of reformatory activities like meditation, vocational trainings, exhibition of goods prepared by the prisoners. They should be provided with facilities for studying and other artistic development.
18. **Effective Legal Service:** should be provided to the prisoners which will in turn help in decongestion of the jails and for this there should be increase in remuneration of the counsel of legal aid. Also there should be appointment of duty counsel in every prison to guide the prisoners in the legal matters in the

same line as medical officer in every jail. Good attractive salary should be offered to such lawyers so as to attract good legal acumen.

19. **Pregnant Woman Inmates:** There should be special care for the pregnant woman inmates in the correctional systems. Special diets should be provided to them, there should be facility of regular health check up of such inmates. Lady Doctor should be appointed by the government as permanent staff in the prisons.
20. **Departmentalisation:** In every state there should be a separate department of prisons and correctional services. And this department should deal with the prisoner's institutional care, treatment, after care, probation, and other non institutional services.
21. **Judicial Surveillance:** Every District judge should be given responsibility of visiting the prison in his area of jurisdiction. This would put check on the various nefarious activities which usually go on in prisons and it will also help in curbing the menace of corruption in the prisons. It will also infuse confidence among the inmates as they would be able to compliant against the jail authorities and ventilate their grievances.
22. **New Prison Manual:** There is dire need for a prison manual which is applicable throughout of India and this is also stressed upon by the Supreme Court in Ramamurthy v. State of Karnataka where it brought to the fore an urgent need for bringing uniformity in laws relating to the prisons and has directed the Central and State Governments to formulate a new Model Prison Manual. Even the All India Committee on Jail Reforms had also emphasized the need for a consolidated law on prisons.

### 9.1 Implementation of Forensic Science in initial stage

Forensic science is where science meets the law. It has a great significance in the criminal as well as civil matters. Forensic evidence is the physical evidence found at the crime scene. It is an unconcealed fact that the role of forensic science and evidence has extensive importance in the justice system. In India, there has been prominence on the incorporation of technologies in the field of investigation. Several commissions

reports suggested that if courts consider the scientific method in delivering the judgments, it can bring fairness, which is the hallmark of democracy.

### Long-Term Solutions

Prison overcrowding is an entrenched problem and solutions require careful work and strong political will. Some of the creative measures taken to address this problem have included:

- Mobile judges travel to prisons to hold court hearings. This reduces the number of remand prisoners.
- Judges use probation and community service as an alternative to prison.
- Legislators adopt sentencing reforms to reduce the length of sentences
- Parole boards are given authority to release and supervise prisoners early who pose little danger to society.
- Parole boards sanction technical parole violators (e.g., fail to report on time) outside prison.

The success of open-air prisons in India so far should be an impetus driving the States to scale up the number of open prisons. Setting up such open institutions with prime focus on the reformation and rehabilitation of prisoners will go a long way in shaping up the jurisprudence of prison administration in India. Lastly, I would like to add as India is a developing country it would be better that the citizens not only blame the justice system of India but do everything in their power to stop crimes in the country.

## 9. Conclusion

In conclusion, open prisons are a unique and effective approach to correctional treatment that has been implemented in various countries for over a century. The concept of open prisons has evolved from chained and isolated labor to the establishment of farms and camps where prisoners can work and live in a more relaxed and natural environment. The system is designed to encourage inmates to take responsibility for their own rehabilitation and to prepare them for their eventual release back into society. However, there are also concerns about the potential for increased security risks and the negative psychological impact on inmates. Despite these concerns, open prisons are a cost-effective alternative to closed prisons and have been successful in reducing recidivism rates in many cases.

As the Indian criminal justice system continues to grapple with issues such as overcrowding and delayed trials, the expansion of open prisons could provide a viable solution to these challenges. By promoting the rehabilitation and reformation of inmates, open prisons could help reduce the burden on the prison system and create a more humane and effective approach to criminal justice. To achieve this goal, it is crucial that the government and prison authorities prioritize the expansion and improvement of open prisons across the country. This will require a commitment to providing adequate resources, staff, and training to ensure the success of the open prison system in India.

B There are different views about the open prison system, some positive and some negative, but the fact is that it has become a part of the new prison system around the globe. Sociologists and psychologists have seen improvement in people's behavior during their sentence in prison due to the open prison system. Penal Law is an instrument of social change. While there is a common belief that if undertrials are sent to open prisons, they will escape, studies have found that prisoners did not escape even when they were kept in the open without a security barricade. In this evolving age of human rights, it is the solemn and constitutional duty of correctional systems to focus on retraining, rehabilitation, and social inclusion. The prison system has granted a mission to reform convicts and reintegrate them into society. An ideal prison must provide adequate work, vocational training, and basic educational, medical, and recreational facilities.

Open prisons are prisons without bars. It is a trust-based system built on the principles of self-governance and self-discipline, which is rehabilitative in nature. If this system is encouraged and expanded across the country, it has the potential to not only change the prison systems but also have a significant impact on crime, recidivism, and eventually help eradicate retributive forms of punishment.

A convicted prisoner is not a written-off person from society. The convicted prisoner who has been sentenced to 10-20 years of imprisonment has to return to society. It is the duty and obligation of jail functionaries to return the inmate to society as a functional responsible individual. The open prison system has deep sociological and psychological impacts on both the prisoner and prison institution. Therefore, the open prison system must be encouraged. It humanizes the prison system as a whole.

Although prison and rehabilitation are a state subject, a central legislation is the need of the hour to bring uniformity in bringing these alternatives to the statute book. It is not the duty of judges only to implement these in the absence of law. All stakeholders should come together for successful implementation of these

alternatives after bringing a law for this purpose. The incorporation of above-discussed alternatives will have a transformational effect on the criminal justice system. These alternatives will give more choices to judges in awarding punishment and tailoring the sentence. These alternatives to imprisonment will help in upholding and restoring the rule of law in prisons wherein corrupt practices and human rights violations are rampant. The alternatives would also better protect the liberty of the offenders and will work as a check on human rights abuses. Although it may seem utopian, it is based on the premise that a person becomes a criminal due to society, so society should come forward and take up the responsibility of reforming the criminal. The evil effects of incarceration may be minimized by resorting to these alternatives since the person as a convict or under the trial will not be deprived of their liberty, they would be able to earn their livelihood, be in a better position to prepare their defence, and social ties will not get disrupted. Hence, it becomes pertinent to develop and give legal recognition to modern kinds of punishments in general statutes in order to rationalize the existing punishment mechanism.

It is imperative to promote institutions like open jails, which will not only assist in decongesting central and district prisons but will also give harmless prisoners an amazing way to reform themselves. A fair opportunity is required to be given to these jails to bring some meaningful reforms to the prison system of our country.

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