



## PRISON REFORMS IN INDIA: EMERGING CURRENT CHALLENGES\*

### Introduction

All men are born equal and are endowed by their creator with some basic rights. These rights are mainly right to life and liberty, but if any person doesn't comply with ethics of the society then that person is deprived of these rights with proper punishment. Many experts believe that the main objective of prisons is to bring the offenders back to the mainstream of the society. Various workshops had been organized by the State Government in collaboration with NGO's to bring reforms in the current prison systems.

Many reforms can be made in jail administration, which are mainly: A- Class prisoners can meet their own expenditure by depositing certain amount fixed by the Government for enjoying special services like tea, newspapers, pillow, and 3 times non vegetarian food in a week and if they are vegetarian they will be served ghee, dhal and buttermilk. Many inmates usually complain about inadequate quality and quantity of food, which is required to be improved. The food is required to be prepared in better hygienic condition.

Rehabilitation of inmates will be meaningful only if they are employed after release and for that purpose educational facilities should be introduced or upgraded. In many jails, inmates including hardcore criminals and women had joined various courses offered by IGNOU and their respective State Universities. Courses mainly offered by them are BA, MA, MBA & other post graduation courses. The inmates can also join the classes of 10th and +2 for basic guidance. In many jails with a view of imparting vocational training a fully fledged computer training centers has been established. The inmates are also provided training in carpentry and fabric painting. Many jails have also initiated programs for women empowerment by training them in weaving, making toys, stitching and making embroidery items. Wage earning and gratuity schemes and incentives are also used to reduce the psychological burden on the convicts. Recently, the Government of Himachal Pradesh had lifted ban on wearing Gandhi cap in jails. Various seminars are organized by jail authorities to enlighten the prisoners on their legal rights, health and sanitation problems, HIV/AIDS and issues of mental health, juveniles, minorities and steps to reduce the violence in prisons.

The open prison system has come as a very modern and effective alternative to the system of closed imprisonment. The establishment of open prisons on a large scale as a substitute for the closed prisons, the latter being reserved for hardcore criminals shall be one of the greatest prison reforms in the penal system.

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Yet several steps have been taken to improve the conditions of prisons, but much more is required to be done. Central Government along with NGO's and prison administration should take adequate steps for effective centralization of prisons and a uniform jail manual should be drafted throughout the country. The uniformity of standards can be maintained throughout all the States. Thus such practices will help in changing the traditional and colonial outlook of the Indian Prison System and also help the prisoners to become more responsible, creative and potential citizen<sup>1</sup>.

### **Rising number of custodial deaths and abuse**

The police repression that has accompanied the past 14 years of free-market economic reforms has caused India's already antiquated and overstretched prison system to descend into an even greater state of chaos and human misery. According to Indian Home Ministry records, deaths while in remand or custody increased from 1,340 in 2002 to 1,462 by the end of 2003. According to an NHRC report, a large proportion of the deaths in custody were from natural and easily curable causes aggravated by poor prison conditions. Tuberculosis caused many deaths, and HIV/AIDS remained a serious health threat among prison inmates<sup>2</sup>.

Non-governmental organizations that deal with prisoner abuse allege that deaths in police custody, which occurred within hours or days of initial detention, often implied violent abuse and torture. The Home Ministry reported that there were 28,765 complaints lodged against police for April 2003 for abuse including deaths. In May of last year in Ambedkar nagar, Uttar Pradesh, police arrested a daily labourer and tortured him when he failed to pay a Rs. 50,000 (US\$1000) bribe. According to media reports, police admitted the victim to the hospital under a false name after injecting him in the rectum with petrol.

Police also threatened to harm his family if he reported the incident. In July 2004, the NHRC requested a report from Punjab's Inspector General of Prisons after a man incarcerated in Amritsar's Central Jail claimed the Deputy Superintendent and other prison officials branded him on his back when he demanded water and better treatment. Doctors found fresh scars on his back that had been inflicted with hot iron rods. By year's end, no action had been taken.

The rape of persons in custody is also part of the broader pattern of custodial abuse. Prisoner charities argue that rape by police, including custodial rape, was more common than NHRC figures indicate, since many rape incidents go unreported due to the victims' shame and fear of retribution.

A statement from the Asian Legal Resource Centre, on custodial deaths and torture in India, handed to the National Human Rights Commission and to the Sixty-first Session of the UN Commission on Human Rights in Geneva, notes: "Any person, who dares to complain about police officers in India, faces the wrath of the law enforcement agency.

Abhijnan Basu, who was serving his prison sentence at the Presidency Jail, West Bengal, was one such person who was not so lucky. Officers at the prison murdered him because he dared to complain about the inhuman conditions and the poor quality of food. Three prison wardens set him ablaze on November 12, 2004.

"Torture in India is widespread, unaccounted for and rarely prosecuted. It contributes to the state of anarchy and lawlessness in many parts of the country. Torture is used as a cheap and easy method of investigation and also as a tool for oppression. In the hands of the wealthy and

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<sup>1</sup> <http://www.legalserviceindia.com/article/1174-Prison-Reforms-In-Indian-Prison-System.html>

<sup>2</sup> <http://www.countercurrents.org/hr-zora260805.htm>, Visited on 03-01-2012

influential, Indian law enforcement agencies have also strengthened links with criminal elements. Even the judiciary in India cannot sever this nexus, between police and criminals.”

The state of India’s penal and justice systems speaks volumes about the true nature of human rights and social equality in a country routinely held up by the Western media as the “world’s largest democracy”<sup>3</sup> by 1835, America was considered to have two of the “best” prisons in the world in Pennsylvania. Astonishingly, reformers from Europe looked to the new nation as a model for building, utilizing and improving their own systems. Advocates for prisoners believed that deviants could change and that a prison stay could have a positive effect. It was a revolutionary idea in the beginning of the 19th century that society rather than individuals had the responsibility for criminal activity and had the duty to treat neglected children and rehabilitate alcoholics.

In reality it became clear that, despite intervention by outsiders, prisoners were often no better off, and often worse off, for their incarceration. Yet, in keeping with the optimistic spirit of the era, these early reforms had only begun a crusade to alleviate human suffering that continues today.

### Wednesday, 29<sup>th</sup> October 2008

More than one in every 100 adults in the United States is behind bars<sup>4</sup>. If the 2.3 million people behind bars were a city, it would be the fourth largest in the country<sup>5</sup>. The US prison system cost tax payers more than \$60 billion per year and it is bursting from the seams, so projections for cost will continue to skyrocket in the absence of significant reforms. Such reforms are needed not only to reduce costs, but also to ensure fairness and human treatment behind prison walls

Because of deeply flawed and discriminatory sentencing policies, our prison holds a disproportionate number of people of color, and people with mental illness and addiction problems. At midyear 2007, the rate at which African- American men were serving sentences was an astounding 4,618 per 100,000. The comparable rates for Hispanic males were 1,747 sentenced prisoners per 100,000 and for white males, 773 per 100,000<sup>6</sup>. This means black males were six times more likely, and Hispanic males twice as likely, to be held in custody than white males<sup>7</sup>. According to the most recent report by the US department of justice, bureau of justice statistics, 56% of state prisoners, 45% of federal prisoners, and 64% of jail inmates in the United States suffers from mental illness.<sup>8</sup> Between 60 and 80 percent of individuals under supervision of the criminal justice system in the US were either under the influence of alcohol or other drugs when they committed an offence, committed the offence to support a drug addiction, were charged with a

<sup>3</sup> <http://www.ushistory.org/us/26d.asp>. Visited on 03-01-2012

<sup>4</sup> One in 100: behind bars in America 2008. Pew research center for the people and the press January 2008

<sup>5</sup> See bureau of justice statistics, US, Department of justice, publication No 2219944 inmates at midyear 2007 bulletin, June 2008 available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/bureau> of justice statistics US Departments of justice, publication No 221945 jail inmates at midyear 2007 bulletin, June 2008 available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/jimo7.pdf>.

<sup>6</sup> Prison statistics, US department of justice bureau of justice statistics, December 2007, available <http://www.ojp.usdoj.gov/bjs/prisons.htm>.

<sup>7</sup> Sabol. William J and Heather Couture, prison inmates at midyear 2007, US department of justice bureau of justice statistics, June 2008, available <http://www.ojp.usdoj.gov/bjs/pub/pdf/pim07.pdf>.

<sup>8</sup> James, Doris J and Lauren E. Glaze. Mental health problems of prison and jail inmates bureau of justice statistics special report 1, department of justice, bureau of justice statistics, December 14<sup>th</sup> 2006.

drug- related crime, or were using drugs or alcohol regularly<sup>9</sup>. Experts also estimate that people with development disabilities may continue as much as 10 percent of the prison population<sup>10</sup>

Grossly deficient medical and mental health care plague prison and jails across the country. In 2005, a federal court found that in California a prisoners dies a needless death due to inadequate medical care or malpractice every six to seven days<sup>11</sup>. Prisoners are also threatened daily by sexual violence, a frighteningly common occurrence in the nations corrections systems. The bureau of justice statistical estimates that there are more than 8,000 reported incidents of sexual assault in prisons nationwide each year. Staff sexual misconduct comprised 42 percent of reported allegations while 37percent involved prisoners on prisoners violence. The number of sexually violent incidents that goes unreported due to victims fear of reprisal cannot even be estimate<sup>12</sup>

The profound failures of the US prison system defy our common values of human dignity, justice and respect. If Fyodor Dostoevsky is correct when he argues. "A society should be judged not by how it is treats its outstanding citizen but by how it treats its criminals" then Americans should truly be ashamed. Dramatic reforms to our prison system are long overdue. This section provides a comprehensive summary of practical policy options to bring about significant improvements to our nations prisons and jail. The prison section priorities focuson needed reforms to return the rule of law to US prison and jails, reduce recidivism and improve transparency in the worlds largest prison system.

## History of Imprisonment

In modern conditions care of prisoners coincides with care for those undergoing punishment, since now the withdrawal of liberty is the principal punishment for crime. This idea has developed only gradually. The history of prisons may be divided into three periods: (1) Until the fifteenth century the prison was not .a means of punishment. " Prisons served not for punishment, only for surveillance." Penalties consisted of fines, proscriptions, and different forms of capital and corporal punishment. (2) During the sixteenth to the eighteenth centuries imprisonment became a form of punishment. The number of cases in which capital punishment and chastisement were applied became so numerous that people asked whether capital punishment was right, and the idea of betterment through punishment gained adherents. But prison conditions were still horrible. (3) In the eighteenth and nineteenth centuries imprisonment came to be regarded as a means of betterment, this coming about especially through the labors of John Howard and Elizabeth Fry (qq.v.). In Germany the old conditions perpetuated themselves longest. There was no division of classes in the prisons (not even always a separation of the sexes), no pastoral care, and neither instruction nor employment, while the personnel was inefficient and the buildings were defective. Theodor Ffiedner (q.v.) gave the first impulse to a betterment of these conditions. But without the influence of Frederick William IV. such reforms would have been impossible. Another laborer in this field was Johann Heinrich Wichern .

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<sup>9</sup> Substance abuse and the prison population:A three year study by Columbia university reveals widespread substance abuse among the offender population correction today,60[6] 82-89, belenko,s, peughJ. Califano,JA UsdanskyM. And foster S.E. 1998,As cited in integrating substatnce abuse treatment and criminal justice supervision douglasB. Marlowe.J.D, SCIENCE AND PRACTICE PERSPECTIVES, VOLUME2. NUMBER1 SEPTEMBER 2003, [http://www.drugabuse.giv.pdf/perspectives/vol2/02perspectives\\_integrating.pdf](http://www.drugabuse.giv.pdf/perspectives/vol2/02perspectives_integrating.pdf).

<sup>10</sup> Leigh Ann Davis, people with mental retardation in the criminal justice system. Available at [www.thearc.org/faqs/crimqa.html](http://www.thearc.org/faqs/crimqa.html).

<sup>11</sup> Gibbons.John and Nichols de B. Katzenbach,confronting confinement, the commission of safety and abuse in Americas prisons, June 2006.

<sup>12</sup> Beck,AllenJ and Timothy A Hughes, Sexual violence reported by correctional authorities, U.S Department of justice bureau of justice statistics, july,2005.

## Theory of treatment of prisoners:

Present conditions regarding the care of prisoners involve: (1) Care for the prisoners during the time of their confinement. An important factor here is the prison-pastor. Every large prison has one or more ministers; in smaller places the clergyman of the community has charge of these matters. Every Sunday church services are held at which the attendance of the prisoners is obligatory. But not least important is the teacher, who gives instruction in the elementary branches, criminals being generally without the simplest elements of knowledge. In charge of the teacher a library is found in each prison. The inspector is also a factor. In Germany the military have usually held these positions in spite of the fact that they often lack the necessary qualifications. Wichern tried to introduce specially trained men from his own charitable institution, but failed. Little has been done so far in the direction of training women to care for prisoners of their own sex. (2) The care of prisoners after their dismissal is also a part of the system. For this purpose there exist protective associations. Neither the State nor individual cities nor churches have done much for this cause. Associations for this purpose are mostly voluntary. An important part of their duties is the care of the family of the prisoner. For the dismissed there is secured employment, if possible, and other aid and assistance are given him though there are only a few asylums for men for temporary lodging, while homes for women are more numerous. It is to be regretted, however, that there is little zeal developed in these protective associations and their success is small, but, of course, the field of labor is a difficult one.

Prison conditions regarding the care of prisoners involve (1): The care of prisoners during the time of their confinement. The purposes of the deprivation of liberty are (a) punishment, (b) deterrent effects, (c) reformatory effects, (d) the protection of society. These factors are emphasized differently in different countries. In Europe, emphasis has been laid chiefly upon punishment and the protection of society. In the United States, probably more than in any other country, the protection of society and the reclamation of the offender are emphasized. Upon the distribution of emphasis depends the nature of the care of prisoners during their confinement? European conditions are in general more rigorous and less reformatory in method than American prison conditions. Important factors during imprisonment in prisons generally are the warden and his associates, the prison physician, the prison chaplain, and the prison teacher. Every large prison has one or more chaplains; in smaller communities, correctional institutions are frequently visited by one or more of the clergymen of the community. In most prisons, if not in all, Sunday church services are held with obligatory attendance. Of great importance are prison teachers, giving instruction in the elementary branches of education. Offenders are in large measure lacking even in the simplest elements of knowledge. Libraries are found in most prisons. In some American prisons, the library is as large and as well selected as libraries in small American cities. The lesser prison officials, such as guards and keepers, are gradually becoming of a higher grade. Civil-service requirements are in effect in many American states. Physical exercise, military drill, and industrial training within the prison tend to reconstruct the abnormal man into a normal and useful member of society upon his release. Much attention is paid in the United States to sanitary conditions in prisons and penitentiaries. Lesser correctional institutions are frequently unsanitary and even filthy. The treatment of tuberculosis in prisons has received great impetus during the last decade, largely through the efforts of New York state in establishing in one of the state prisons a separate ward for prisoners afflicted with the "White Plague." The death rate from tuberculosis has been very materially reduced through such segregation.

(2) The care of prisoners after their release is also a part of the system of the treatment of prisoners. In many American states, a more or less effective parole system is carried out. Released prisoners are placed under the supervision of a parole agent for periods of from six months to the period of the maximum sentence. No conclusive statistics are available as to the percentage of permanent reformation of released prisoners. About twenty-five per cent of released prisoners become delinquent before the termination of their parole. The parole system is increasingly

considered fully as necessary as the imprisonment of the offenders. The tendency is to place the parole work under the supervision of the State. In some states, private associations, such as prisoners' aid societies, conduct the parole work. In many states, no parole work is done. An important part of the duties of prisoners' aid societies is the care of the family of the prisoner during his imprisonment. For the released prisoner employment is secured, if possible, and other aid and assistance given him. There are a few homes for discharged prisoners in the United States, the Volunteers of America (q.v.) maintaining several "Hope Halls."

The released or discharged prisoner does not now find it so difficult as formerly to obtain work. The attitude of society toward the released prisoner is materially changing, the principle of the "square deal" making gratifying progress.

## Penology

The Greek word *poine*, denoting the satisfaction, pecuniary or otherwise, paid for an injury, passing through the Latin *pana*, "penalty," has become enlarged in later years to signify in "penology" the whole science of penal law, penal administration, the prevention of crime, and the correction of the offender. In each of these departments there is a new recognition of fundamental principles, some of them early discerned but tardily applied, and an infusion of new knowledge and of the humane sentiment. Jesus set aside the retaliatory features of the Jewish law. Modern penal law can hardly be said to have eradicated vindictive features entirely from its codes; but the modern tendency is to make such codes measures of social defense with deterrent rather than vindictive penalties. Fundamental principles of the new penology are the protection of society and the reformation of the offender. In Plato's social system there was recognition of the duty of kindness and pity toward the prisoner; in the New Testament it has a distinct prominence in the teaching of Jesus. In modern times the most important point of departure from the old penal system dates from the publication of the work entitled *Dei delitti e delle pene* ("Crimes and Penalties") in 1769 by Cesare Beccaria Bonesana, an Italian nobleman, and from the personal work of John Howard (q.v.), who began his visitations of prisons in England in 1773 and extended his work and inspections over the continent. Beccaria's influence was felt mainly in the abolition of torture and of capital punishment, and the reformation of criminal codes. Howard initiated reforms in the physical, moral, and industrial conditions of prison life. The duty of society to the offender was considered in all its aspects. Elizabeth Fry exerted great influence in the last century in Great Britain and Europe, also Mary Carpenter (q.v.), Matthew Davenport Hill, and others. Alexander Maconochie at Norfolk Island, and Sir Walter Crofton in Ireland, enlightened and progressive prison directors, demonstrated the possibility of making new moral and educational appeals to the prisoners with grades and privileges based on the merit system.

## The Modern System:

The same principle with independent and original application has borne fruit in the reformatory system in the United States. Juvenile reformatories for boys and girls were established in the first half of the last century; but a new epoch marks the extension of the idea to institutions for those from sixteen to thirty years of age first established in Elmira, New York, in 1876 under Z. R. Brockway and since adopted in Ten American States. A fundamental feature of the reformatory system is the indeterminate sentence. The prisoner is not committed for a definite time to the institution, but is obliged to secure his conditional release by his attainments in school, industry, and deportment. When he has earned his parole he is released tentatively, and after proving by some months of good conduct his ability to live an honest, law-abiding life receives his absolute discharge. If not corrigible, he can be detained for the maximum period fixed by the code as the penalty of the offense for which he was committed. The probation system of treating offenders without imprisonment was first adopted in Massachusetts in 1878 and afterward adopted in France, Belgium, and various American states. Another important American

contribution is juvenile courts first established in Chicago in 1899 and soon after adopted in other states and also in Europe. The system of county jails in the United States still remains the worst feature of American prisons. The tendency is now toward state control of prisoners with better sanitation, an improvement in the personnel of prison officials, the introduction of common schools, trade-schools, libraries, prison journals, lectures, and the formation of various societies among the prisoners. In Europe the system of separate confinement is applied in a number of countries; in the United States the prevailing system is congregate labor by day and separate cells by night. Reduction of sentence is allowed for good behavior, and the parole system is now applied in some thirty states. The abolition of the lease system in Georgia and Louisiana marks a great advance in the South. Educative and productive labor is a fundamental necessity as a moral agent in prison. Other features of modern progress are a better standard of prison construction, the assignment to prisoners of a portion of their earnings; provision for the payment of fines by instalments on probation and the assignment of a portion of the prisoner's wages to his family; an improvement in prison dietaries; new and better principles of classification, the development by finger prints of a scientific method for the identification of prisoners, the separation of accidental from habitual criminals, the humane treatment of the criminal insane, with more effective organization for aid to the discharged prisoner. Under Cesare Lombroso, Enrico Ferri, and others a new impulse has been given to the study of the criminal, his environment, and history, though criminal anthropology has hardly attained yet the rank of a science. Prison associations for improving legislation and aiding prisoners exist in several states. The National (now "American") Prison Association in the United States was first formed in 1870, and immediately after, under the initiative of Dr. E. C. Wines, supported by the government of the United States, the International Prison Congress was formed, and has exercised great influence in Europe and the United States.

### **Samuel J. Barrow**

The Eighth International Prison Congress was held in Washington, U. S. A., in October, 1910, and marked high-tide in the advocacy of modern principles of penology. The congress, composed of representatives of nearly two-score nations, went on record as advocating the principle of the indeterminate sentence, the theory of the reformation of the offender, the use of probation and parole, the development of colonies for tramps and vagrants and inebriates, the productive labor of prisoners and the support, when possible, of prisoners' families from the earnings of the prisoner, the development and extension of the juvenile court and other important modern principles.

### **Conclusion**

The talk about treatment and training in prison is not rhetoric; it can be real, given the zeal and determination. We cannot afford to fail in this sphere, as a sound prison system is a carrying need of our time in the backdrop of great increase in the numbers of prisons and that too of various types and from different strata of society. Efforts should be to improve our prison system by introducing new technique of management and by educating the prison staff with our constitutional obligation towards prisoners. Rest would follow, as day follows the night. Let the drawing ray of hope see the end of gloom cast on the faces of majority and let a new awakening percolate every prison wall.