

PRISONS AND HUMAN RIGHTS

INTRODUCTION

This report is based on the proceedings on the workshops on 'Prisons and Human Rights' organised at Bhopal by the Commonwealth Human Rights Initiative (CHRI) in collaboration with the Madhya Pradesh Human Rights Commission (MPHRC). The workshop, conducted on the 25th and 26th of April 1998, was attended by representatives from the Law Commission of India, the National Human Rights Commission of India (NHRC), MPHRC, Madhya Pradesh State Commission for Women, CHRI, retired and serving officers from the prisons and police departments, ex- prisoners and their family members, members from NGOs, academicians, bureaucrats, journalists and lawyers.

The main objective of the workshop was to sensitise the administration to human rights issues; suggest mechanisms to monitor prison conditions effectively and ensure accountability in respect of violation of human rights; discuss the problems of prison administration and ways to motivate and develop prison staff.

Inaugurated by Mr. Justice M.N. Venkatachaliah, Chairperson of the National Human Rights Commission, the workshop was divided into four sessions with two sessions on each day. The first day's sessions, presided over by Mr. R.K. Kapoor, former Director, Intelligence Bureau and Mr. Justice Awasthy, Member MP Human Rights Commission, covered issues pertaining to the modernisation of prison administration and motivation and development of prison staff. The second day's sessions, chaired by Justice Leila Seth, Member, Law Commission of India, discussed the subject of prisoner's rights: the need for transparency and accountability; and monitoring of prison conditions.

The need for prison reforms has come into focus during the last few decades. The Supreme Court and the High Courts have commented upon the deplorable conditions prevailing inside the prisons, resulting in violation of prisoner's rights. The problem of prison administration has been examined by numerous expert bodies set up by the Government of India. The most comprehensive examination was done by the All India Jail reforms Committee of 1980-83, popularly known as the Mulla Committee. The National and the State Human Rights

Commission have also, in their annual reports, drawn attention to the appalling conditions in the prisons and urged governments to introduce reforms.

Prisoners' rights have become an important item in the agenda for prison reforms. This is due essentially to the recognition of two important principles. Firstly, the prisoner "is no longer regarded as an object, a ward, or a 'slave of the state', who the law would leave at the prison entrance and who would be condemned to 'civil death'."¹ It is increasingly been recognised that a citizen does not cease to be a citizen just because he has become a prisoner. The Supreme Court has made it very clear in many judgements that except for the fact that the compulsion to live in a prison entails by its own force the deprivation of certain rights, like the right to move freely or to practice a profession of ones choice, a prisoner is otherwise entitled to the basic freedoms guaranteed by the Constitution.² Secondly, the convicted persons go to prisons as punishment and not for punishment.³ Prison sentence has to be carried out as per court's orders and no additional punishment can be inflicted by the prison authorities without sanction. Prison authorities have to be, therefore, accountable for the manner in which they exercise their custody over persons in their care, specially as regards their wide discretionary powers.

It is thus the above two themes- 'prison administration' and 'prisoners' rights'- are brought under focus in this workshop.

This report summarises the deliberations of the workshop, highlighting the important issues which emerged during the deliberations and the important recommendations which were made during the sessions. The report does not present the deliberations in the chronological sequence in which they were held but groups them under different thematic heads.

¹ Dr. Kurt Neudek, *The United Nations in Imprisonment Today and Tomorrow- International Perspectives on Prisoners' Rights and Prison Conditions* eds., Dirk van Zyl Smit and Frieder Dunkel; Kluwer Law and Taxation Publishers, Deventer, Netherlands, 1991.

² Charles Shobraj vs. Superintendent, Tihar Jail, AIR 1978, SC 1514

³ Jon Vagg. *Prison System- A Comparative Study of Accountability in England, France, Germany and the Netherlands*, Clarendon Press, Oxford 1994

Prisoners' Rights

The Constitution of India confers a number of fundamental rights upon citizens. The Indian State is also a signatory to various international instruments of human rights, like the Universal Declaration of Human Rights which states that: "No one shall be subject to torture or cruel, inhuman or degrading treatment or punishment"⁴. Also important is the United Nations Covenant on Civil and Political Rights which states in part: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person"⁵. Therefore, both under national as well as international human rights law, the state is obliged to uphold and ensure observances of basic human rights.

One of the best tenets of human rights law is that human rights are inalienable and under no circumstances can any authority take away a person's basic human rights. The fact that this tenet is not sometimes made applicable to prisoners is well documented. There are innumerable judgements of Supreme Court and High Courts, showing how prisoners' rights are violated. The judgement highlighted the highly unsatisfactory conditions prevailing inside the prisons and the failure of the prison authorities to provide an environment which is conducive to the maintenance of prisoners' rights, partly rooted in the belief that the prisoners do not deserve all the rights and the protections that the constitution provides to all citizens. Besides being morally wrong and legally invalid, this belief does not show adequate recognition of some basic facts about the prison population.

Out of the total population of 2,26,158 in the country on 1.1.1997, 1,63,092 were undertrials.⁶ Thus 72% of the prison population is not even convicted of any crime. Secondly, even those who are convicts, a large number of them are first time offenders involved in technical or minor violations of law. Very few are recidivists or hardened criminals.⁷ Also, as was observed by the Mulla Committee, a majority of the inmates come from the "underprivileged sections of the society, as persons with the means and influence generally manage to remain beyond the reach of law even if they are involved in violation of law."⁸

⁴ Universal Declaration of human Rights, Article 5.

⁵ United Nations International Covenant on Civil and Political Rights, Article 10

⁶ Source: Ministry of Home Affairs, Government of India

⁷ J Guha Roy, *Prisons and Society: A Study of the Indian Jail System*, Gian Publishing House, New Delhi. 1989

⁸ Report of the All India Committee on Jail Reforms, 1980-83

It is against the above backdrop that some important rights of the prisoners were discussed in a paper presented at the workshop by Ms. Marion Macgregor of the Commonwealth Human Rights Initiative (CHRI).⁹ The paper provided an outline of some important rights of prisoners, like the *Right to Live with Human Dignity*, *Right to Punishment as Prescribed by Law*, *Right to be Free of Fetters or Handcuffs*, *Right to Communication and Information*, *Right to Counsel*, *Right to Writ of Habeas Corpus* and the *Right to Air Grievances*.

Besides discussing the legal sources of the rights, the paper made some suggestions which could prove helpful in ensuring an element of transparency and accountability in prison administration. Some of the suggestions made in CHRI's paper will be discussed later in this report.

Prison Conditions: First Hand

The workshop provided a unique opportunity to ex-prisoners to narrate their experiences, and to the delegates to share and learn from them about the conditions prevalent behind the prison walls. The family members of ex-prisoners, who also spoke at the workshop, informed the delegates about the sufferings and hardships faced by them while coping with the problems of detention of their close relatives in the prisons. This session constituted a very important part of the workshop, as the ex-prisoners and their family members gave fairly graphic, vivid and moving accounts as well as valuable insights into the problems of those held in custody.

The first speaker in this session, Mr. Guddu Koshti, had been in and out of prisons on several occasions during the last 18 years. He mentioned that he was transferred from prison to prison throughout the state and once even out of the state to Maharashtra. This, he alleged, was due to his continued protests against the appalling conditions prevailing inside the prisons and against the abuse of authority by the prison staff. He spoke of the atmosphere of repression existing in prisons which discourages the prisoners from voicing their grievances and complaints against authority. Mr. Koshti said that the extreme 'third degree' measures that he had been subjected to during the eighteen long years had left him far too weak physically to earn livelihood through labour, and that his long terms in prisons had not

⁹ *Prisoners' Rights – Need for Transparency and Accountability* – CHRI's paper presented at the Workshop

equipped him with vocational skills that would sustain him as a skilled worker. He also claimed to be a victim of social stigmatisation which made rehabilitation all the more difficult.

Mr. Koshti complained that those with money, power and clout are privileged with remission of sentences, better food, medical care etc. He alleged that often on payment of money to members of staff, prisoners are given special diet or admitted to hospital even though they do not have access to these facilities.

Mr. Koshti blamed the MPHRC for its failure to bring about any change in prison conditions and complained that all his petitions have thus far been ignored.

The second ex-prisoner, Mr. Patel, complained of over crowding as well as of poor medical facilities. He had suffered due to absence of adequate medical care in the prisons, which resulted in his losing one eye. He also spoke about the incidence of lunacy resulting from mental strain in prisons. Mr. Patel alleged that it was local bosses in the prisons having money or muscle power or political clout, who were invariably given privileged treatment. The delegates were informed about the compliant system and that prisoners could write to their relatives or friends or to relevant authorities about their problems. However, the letter were to be given open to the warder at the weekly parade, thus suggesting a lack of privacy which could account for the loss of several letters containing complaints of prisoners.

Mr. Patel informed the delegates that the system of monitoring prison conditions was extremely ineffective. In his experience, visitors, official or non official, hardly ever came and even if they did, their check was merely routine, while most of their time was spent chatting with the prison authorities. He also mentioned that there was hardly any legal aid available to prisoners and that lawyers rarely visited the prisons to give legal advice to the prisoners.

The next person who spoke was the younger brother of Mr. Patel. He said that he had visited his brother frequently in the jail during the eight year period. The main problem faced by him was to avail his visiting rights without bribing prison staff. Although bribes were not openly asked for, it was an unspoken rule that the visiting time was in direct proportion to the money that one secretly paid to the warder. One could meet one's relatives without paying bribes,

but the frequency would be greatly reduced and the time allowed would be very short. In his experience, on payment of a bigger amount, one could even go inside and talk to the prisoner from the visitor and provides little privacy. He also alleged that often the food or some other items sent to the prisoner did not reach the person. Much of it was either stolen or consumed by the prison staff.

The last speaker in this section was Mrs. Malati Maurya whose husband was convicted and sentenced to the life imprisonment. Mrs. Maurya explained her plight as a woman without financial or social support, while having to support two children and an aging mother-in-law. She gave instances when she was not allowed to meet her husband and had to pay bribes to various members of the prison staff. Not only was she shown little sympathy but was also humiliated at times by the staff. Mrs. Maurya complained that in spite of a number of petitions on her part to stay the transfer of her husband to another prison, he was moved far away from their home town, making visits all the more difficult. Mrs. Maurya also cited the instance when her husband was not let out on leave despite his mother being ill and was finally only granted leave for the day when she died.

The Problems

The complaints of the ex-prisoners and their relatives need to be highlighted not as cases of individual suffering but as examples of the general systemic malaise that affects the prison system, leading to serious human rights violations. The following are some of the important problems of the prisons and related issues, having a bearing on prisoners' rights, which were discussed by the workshop.

Overcrowding

Overcrowding in Indian prisons is seen as the root problem that gives birth to a number of other problems relating to health care, food, clothing and poor living conditions. Mr. Justice Venkatachiah, while inaugurating the workshop, referred to this problem. He said that the prison population of about 2,24,000 in India in relation to the total population of the country was one of the lowest in the world. He pointed out that while some jails were comparatively empty, there were others which were overcrowded by about three times the capacity, though the percentage of overall overcrowding was about 9%. In some of the prisons inspected by

Justice Venkatachaliah, the problem of overcrowding was so acute that inmates often had to sleep in shifts of 3-4 hours due to lack of space.

Overcrowding has also begun to affect the attempts of the prison administration to empower prisoners with skills that would involve them in gainful employment after release. These attempts come in form of workshops where prisoners are taught carpentry, printing, binding, doll-making, typing etc. however, due to the pressing need for space, more and more workshops are being used to house prisoners. In Madhya Pradesh, currently only 16 out of 120 prisons can afford the luxury of maintaining workshops and these are also increasingly coming under threat due to the increasing problem of overcrowding.

According to Dr. Hira Singh, Consultant, NHRC, optimum population capacity of prisons needs to be assessed and provisions made accordingly. Thus, no central jail should hold more than 750 prisoners and no district jail, more than 400. However, it was observed that even though in some cases as in MP, where more space is being commissioned and larger prisons are being constructed, the problem of overcrowding persists. According to a study done by the MP Prison Department, prison population is rising by 6.92% a year. As per expansion plans of the state government and presuming that all plans are completed, the total capacity of the prisons in MP would go up to 20,931. Although this seems to be a huge growth in capacity terms, the extent of overcrowding would still be to the tune of 56.43% by the year 98-99, and by the year 2005-6 it would go up to 151.18%.¹⁰

A serious and long term solution to the problem of overcrowding in prisons needs a review of the functioning of the entire criminal justice system, including the system of arrests, sentencing policies and notions of crime.

The National Police Commission had pointed out that 60% of all arrests were either unnecessary or unjustified.¹¹ The police often look upon imprisonment as an easy solution and use preventive sections of law, like 151 of the Criminal Procedure Code indiscriminately. The liberal use of the power to arrest, while contributing significantly to the problem of overcrowding, leads to increased expenditure on jails. One way to deal with the problem of

¹⁰ Source: Prison Headquarters, Madhya Pradesh.

¹¹ The National Police Commission: *The Third Report, Chapter XXII, 1980*

overcrowding is to decriminalise certain offences and find alternatives to imprisonment, particularly in petty offences and make minor offences compoundable.

Delay in completing cases is responsible for overcrowding in jails. An important factor responsible for delaying trials is the failure of the agencies to provide security escort to the undertrials to the courts on the dates of trial hearings. The prison department blames the police for failing to provide adequate escort when required. The police, however, have their own problems and cite law and order requirements and security duties for VIPs as having overriding priority in deciding deployment of manpower. The only solution to the problem is for the State Government to provide trained manpower exclusively for prison department's requirement of escorting prisoners. It was suggested that the armed police sanctioned for this purpose should always be kept at the disposal of the prison department.

Prisons are also being used as multipurpose institutions, to house not only those convicted of crimes but also those who do not need incarceration but medical and psychiatric treatment. Although there are many judgements of the higher courts denouncing the use of prisons as homes for the mentally ill, the practice continues to exist at some places.

Undertrials and Legal Aid

Some important issues about providing legal aid to the needy and poor were discussed in a paper presented by Mr. N.K. Jain, Member Secretary, State Legal Service, Madhya Pradesh. Mr. Jain mentioned that legal aid was a fundamental right of an indigent person in the USA and in UK. In India also, the State is obliged to provide legal aid to the poor, as the Indian Constitution makes it one of the Directive Principles of the State Policy to do so. However, as 70% of the prison population is illiterate, lacking an understanding of their rights, the poor do not always get the benefit of the provisions of law in this regard.

In addition, though there are panels of lawyers, at least in district courts in Madhya Pradesh, the panels do not have good and efficient lawyers.

Mr. Jain, in his paper, made some suggestions to speed up the trial process so that the population of undertrials is reduced. Though Section 309 Cr.P.C. suggests that the trial proceedings should be held as expeditiously as possible and once the examination of

witnesses has begun, it should be continued on day to day basis till completion of the case, this does not happen. Mr. Jain suggested that an amendment should be made in the Cr.P.C. to make it possible for an undertrial prisoner to plead guilty at any stage of the trial. It was further suggested that the Lok Adalats should deal not only with compoundable cases but also with cases where the accused pleads guilty. He advocated strongly for the introduction of the system of plea bargaining by making necessary amendments in laws. It was, however felt by some delegates that some safeguards would have to be instituted to minimise the scope for misuse of the plea bargaining system. One could always plea bargain falsely just to avoid being kept in prison as an undertrial.

Professor B. B. Pande of the Faculty of Law, University of Delhi, informed the workshop about the work that was done by him and his students in Tihar Jail in the field of legal aid. Legal Aid consists of four essential components. The first step is to impart legal literacy with the aim of spreading awareness amongst prisoners about their rights and obligations and sensitising the prison administration. legal aid must help the prison system in reducing reforms. The next step is that of litigation, where the legal aid workers take up cases of prisoners in courts and see that justice is done. It would also be necessary to keep identifying those who need and deserve legal aid. To make legal aid efficient and easily available, Professor Pande stressed to need for para-legal staff to work in prisons with both convicts and undertrials. It was further suggested that there should be greater involvement of Lok Adalats in criminal cases, which at present is limited. Lastly, constant monitoring of the prison conditions to identify inadequacies and shortcomings of the prison administration and suggest changes in law to bring about the desired reforms was discussed as essential to the entire system of legal aid.

As observed by the Mulla Committee, most prison inmates belong to the economically backwards classes and this could be ->attribute<- to their inability to arrange for the bail bond. Legal aid workers need to help such persons in getting them released either on bail or on personal recognisance. Bail provisions must be interpreted liberally in case of women prisoners with children, as children suffer the worst kind of neglect when the mother is in prison.

Limiting the powers of the police to arrest, applying the principle of ‘bail not jail’ in majority of cases and releasing persons on personal recognisance and adding to the list of compoundable offences would help in reducing overcrowding in jails.

Health Care and Medical Facilities

The problems relating to the health of prisoners and lack of adequate medical facilities in Indian prisons received considerable attention in the workshop. Justice Venkatachaliah referred to a recent study of custodial deaths in judicial custody done by the National Human Rights Commission, which revealed that a high percentage of deaths were attributable to the incidence of tuberculosis amongst prisoners. In recent times, there has also been a disturbing rise in the percentage of HIV positive inmates. Special and urgent care is required to look after such cases.

Due to overcrowding, inmates have to live in extremely unhygienic conditions, with little concern for health or privacy. Often cells built to house one or two persons now accommodate twice or three times the number. Most toilets are open, denying the prisoner his basic right to privacy and human dignity, and are also dirty. Water shortage being the rule than the exception the toilets prove to be the ideal breeding grounds for health hazards and epidemics.

Justice Leila Seth gave a first hand account of the health facilities available to prisoners, based on her experience as the chairperson of the enquiry committee set up to investigate the death of Rajan Pillai in Tihar Jail. Health care of the prisoner should be treated as a special responsibility of the prison administration as the prisoner, in fact, is handicapped by the inability to choose the kind of medical treatment required. There is often little provision for support and succour from family or friends and the prisoner is solely dependent on his custodians to provide him adequate medical facilities. Quite often the prison authorities do not take this responsibility as seriously as they should. Medical checks are routine and complaints of ill-health are not attended to urgently.

Once again the systemic problems come to surface. For example, the sanctioned strength of doctors and para-medical staff in many prisons is much less than what is required. As Mr. G.K. Agarwal, Additional Inspector General (Prisons), Madhya Pradesh, informed, the

Jabalpur Jail in M.P. was sanctioned a strength of three doctors way back in 1956 when the number of inmates in that prison was only 550 to 600. Though the prison population now is about 4000, the number of doctors remains the same. Even this limited strength is not always available as there are invariably a large number of vacancies in the posts of doctors in most prisons. Justice Leila Seth observed that even in a high profile jail like Tihar, in 1995, out of the seventeen sanctioned posts of medical officers, only six were occupied. Of these six, two were always on leave. Therefore, for a prison population of 9000 inmates, only four medical officers were available, of which 3 worked during the day and one at night.

Non-availability of adequate medical facilities for prisoners is largely due to the lack of full time doctors as well as lack of basic infrastructure, like well equipped ambulances, stretchers, dispensaries, hospital beds etc. sometimes, the prisoner may need expert and urgent medical attention which is not available within the jail premises. Transporting the sick prisoner out in the absence of vehicles and escort in districts sometimes poses a problem. For example, Mr. J.M. Bhagat, Member, Madhya Pradesh Human Rights Commission, narrated the instance of a prisoner in the Rewa jail, who lost an eye because the cataract could not be diagnosed and attended to in time. Sometimes, when the cells are closed, the warder who has the keys to the cells is not available, as a result of which quick medical aid is not possible in case of an emergency. Justice Seth quoted an instance where the doctor was required to administer injections through the bars as they could not have the cell opened. Thus in many cases, besides lack of resources, it is the existence of a dehumanised system in the prison which contributes to the problem. It is, therefore, important to humanise the relationship between the prisoner and the prison staff so that the latter are sensitised to the needs of the prisoners and regard themselves as the caretakers of the inmates.

The Mulaizha, which is the first medical examination of the individual when he is admitted to the prison, is generally regarded as a mere routine and done perfunctorily. Justice Seth suggested that the Mulaizha should be detailed and thorough, involving check up of all known and unknown ailments. This is essential as the majority of the prisoners who come from economically disadvantaged backgrounds rarely have complete knowledge of their ailments. Justice Venkatachaliah, in his inaugural address, informed the workshop that the NHRC was evolving a comprehensive format for the initial medical examination of the prisoners.

Drug addiction is on the increase in prisons and in many cases leads to other diseases, such as AIDS and Tuberculosis. The nexus between drugs and crime is getting stronger day by day. Mr. Sankar Sen, Director General (Investigations), National Human Rights Commission, said that there was evidence that large drug gangs recruited inmates from prisons to increase the use of drugs. There exist, according to Dr. Hira Singh, 30,000 drug addicts in Indian jails. The rise in incidence of drug abuse could be related to the rise in corruption and the easy access that miscreants outside may have to inmates. A careful monitoring is needed alongwith adequately equipped drug de-addiction centres. Justice Seth spoke about Aashiyana, a drug de-addiction centre in Tihar Jail. However Aashiyana too has started facing the problem of overcrowding. There is, therefore, an urgent need to get as much aid as possible from civil society and NGOs. NGOs should be encouraged to work inside the prisons and their efforts should be supported and supplemented by those of prison administration.

Besides suffering from physical ailments, the prisoner also undergoes considerable stress and trauma during his stay in prison. Imprisonment is often accompanied with depression and a feeling of isolation and neglect. It was therefore felt that active counselling must be made available to the prisoners to overcome these problems. Counselling should aim not merely at providing temporary relief by pulling them out of their depression, but at instilling hope and a sense of purpose in them and by equipping them with skills that may prove useful upon release.

Justice Seth suggested the need for a thorough overhauling of the arrangements in prisons to provide medical care and facilities. Most prisons are not equipped with an effective communication system that would inform the concerned authorities in case of a medical emergency. Besides establishing such a system, inmates must be thoroughly briefed about how to seek medical aid in case of emergency.

Women Prisoners

The workshop discussed the need to sensitise the prison administration to gender issues and specific needs of women prisoners. Mr. Bhagat informed the workshop that during inspection of several jails, it was found by the M.P.H.R.C. that a large number of women prisoners were detained in jails as undertrials for a long time. Women, due to their ignorance, are not even

getting the benefit of proviso to Section 437 Cr.P.C, according to which they can be released on bail even in non-bailable cases. The Commission has now insisted on the prison authorities to take up the cases of women undertrials with courts so that they can be released on bail.

Little has been done to attend to the special needs of women inside the prisons. To give one example, the Mulla Committee report of 1983 had recommended that “at every prison where there is a sufficiently large number of women prisoners, (say, 25 or above), a full time lady officer should be appointed. At other prisons arrangement should be made for part time lady medical officers.”¹² There are 120 prisons in Madhya Pradesh and none of them has provided for a lady doctor for women prisoners, leave alone providing extra medical facilities to pregnant women.¹³ Justice Seth suggested that women should be allowed to return to their families for delivery, as that time they need special support and care which they cannot get in prisons.

Then there is the problem of rehabilitation. Women suffer from a low social and economic status within their own families and find it harder to get back into society upon release than men. It was suggested that such destitute women should be equipped with vocational skills and protective homes to be established to provide shelter to them after release.

Mr. J.M. Bhagat mentioned in his paper¹⁴ that a majority of women detained in safe custody are not the standard criminal offenders but those who have escaped from a repressive environment of their homes, brothels or criminal gangs. He suggested that female prisoners should be imparted prison education and training programmes, irrespective of their status as convicts or undertrials, to enable them to face the world after release.

Classification of Prisoners

The rationale behind the existing system of classification of prisoners came up for discussion in the workshop. It was considered essential to prevent undertrials, first timers and casual prisoners from being influenced, bullied and abused by the few but dominant hard core

¹² *Report of the All India Jail Committee, 1980-83*

¹³ Source: The Prison Department, Madhya Pradesh

¹⁴ *Prisoner's Rights, including Women's Rights* – A paper presented in the workshop

criminals in prison. It was observed that juveniles or young offenders, who are housed with other hardened criminals, often come out of prison only to commit far more serious crimes than they had done earlier.

At present, prisoners in Indian jails are classified into different classes not on the basis to their criminal record but according to their social, economic and educational background. This, in fact, is a legacy of our colonial past which we have not shed. It is in this connection that a reference was made in the workshop to the report of Justice Santosh Duggal Committee appointed by the Lt. Governor of Delhi. This Committee was appointed on the orders of the Supreme Court in a civil writ petition in which the existing system of classification was challenged.

The Committee, in its report, mentioned that the existing system of classification, based on criteria, like social status, education, habit, mode of living etc. was repugnant to the concept of equality propounded by Article 14 of the Constitution of India and should be abolished. The broad criteria for segregation of prisoners, according to the Committee, should include Convicts, Undertrials, Age, Nature of Crime, Previous History (whether habitual or casual), Prison Term, Kind of Sentences, Nationality, Civil Prisoners, Detenues, Security Requirements, Disciplinary or Administrative requirements, Correctional Educational or Medical Needs. The recommendations made by the Committee about classification of prisoners have been accepted by the Delhi Administration. The workshop felt that these recommendations merited implementation by prison administrators across the country. The State Governments should be persuaded to implement the recommendations. The Commonwealth Human Rights Initiative has already circulated the recommendation to all States and Union Territories.

Prison Administration

The workshop acknowledged that protection and promotion of human rights in prisons was linked to the service and working conditions of the prison staff, though it was also stressed that the poor working conditions could not be regarded as an excuse for violation of prisoners' rights.

Prison Staff-Working and Service Conditions

Central to the prison administration is the problem of demoralisation and lack of motivation of the prison staff that was reiterated by most participants in the workshop, particularly those belonging to the prison department. It was pointed out that the conditions in which the lower echelons of the prison staff lived were in some cases worse than those of the prisoners. This was seen as an important factor contributing to the poor functioning of the prisons, apathy of the prison staff towards the plight of the prisoners, corruption and the over all deprivation of the prisoners of their basic amenities. Such substandard conditions of service produce a culture of frustration and dehumanisation in the service which often spills over and gets translated into aggression on prisoners. As expressed by members of the prison staff and acknowledged by other delegates, the conditions of work create an environment that discourages initiative, leadership qualities and enlightened rights based approach.

Mr. Aivalli, Additional DG Prisons of Jammu and Kashmir pointed out¹⁵ that the prison administration has basically three levels – the management level (DG/IG/DIG etc.); the supervisory level (the Superintendents/Deputy or Asst Superintendent/ Jailers etc.); and the grassroots level (Head Warden/Wardens etc.). The officers at management level, majority of whom are on deputation from the police service, consider this as a punishment posting and are generally too demoralised to contribute significantly to the building up of the department. Most of them are merely time servers. The supervisory level, consisting of staff belonging to the prison service, too is demoralised because of poor service conditions, lack of career opportunities and low public esteem. At the grassroots level, the department has people who remain inside the prison walls, interacting with prisoners most of the time. This factor, combined with their pathetic service conditions, has the effect of dehumanising them. Some of them develop vested interests and join hands with criminals. Mr. Aivalli suggested drastic changes in the organisational structure, control and service conditions of the prison department. The package suggested by him would require (a) having a common cadre for prison and fire services at grassroots level, with rotational cycle of postings to be effected after putting them through refresher courses; (b) providing a professional and better supervisory level by prescribing higher qualifications with better emoluments and status; and (c) having a judicious and humane management level by having judicial officers at the helm

¹⁵ *Prison Administration* – A paper presented by Mr. Veeranna Aivalli, Additional DGP, Prisons and Fire Services, Government of J&K in the workshop

of affairs and placing the administrative control of the prison department with the State High Courts. It was felt that the suggestions at (a) and (c) would not be acceptable.

Mr. Agarwal was of the opinion that the prison administration was not able to recruit and retain competent people due to its unattractive service conditions and lack of recognition by the government and the public of the needs of the department. It was suggested by him that the recommendation to set up an All India Prisons Service made earlier by Dr. W.C. Reckless, an UN expert, who was invited by the Government of India to study prison problems in the country (1951-52) and other recommendations contained in the reports of the All India Jail Manual Committee (1957-58), the Working Group on Prisons (1971-72), the Mulla Committee (1980-1983) and by the Kapoor Committee (1988) should be implemented by the Central Government.¹⁶

Mr. Agarwal further pointed out that most prisons suffer from severe under staffing. He indicated the need for other infrastructure related posts, like those of engineers who could aid in making living and sanitary conditions more comfortable for inmates and thus lessen the load on the prison staff. He said that support was required from departments like the PWD or the Health department to ensure the smooth running of prisons. A conscious policy towards the induction of women in the prison administration is necessary to bring about a gender balance and sensitivity within the system. This could create a more tolerant culture towards marginal and weaker sections within prison walls.

The workshop generated some debate regarding the post of convict warders which the new Prison Bill drafted by the NHRC seeks to abolish. This post is occupied by convicts, who, on the basis of their good conduct, are given charge of certain duties that would normally have been undertaken by the warders. This, according to the prison staff, not only works as an incentive to the prisoner who is entitled to remission of sentence as a holder of the post, but also helps lessen the work load of the prison staff. The prison department is constantly short of manpower and the system of appointing convicts as warders does prove helpful in meeting the shortage of manpower at the grassroots level. This viewpoint expressed mostly by the prison staff was challenged by others in the workshop. It was pointed out that the system was being misused and the convict warders were generally working as touts of prison authorities,

misusing their positions to terrorise other prisoners and thus commit gross human rights violations. Mr. Hira Singh vehemently opposed the retention of the system.

Issues of remuneration and promotion opportunities of the prison staff were discussed. The prison services, especially in the lower ranks, are mostly poorly paid and least glamorous of all state public services. Very few come into the prison services voluntarily and fewer still would recommend it to others. The feeling in the ranks was that the government as well as the public at large was totally apathetic towards them. Prison officers complained that the only attention they received from the public was negative and their performance was hardly ever appreciated or encouraged.

The deplorable service conditions are made worse by the near complete absence of vertical mobility in the department, especially for the lower or middle order ranks. Jail officials are known to occupy the same post for twenty five to thirty years which is often the cause for lack of motivation. In a paper¹⁶ circulated in the workshop, Justice Awasthy, Member, M.P. Human Rights Commission made a strong plea for improvement in the remuneration and promotion prospects for different ranks in the prison department. It was suggested that the pay-scales of jail-employees should be similar to those sanctioned for equivalent ranks in the police department. This recommendation had been made earlier by the Kapoor Committee too.

The posts of Naib-Tahsildars, Sub-Inspectors of Co-operative Societies/Excise Department and Assistant Jailers are kept at par for selection by the M.P. Public Service Commission. Though the academic qualifications prescribed for the examination are the same and selection is done through a common examination, yet the Government in the very beginning downgrades the posts of the prison department by prescribing lower scales of pay for the posts of Assistant Jailer. While the pay-scale for other posts is Rs. 1400-2340, the one for Assistant Jailer is Rs. 1320-2340. Consequently, the prison department figures very low in the priority of the aspiring candidates. Justice Awasthy also made a plea for improving the promotion prospects of the people who join at this rank by creating additional posts at the level of Deputy Jailer.

¹⁶ *Role of Prison Personnel and their Problems* – A Paper presented in the workshop by Mr. G.K. Agarwal, Additional IG (Prisons), MP

¹⁷ *Motivating and Developing Prison Staff*; Mr. Justice S Awasthy, Member, MP Human Rights Commission

A presentation on the grievances of the lower supervisory order ranks in the prison department was made by Mr. V.K. Sharma, Assistant Jailer, Rewa Jail. He pointed out that an Assistant Jailer is promoted to the post of Deputy Jailer after 20-22 years of service. By that time, his basic remuneration increases to Rs. 2000, while those in the other services recruited through the same examination by the State Public Service Commission have had at least two promotions. Once an Assistant Jailer is promoted to the post of Deputy Jailer he would be, on an average, 50 years of age. As each promotion requires at least five years experience in a given post, by the time this requirement is fulfilled, the Deputy Jailer is often close to retirement age. The problem, according to Mr. Sharma, is that after Independence, unlike other service like the police, few posts have been added to the prison hierarchy.

The service conditions are worse at the lower rungs. The MP prisons department has a number of Warders who have not been given any promotion for the last twenty five years. As a Warder present at the workshop complained, after five years of good conduct, prisoners get promoted to the level of convict warders and are given incentives like remission, while Warders after 25 years of service continue to remain where they were.

Training

Expressing serious concern over the extent of dehumanisation amongst prison staff, Mr. Justice Venkatachaliah underlined the need for periodic counselling and training of prison staff. There was a general feeling amongst the delegates in the workshop that training of the prison staff had been completely neglected by the prison department.

Very few States/Union Territories have set up institutions exclusively for the training of prison staff. A state as large as Madhya Pradesh, with a substantial prison population, does not have a single training institute for its prison officers. The officials are being sent to Lucknow for training purposes. Many of the prison staff from Madhya Pradesh present in the workshop seemed unsure of the nature and scope of training provided even in the Lucknow training institute, thus indicating their minimal exposure to and awareness of the existence of training facilities that could be available to them. According to Mr. Aivalli, there was no specified training institute for prison staff till last year in Jammu and Kashmir.

According to Mr. Sankar Sen, Director General, (Investigations), NHRC, wherever training is available, it is in the hands of those members of the police and prisons staff who are found redundant for active service and are transferred to the training department. Postings in training institutions are considered a sign of punishment. This is most unfortunate as training, which is such an important function, is placed in charge of those who have neither the required aptitude nor the competence for the job thrust on them. All this needs to be changed and training of prison staff needs to be assigned to those who have the required vision and understanding of the prison problems.

The workshop suggested that the State Governments should be persuaded to establish training institutions exclusively for the basic as well as in-service training of the prison staff. It was felt that human rights needed to be central to all training programmes. The NHRC and the State Human Rights Commission should ensure that the human rights component is made central to all prison training modules adopted and implemented by the prison training institutions.

Accountability

As we have seen in the earlier sections, the deplorable service conditions of the prison staff and their lack of motivation and self esteem seem to logically extend into a culture that encourages corruption and malpractices. It was recognised in the workshop that the problem of corruption in the prison administration was inextricably linked to the violations of human rights of prisoners.

Besides improving the service and working conditions of the prison staff, what is needed is the introduction of mechanisms that would ensure an element of transparency and accountability in the prison administration. The need for accountability was expressed by several delegates at the workshop. Mr. Kapoor suggested that giving access to media and civil society via the involvement of non-governmental organisations would be one way of ensuring higher level of accountability and transparency in the prison system. Mr. Aivalli felt that the international and national attention focused on human rights conditions in Jammu and Kashmir worked as a catalyst to introduce reforms in the state prison conditions.

The paper presented by CHRI places stress on the need to educate prisoners about their rights.¹⁸ Violations in many cases occur because of lack of awareness on the part of prisoners about what they are entitled to. Educating them about their rights would have the effect of empowering them. It was suggested that a Manual, explaining to the prisoners their rights and obligations, procedure for lodging complaints, the conduct that is expected of jail administration etc. should be prepared in simple language for prisoners' benefit. In fact, such a Manual would benefit the jail administration also by providing them clear guidelines in important areas of their work. The Manual should be supplemented by the efforts of the NGOs to do legal literacy work amongst prisoners.

The system of prison visitors could provide an effective mechanism to monitor prison conditions provided it worked viably. There was a general consensus in the workshop that the system was not functioning effectively in most places. Either the Boards of Visitors have not been constituted and at places where they exist, they seldom visit prisoners. The ex-officio visitors also do not take their responsibility of visiting prisons, ascertaining prisoners' grievances and providing redress seriously. It was suggested that the visitors should be chosen from amongst those who have an interest in prisons and knowledge of how they should be run. These could be members of the media, social workers, jurists, retired public servants etc.

Another pre-requisite to ensuring accountability is to establish an effective complaint system that would encourage prisoners to complain against systemic and other failures within the prison system without fear of retribution. Once a complaint is made, there should be a quick and impartial enquiry followed by providing redress if the complaint is found to be true. No attempt should be made to suppress wrongdoing and anyone found guilty of abusing his authority must be suitably dealt with. If appropriate disciplinary action is taken, not only does the prisoner feel that his or her rights have been upheld but it also sends a warning to other staff that poor conduct will not be tolerated.

The workshop felt that an effective accountability mechanism would benefit not only the prisoners but also the prison administration. An open system would help the public target

¹⁸ *Prisoners' Rights: Need for Transparency and Accountability* – A Paper presented in the workshop by Ms.

their anger or disappointment at the root of the problem. It would bring the problems out in the open and the public may realise that in many cases the prison staff may not be responsible for what ails the prison department. Justice Venkatachaliah expressed the view that opening the prisons to civil society would be of great help in ensuring transparency and accountability in the prison administration.

Implementation

It was felt in the workshop that though prison problems had been examined by many expert Committees and that the Supreme Court and High Courts had on many occasions passed judgements, indicating inadequacies and deficiencies in different areas of prison work and administration, a comprehensive programme of reforms was yet to start. The recommendations contained in the reports and judgements had remained mostly unimplemented.

An important factor responsible for lack of follow-up action has been the absence of political will, leading finally to bureaucratic apathy towards the requirements of prison administration. This apathy is reflected in the scarcity of funds spared by the Governments out of their annual budgets for prison administration. As was shown in CHRI's paper presented by Ms. Marian, the percentage of funds allocated for prison administration out of the budgets of the Union and State Governments has shown a consistently declining trend, even though there has been some increase in absolute expenditure on prisons. An opinion was expressed in the workshop that this lack of political will was due to the fact that the prisoners did not constitute an important constituency for the politicians, as they have no right to vote. The workshop, therefore, recommended that the existing laws and arrangements should be reviewed so that the prisoners could exercise the right to vote, like any other citizen.

The need to evolve a mechanism to ensure follow-up action on the recommendations of the committees, conferences and workshops and on judgements of courts was also discussed in the workshop. This would require monitoring and it was felt that the National and State Human Rights Commissions could play an active and prominent role in monitoring prison conditions and ensuring action by the concerned authorities to introduce reforms.

The New Prisons Bill

The new Prisons Bill drafted by the NHRC called the Prisons (Administration and Treatment of Prisoners) Bill, 1998 was brought up for discussion in a paper presented by Ms. Catherine Pierce of CHRI.¹⁹ The Bill was prepared by the NHRC earlier this year in response to calls for penal reform from various committees and more recently from the Supreme Court.

The existing legislation, the Prison Act of 1894, was formulated when the country was under the colonial rule. It has been criticised as being an outdated piece of legislation, which was not in keeping with the modern view of prisons as places of rehabilitation rather than retribution. In the recent case *Ramamurthy v. State of Karnataka* (1997) 2 SCC 642, the Supreme Court stated that "...the century old Indian Prison Act, 1894 needs a thorough look and is required to be replaced by a new enactment which would take care of the thinking of Independent India and our constitutional mores and mandate."

The paper focused on certain key issues, like the efficacy of the supervisory mechanisms, which the Bill proposes to establish as a means of safeguarding prisoners' rights. An important monitoring mechanism is the system of prison visitors. Various courts as well as the NHRC have severely criticised the working of this system. The new Bill lacks provisions which would strengthen the system of visitors. Unlike the 1894 Act, the new Bill does not set out the duties and mandate of prison visitors. If the system is to be effective, the visitors should be mandated to examine all aspects of prison life and not be restricted to a number of defined issues, as the new Bill does.

The non-official visitors, according to the Bill, are to be appointed by the Inspector General of Prisons. After visiting the prisons, they are then required to report back to the Inspector General. This provision thus marks a retrograde step in terms of ensuring the impartiality and independence of visitors. There is no scope for external oversight of the prison administration. It was felt that the National and State Human Rights Commissions should be given the mandate to appoint visitors who should then report back to the commissions and also make their report public through the active and effective use of the media.

Delegates at the workshop, including Mr. Sankar Sen and Mr. Aivalli, felt that opening the prisons to civil society organisations would lead to greater transparency and accountability in the prison administration. The new Bill must incorporate some provisions to institutionalise such arrangements.

The new Bill establishes in Chapter IV the right of the prisoner to appeal to the prison authorities for any lapse in the provision of basic amenities and facilities, arbitrary punishment or any other matter considered legitimate. The Bill fails to provide for an impartial body independent of the prison administration to hear prisoners' complaints.

Some delegates, particularly those from the prison department, felt that the NHRC should invite representatives of prison departments from the states to discuss their needs and concerns. This would help in widening the debate on prison reforms, besides making the new law reflect the accumulated practical wisdom of persons working in the field.

Recommendations

The workshop made several recommendations which have been stated at different places in the report. To avoid repetition, we have not reproduced the recommendations from the above text. However, to provide a bird's eye view of the ground covered by the workshop, a summary of the recommendations in a capsule form is provided under different heads:

Overcrowding

- Optimum capacity of prisons needs to be assessed. Central Jails should not house more than 750 inmates and district jails not more than 400.
- Certain offences should be decriminalised and alternatives to imprisonment should be designed to deal with such cases.
- Some more offences should be added to the list of compoundable offences prescribed in law.
- Unnecessary and indiscriminate arrests should be avoided by police personnel.

¹⁹ Discussion Paper on the Prisons (Administration and Treatment of Prisoners) Bill, 1998 by Ms. Catherine Pierce, Researcher, CHRI

- Some Armed Police should be raised exclusively for the Prison department and kept at their disposal.
- Alternative care homes for non criminal mentally ill persons should be built.

Undertrials and Legal Aid

- An Amendment should be made in the Cr.P.C. to enable an undertrial prisoner to plead guilty at any stage of the trial.
- Lok Adalats should deal not only with compoundable cases but also with cases where the accused pleads guilty. The scope of work of Lok Adalats in criminal cases should be increased.
- The plea bargaining system may be considered for introduction after adopting necessary safeguards.
- Legal aid workers should make greater use of the judgement of the Supreme Court in *Common Cause v. Union of India* (1996) 4 SCC 33 and approach the courts to get more persons released from jails.
- Legal literacy drives should be launched with the aim not only of sensitising the prison administration but also of spreading awareness amongst prisoners about their rights and obligations.
- It is necessary to keep identifying those who need and deserve legal aid. Legal aid workers must identify such prisoners and educate them about their right to legal aid.
- Legal aid workers must help in getting the undertrials released on bail and on personal recognisance.
- Para legal staff should be utilised to work in prisons and provide the required legal aid to prisoners.
- Legal aid workers must constantly monitor prison conditions and suggest changes in law to bring about the desired reforms.

Health Care and Medical Facilities

- It is necessary to review the strength of doctors sanctioned for prisons and ensure the availability of adequate medical facilities for prisoners and prison staff.
- Arrangements must be made to look after the special requirements of women prisoners. At least one woman medical officer must be available at times to attend to women prisoners.
- The first medical examination of the prisoner, done at the time of his entry into the prison, must be thorough. Detailed information about various ailments, including past medical history, must be collected and faithfully recorded.
- Adequate infrastructural health care facilities, like well equipped ambulances, stretchers, dispensaries, hospital beds etc. should be made available to the prison administration.
- Suitable arrangements should be made to provide psychiatric counselling to those suffering from chronic depression, particularly to women prisoners.
- There should be a clearly defined system of responsibilities of the prison staff in case of a medical emergency, which should be made known to prisoners through a chart or pamphlet.
- NGOs' help should be enlisted in dealing with drug addicts and in establishing drug de-addiction centres.

Women Prisoners

- Programmes should be implemented to sensitise the prison administration on gender issues and the special needs of women prisoners.
- Besides special facilities for pregnant women, arrangements should be made to allow women to go back to their families for post natal care.
- It is necessary to take special care to rehabilitate women prisoners, as it is harder for them to find acceptance in civil society upon release than men. Thus women should be specially equipped with vocational skills to empower them on their return to society.
- Arrangements should be made for women to reside in special homes if they find it difficult to get accepted in society after release.

Classification of Prisoners

- Classification of prisoners on the lines of education, income tax status or socio-economic background should be abolished and it should be done on the lines suggested in the Justice Santosh Duggal Committee Report.

Implementation

- A mechanism should be evolved to monitor and ensure the implementation of various recommendations made by different expert committees, courts and workshops from time to time. The NHRC and the State Human Rights Commissions could take up this work and ensure that follow-up action is taken to implement the recommendations.
- Existing laws and arrangements should be reviewed so that prisoners could exercise their right to vote.

Prison Staff

- The recommendations made earlier by many expert groups that there should be an All India Prison and Correctional Service should be considered by the Central Government.
- Most prisons suffer from shortage of manpower. The State Governments should periodically review the requirements of different types of staff required, including medical, and take steps to remove the shortage.
- There is considerable stagnation amongst different ranks in the prison department due to lack of promotion opportunities. The governments should carry out a cadre review and create additional opportunities for promotion for different ranks based on a work study.
- The posts of convict warders should be abolished and an equivalent number of regular number of regular posts should be created to meet the requirements of manpower.
- A conscious policy towards the induction of more women in the prison administration is necessary to bring about gender balance and sensitivity within the system.
- The pay-scales of lower ranks in the prison department need to be reviewed. The State Governments should not downgrade the posts of the prison department by prescribing

lower pay scales for them as compared to the posts of the other departments, particularly when the recruitment to these posts is done by the State Public Service Commission on the basis of a combined recruitment test.

- The State Government may consider establishing parity in the pay scales of lower ranks in the prison department with those in the police department after doing an analysis of job responsibilities of the selected ranks in the two departments.

Training

- It is necessary to organise periodic training programmes and refresher courses for all levels in the prison administration.
- All State Governments should establish training institutions exclusively for the basic as well as in-service training of the prison staff.
- The NHRC and the State Human Rights Commissions should ensure that the human rights component is made central to all training modules adopted and implemented by the prison training institutions.
- The training of prison staff must be made the responsibility of those who are professionally competent and who have the required aptitude to bring about reforms.

Accountability

- A Manual, explaining to the prisoners their rights and obligations, procedure for lodging complaints, the conduct that is expected of jail administration etc., should be prepared in simple language for prisoners' benefit. The Manual should be supplemented by the efforts of the NGOs to do legal literacy work amongst prisoners.
- The system of visitors should be made viable to function as an effective monitoring mechanism. The visitors should be chosen from amongst those who have an interest in prisons and knowledge of how they should be run.
- Appointment of visitors should be done on the advice of the State Human Rights Commission. The criteria for selection should be made known to the public.
- An effective complaint system should be established which would encourage the prisoners to lodge complaints without fear of retribution. The complaints should be enquired into fully and impartially and strict action should be taken against the

persons found guilty. No attempt should be made to suppress wrong doing by any member of the prison staff.

- Prisons should be opened to civil society organisations as this would help in ensuring transparency and accountability in the prison administration.

New Prisons Bill

- The new Prisons Bill drafted by the NHRC must incorporate effective safeguards against violations of prisoners' rights and establish mechanisms to ensure accountability of the prison staff for violations.
- The new Bill does not set out the duties and mandate of the prison visitors. The visitors should be mandated to examine all aspects of prison life and not restricted to some defined issues, as the new Bill does.
- The National and State Human Rights Commissions should be given the mandate to appoint prison visitors who should then report back to the Commissions, heads of the prison department and make their report public through effective use of mass media.
- The Bills fails to provide for an impartial body independent of the prison administration to hear prisoners' complaints. This lacuna should be removed and the new law must institutionalise arrangements for outside oversight of investigations into prisoners' complaints.
- The NHRC should invite a wider public debate on the Bill and also call representatives from the State Prison Departments to give their views so that the new law reflects the practical wisdom of persons working in the field.