

Status of Prisoners in Rajasthan: A Critical Study

***Dr. Vikas Mishra**

ABSTRACT

Human rights are often characterized as universal, inalienable and fundamental. The universality of human rights has two meanings. In spite of the fact that most of the human rights found clear expression in the Constitution of India, the independent Indian State carried forward many colonial tendencies and power structures, including those embedded in the elite Indian Civil Service. The need for prison reforms has come into focus during the last few decades. The Supreme Court and the High Courts are constantly commenting upon the deplorable conditions prevailing inside the prisons which have arisen due to violation of prisoner's rights. The problem of prison administration has also been examined by numerous expert bodies set up by the Government of India so as to develop a healthy environment of the prisons. 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'." 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 judgments 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 one's choice, a prisoner is otherwise entitled to the basic freedoms guaranteed by the Constitution. Secondly, the convicted persons go to prisons as punishment and not for punishment. 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 the need of the time that prisoners should also be aware of their rights as human beings. Some of the important rights which prisoners should prevail are 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.

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

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or degrading treatment of punishment”¹. 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”². 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 judgments of Supreme Court and High Courts, showing how prisoners’ rights are violated. The judgment 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.

It is unfortunate to know that 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.³ 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.”⁴ 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.

A comprehensive international legal framework has developed guaranteeing the right to health of all persons deprived of their liberty worldwide. However, the emergence of this international human rights regime has no more resolved the global problem of prison health.

The UN Committee on Economic, Social and Cultural Rights, the independent expert body which monitors state compliance with the obligations under the International Covenant on Economic, Social and Cultural Rights, has stated, “Health is a fundamental human right indispensable from the exercise of other human rights”. On this basis, the health status of prisoners is a measure to assess the degree to which the rights of persons in detention are fulfilled or denied in a much broader sense. In reviewing international data on prison health, one can only conclude that the denial of the fundamental human rights of people in prison, including the right to health, is occurring on a global scale. Today, over nine million people are incarcerated in penal institutions worldwide.

A significant proportion of prisoners in most countries are members of groups that suffer social, economic or ethnic/racial discrimination in the broader society. Many of the same factors that make these populations more likely to find themselves in conflict with the law, and therefore incarcerated, also mean that they suffer disproportionately from a poor health status. According to the World Health Organization (WHO), In all countries of the world, it is people from the poorest and

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most marginalized sections of the population who make up the bulk of those serving prison sentences, and many of them therefore have diseases such as tuberculosis, sexually transmitted infections, HIV/AIDS and mental disorders. Penitentiary populations [therefore] contain an overrepresentation of members of the most marginalized groups in society, people with poor health and chronic untreated conditions.

According to the WHO, prisons are places where “Two of the greatest public health problems facing all societies overlap: the epidemic of HIV/AIDS and the pandemic harmful use of psychotropic substances such as alcohol and illegal drugs”.

In addition to infectious diseases, mental health in prison is a growing international concern. The UN Special Reporter on the Highest Attainable Standard of Health, who is appointed by the UN Human Rights Council to report on the status of the right to health around the world, has expressed concern that people with mental health problems are often “misdirected towards prison rather than appropriate mental health care or support services”, creating a disproportionately high rate of mental illness within penal institutions.

Human Rights Watch also documented consistent problems with environmental health in prisons, including overcrowding, poor sanitary conditions, inadequate lighting and ventilation, extremes of temperature, insect and rodent infestation and insufficient/nonexistent personal hygiene supplies, any one of these factors can negatively affect a prisoner’s health, and “Inadequate diet and unhygienic living conditions contribute to an extremely high rate of disease and death”.

Living conditions in prisons have certainly not improved uniformly in the past decade and in many countries overcrowding has made these conditions even worse. The recognition of the rights of prisoners across jurisdictions has been uneven and progress uncertain. The evidence clearly illustrates the degree to which the right to health of prisoners is far from fulfilled.

In the words of the WHO, “Ill-health thrives in settings of poverty, conflict, discrimination and disinterest. Prison is an environment that concentrates precisely these issues”. The problem of poor prison health is not one limited to prisoners and prison authorities. Indeed, health experts and international organisations have consistently emphasised the fact that the issue of prison health cannot be isolated from broader public health concerns, as the vast majority of people in prison are eventually released back into the community. Therefore, the fulfillment of the right to health of persons in detention is not only a matter of pressing concern for persons in detention; it is also integrally linked to state obligations to fulfill the right to health within the population as a whole. Background to international human rights law The section will review the various human rights systems and monitoring bodies whose work is described in this article.

There are four systems of international human rights law, falling into two distinct categories. The first is the United Nations system, which itself contains two distinct elements: the treaty system and the Charter-based system. The treaty-based system is based on nine core international conventions:-

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- International Covenant on Civil and Political Rights.
- International Covenant on Economic, Social and Cultural Rights.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment.
- Convention on the Elimination of All Forms of Discrimination Against Women.
- Convention on the Elimination of All Forms of Racial Discrimination.
- Convention on the Rights of the Child.
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- International Convention for the Protection of All Persons from Enforced Disappearance (not yet in force).
- Convention on the Rights of Persons with Disabilities (not yet in force).

The Problems:

The following are some of the important problems of the prisons and related issues, having a bearing on prisoners' rights:-

(i) Overcrowding:

Overcrowding in 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. 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%. 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. 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.

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 it has been very well pointed out by that 60% of all arrests were either unnecessary or unjustified.⁵ The police find 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 overcrowding is to decriminalise

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

Another reason of overcrowding is delay in completing cases in jails. An important factor responsible for delaying trials is the failure of the agencies to provide security escort to the under trials 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.

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 judgments of the higher courts denouncing the use of prisons as homes for the mentally ill, the practice continues to exist at some places.

(ii) Under trials and Legal Aid:

The State is under the obligation 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. There is need to speed up the trial process so that the population of under trials 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, which does not happen. The Lok Adalats should deal not only with compoundable cases but also with cases where the accused pleads guilty. The system of plea bargaining by making necessary amendments in laws should be introduced.

Legal aid can help to be aware of their rights. 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, there is need for Para-legal staff to work in prisons with both convicts and under trials, 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,

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as children suffer the worst kind of neglect when the mother is in prison.

By 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.

(iii) 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. 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.

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. 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. 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, suggested that the Mulaizha should be detailed and thorough, involving check up of all known and unknown ailments.

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This is essential as the majority of the prisoners who come from economically disadvantaged backgrounds rarely have complete knowledge of their ailments.

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. 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 along with adequately equipped drug de-addiction centers.

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 counseling must be made available to the prisoners to overcome these problems. Counseling 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.

(iv) Women Prisoners:

The need to sensitise the prison administration to gender issues and specific needs of women prisoners. a large number of women prisoners were detained in jails as under trials 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 under trials 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."6 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.

Classification of Prisoners:

It is disappointing to say that 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. 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

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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, Under trials, 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.

Prison Administration:

The 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 overall 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.

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. 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

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humane management level by having judicial officers at the helm 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.⁷ 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.

Training:

Expressing serious concern over the extent of dehumanisation amongst prison staff, the need for periodic counselling and training of prison staff. There was a general feeling amongst the

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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.

Accountability:

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 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. 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 need to educate prisoners about their rights.⁸ 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 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.

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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 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 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 judgments, 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 judgments 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. 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 prepared by the NHRC in response to calls for penal reform from various committees and more recently from the Supreme Court.

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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*⁹, 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 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.

Recommendations:

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.
- 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

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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-

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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

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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

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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.

The right of civil and military prisoners are governed by both national and international law. International conventions include, the international covenant on civil and political rights, the United Nation's Minimum Rules for the Treatment of Prisoners and the Uropean Committee for the Prevention of torture and inhuman or degrading treatment or punishment.

***Vice-Principal
Bharat Law College
Jaipur (Raj)**

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** Guest faculty lecturer in University Law College, University of Rajasthan, Jaipur & Lecturer in Bharat Law College, Jaipur

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Dr. Vikas Mishra