Rationalisation of Classification of Prisoners in Tihar Jail

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REPORT OF THE COMMITTEE ON
RATIONALISATION OF
CLASSIFICATION OF PRISONERS
IN TIHAR JAILS

HOME DEPARTMENT
GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI
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FOREWORD

The common and conventional perception of a jail existence is very
tellingly reflected in the following lines, penned by Oscar Wilde:(1)

"I know not whether Laws be right,
Or whether Laws be wrong.
All that we know who lie in gaol
Is that the wall is strong;
and that each day is like a year,
A year whose days are long."

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"Something was dead in each of us
And what was dead was Hope.

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The vilest deeds like poison weeds
Bloom well in prison-air;
It is only what is good in man
That wastes and withers there:
Pale Anguish, keeps the heavy gate,
And the Warder is despair"

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These pourings of the imprisoned poet lay bare the anguish - mental
and emotional - that a jail inmate undergoes. The experience no doubt was
of jails of 19th Century, but interestingly the perceptions have not much
changed, so much so that we have in the judgement delivered by the Supreme
Court on 23-12-1996 (2), on a petition complaining of incarceratory torture and
maladministration in jail, observations of Justice B.L.Hansaria, as follow:

1 The Ballad of Reading Gaol - by Oscar Wilde
2 Rama Murthy Vs State of Karnataka W P (C) No 12223 of 1984 Judgement dated
23 12 96
"..but it seems there are yet promises to keep and miles to go before one can sleep. And how can one sleep with wallings of prisoners getting louder and louder which requires a sentinel on the qui-vive, as this Court is so far as fundamental rights are concerned, to take note of the agony and to lay down what is required to be done to make prisons match the expectations of society?"  

(emphasis added)

In this judgement, the Apex Court has dealt most enlighteningly, extensively and comprehensively with all possible areas relating to jail administration, such as (1) overcrowding, (2) delay in trial, (3) torture and ill-treatment, (4) neglect of health and hygiene, (5) insubstantial food and inadequate clothing, (6) prison vices, (7) deficiency in communication, (8) streamlining of jail visits, and (9) management of open air prisons. The principles enunciated therein are bound to furnish valuable guidelines for everyone concerned with jail administration.

Earlier, Justice V.R. Krishna Iyer had observed: (3)

"Broken hearts cannot break prison walls. Since prisons are built with stones of law..."

I would, however, like to place on record that during its deliberations and inter-action with official agencies, the Committee has happily witnessed a radical change in the attitude of the jail administrators and has found them to be positive in thinking, humane in attitudes and innovative in approach. The interest taken by the Executive, has been no less. One can attribute this, besides judicial prodding, to media awareness, the concern shown by human right/social right activists, both in groups such as NGOs or other institutionalised bodies, as also individuals. As a result, there has been

demonstrable responsiveness in attitudes in areas relating to treatment of prisoners, and a manifestly sharp focus on jail reforms.

It is also noteworthy that this interest of the State is not a recent phenomenon or solely pursuant to judicial intervention, but also by way of its own responses to the pressing problems relating to jail administration, as evidenced by constitution of various Committees of all India stature, such as the Indian Jails Committee (1919-20), All India Jail Manual Committee (1919-20), Justice Mulla Committee (1980-83). There has also been an attempt at implementation, by constituting study groups, convening seminars, calling conferences of chief executives of States, and formulating action plans. But the problem is so intractable that so far very little dent has been made, and very little visible or appreciable improvement, so much so that even in 1995 we have the report of the National Human Rights Commission, describing the conditions prevailing in some of the jails as appalling.

This Committee was, however, concerned only with Central Jail, Tihar, Delhi, and that too confined to the specified subject of classification of prisoners, rationalisation thereof, and related question of segregation and other facets of jail administration, having a bearing on the conditions of prisoners in this jail.

We have pinpointed the fact in our Report that Tihar Jail stands on an altogether different footing as compared to other jails, and has enjoyed a unique position in as much as being located in the Capital Territory, its population reflects the complexity and diversity of the populace in the metropolis. Besides it also combines the characteristics of various jails such as central, district, sub-jails or special jails for specified category of prisoners.
as exist in other States, and for that reason this jail faces problems peculiar to it alone. This fact was recognised as far back as 1980, when the Central Government while constituting Justice Mulla Committee on jail reforms on a comprehensive scale, requisitioned a special report on Tihar. The aforesaid Committee dealt with the question accordingly, and submitted a special Report in December, 1980, to the Ministry of Home Affairs, Government of India.

We have dwelt at length in our report with all the aspects. I wish here only to highlight the fact that one disturbing feature which can be said to be the root cause of all problems pertaining to Tihar Jail is that of overcrowding. A further notable feature is that the majority of this jail population consists preponderantly of undertrials, which at any given time constitutes 85 to 90% of the total number of inmates. It is this category of prisoners that is responsible for the imbalance and the primary cause of congestion in prison. The resulting situation creates problems, which certainly could be avoided or resolved, if the population were with in manageable limits, and if numbers correspond, if not wholly at least largely, to the available space and capacity. I mention this because the Committee had to have a broad and wide perspective as the issues referred to it could not be treated in isolation. This explains our travelling to certain areas which we felt were vitally inter-related. As for the specific issues referred to us, we have endeavoured to find answers by adopting a holistic and integrated approach.

Originally as per Punjab Jail Manual, 1900 there was a hierarchical classification of prisoners in jails into 'A', 'B' and 'C'. While category 'A' was abolished, when separate rules for Delhi were notified in 1988, classification
into 'B' and 'C' still remained and continues till date. The former is claimed on the basis of 'social status', 'mode of living', 'habit of life' or 'education'. These are the persons who belong to affluent section of society because it would be they who would be used to opulent style or enjoying social status, distinct from the ordinary. In the Committee's perception, these are the persons who commit crime not out of any ignorance or sense of deprivation or economic compulsions, but out of avarice, lack of scruples, self aggrandisement, or growth of a criminal culture that is totally unresponsive to the welfare of the society, interest of the nation, and commit crimes with socio-economic intones, known as white collar crimes, involving smuggling money-launderings, trafficking in drugs and narcotics, foreign exchange manipulations, international fraud, breach of trust, corruption, misappropriation, embezzlement, espionage and similar other grave offences. They not only betray a callous and cavalier attitude to the welfare of the society, but also betray baser human instincts. Any infraction of law by this section of society, whom Justice Krishna lyer described as 'Black Guards' (4) is indefensible, and when they come within the grip of law through its enforcement agencies or through judicial process, inviting punitive action, they are the persons who least deserve indulgence, much less any preferential treatment.

As against this an overwhelming majority of prisoners belong to lower or poor strata of society who may have committed the crime due to some economic compulsions or ignorance, frustration arising out of a sense of deprivation, and psychological or emotional stress, and are in jail, particularly

4 Rakesh Kaushik V/s Vig. AIR 1981 SC p 1767
undertrials, for reasons of poverty because they either have no means to apply for bail, or fulfil the conditions of bail, or simply remanded waiting for trial to start, and lastly due to long pendency of the trial. The State cannot endorse social disparities prevailing outside the penal institutions by according better class to the rich and influential, and denying the same to the poor and the deprived.

In Committee’s view, once a person is committed to jail, whether to face trial or serve sentence, to be kept or maintained at State expense has to be treated uniformly.

Nevertheless, we felt that there has to be a need based or personalised approach, responding to special requirements of an individual or a group of individuals, and then a uniform treatment on the criteria suggested by us in the body of the report, has to be accorded to all.

This way the State keeps its promises as contained in the Preamble to the Constitution to, interalia, secure to all its citizens Justice, Social, Economic and Political, ‘equality of status and opportunity, and to promote among them all fraternity, assuring the dignity of the individual’ and also respects the Constitutional mandate of equality of treatment, as enshrined in Article 14 of the Constitution. Further, one of the directions given to the Indian State in the Directive Principles of State Policy, which though not enforceable by any Court of Law, lay down the principles which are nevertheless fundamental in the governance of the country, making it a constitutional duty of the State to apply these principles in making laws. One of such Directive Principles contained in Article 38 of the Constitution provides as under.
1. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social economic and political, shall inform all the institutions of the national life.

2. The State shall, in particular, ... and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations." (emphasis supplied).

In view of such a Constitutional mandate and Directive the State cannot, in our view, perpetuate socio-economic disparities or inequality existing in the society, after a person enters its penal institutions.

While making our recommendations, we have kept in focus the penological philosophy that now permeates the thinking at all levels, namely, judiciary, executive, sociologists, criminologists, persons administering or interested in criminal justice system, namely that the object of incarceration, should be primarily reformist or rehabilitative. We are alive to the fact that the punitive or incapacitative factors are implicit in the sentencing policy, but the emphasis now is that the deprivation of a person’s liberty on infringement of laws is no doubt permissible, but as a measure of social defence and as a social imperative it becomes essential that once a person is sent to a penal institution, all efforts should be directed to redeem him to the society and keep his rehabilitation in the post-release period as the ultimate object by creating such positive behavioural attitudes that he comes out of jail not as a bitter or criminalised individual, but as a regenerated person, ready to assimilate in the social milieu to which he returns. For this is the only way to curtail, or control recidivism. In Justice B.L. Hansaria’s words,(5) “Let our prisons

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5 Ibid P.1 (No 2)
become reform houses as well", so that "the social and economic costs of incarceration would become more worthwhile".

This focus on the reformative aspect is visible, particularly from the seventies, but also the recommendations made by the Indian Jail Committee, 1920, and more prominently focussed by the All India Jail Manual Committee, reflected in the Model Prison Manual presented by it in 1960, and endorsed broadly by Justice Mulla Committee, besides other Committees, such as the Report of National Expert Committee on Women Prisoners (Justice V R Krishna Iyer), in the context of gender justice. We have a very encouraging evidence that this reformative and rehabilitative angle has been unreservedly adopted by the State, as revealed by a number of follow up actions, establishment of the Central Bureau of Correctional Services (in 1961), later reorganised in 1975 into National Institute of Social defence, besides steps taken to implement the recommendations of various Committees' Reports in the States.

This governmental policy, conspicuously guided by considerations of correctional approach, is reflected from a letter written as late as in May, 1996 addressed by the Ministry of Home Affairs, Government of India, to Chief Secretaries of all States, whereby a Report on Crime Prevention'(6) was forwarded with the following observations:

"...the Government of India is continuously engaged in monitoring the functioning of prisons and correctional administration aspects in the country. The Central Government has not only forwarded the reports/recommendations made by various Committees, Commissions, Conferences, etc. in the areas of Prison

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Management and Correctional Administration to the State Governments but also released substantial amounts of money to help improve the lot of prisons and prisoners in the country. The problem of overcrowding in prisons has always been a matter of serious concern for the prison management and this issue has all long been a subject of discussion at various national and international forums. The wider use of alternatives to imprisonment assumes a high priority in any action contemplated to reduce overcrowding in prisons.

We have extracted from the above communication in a spirit of optimism, feeling sanguine that this Committee's report shall receive due attention. We on our part have tried to be as pragmatic as possible, because we are not oblivious of the fact that the subject of jail reforms continues to remain as vexing as well as taxing as ever inspite of so many Committees having been constituted with far larger mandate and wider jurisdiction, with attendant powers than ours, but still as stated in the opening paragraph of this foreword, the perceptions about jails have not perceptibly changed and some areas such as overcrowding, outnumbering of the jail population by undertrials and related problems continue to persist, affecting the efficacy of efforts towards jail reforms as well as efficiency of jail administration. creating management problems and attendant hassles. We also know that execution, for reasons of financial constraints - real or perceived - has invariably proved to be the achilles' heel of various Committee reports. We fervently hope that this report, covering a limited area but none-the-less vital one, shall be spared such a fate.

I would further like to impress that there ought not to be any let up in the effort and there should be an inter-related and co-ordinated effort by inter-departmental and inter-disciplinary co-operation amongst all agencies to evolve
crime control strategies. It should be the primary concern of the society and the State, to have a thorough research done to study the causal influences responsible for crime and prepare a scientific data as to the factors responsible for increase in crime.

From available material, it would be a mistake to assume that the development process, be it social, educational, or economic brings reduction in crime gradually or at a given stage. It may also be a misconception to think that new techniques, plans, strategies or general development in economic and educational levels or augmentation of earning capacity or development in general may contribute towards reduction in prison population, and that gradually overcrowding may no longer remain a serious concern. Unfortunately, the experience not only in this country, but the world over has been otherwise, because in different areas or stages of development, different types of crimes have been rampant. At every stage of a nation's development, there has been prevalent crime in one shape or the other and it may not be advisable to rest on our laurels, simply in the hope that with development this question of crime control, including prison administration may not remain a pressing problem.

I say so from experience because even in 1957-59 the All India Jail Manual Committee, while finalising its report had remarked that:

"The general pattern of crime in India is showing significant changes. There are indications that professional, organized and habitual criminality is becoming more serious than before. Crime like manipulations and fraudulent practices in trade and commerce, breach of trust, fraud, swindling, corruption, hoarding, black marketing, tax-evasion, are coming to the force."

The said Committee made very extensive recommendations and gave the Model Prison Manual in 1960. In spite of efforts made and various policies...
towards prison reforms having been formulated and adopted, and development at all levels, we find, facing after almost four decades, the same trends and same problems in so far as crime rate, its nature and growth, particularly socio-economic and white collar variety of crime, and attendant problems, are concerned. And in 1996 again, the Supreme Court (7) is highlighting the need for a "new All India Jail Manual, to serve as a model for the country."

Interestingly, this is not peculiar to India alone, but seems to be a universal trend as indicated by the Survey conducted by the United Nations on the basis of statistical data, received from Member Nations. In the year 1970 the Report (8) contained the following observations:

"As any country begins to open up, outgrow its traditionalities and respond to outside influences or new ideas by modernizing, industrializing and concentrating people in certain areas, its people and particularly its young generation, seize them any new opportunities. And in doing so, a small but progressively increasing number of them succumb to temptations and seek illegal satisfaction through crime."

In 1993, the scenario is no better as following would show (9):

"The global crime picture is not an encouraging one. There has been an increase in the overall crime rate, and there is the difficult issue of the interrelationship between 'higher' and 'lower' crime rates in the context of socio-economic development. The future may be even more gloomy, as some projections seem to indicate..."

7 Ibid, p 1 (No 2)
9 United Nations Third Survey, 1993
We find a note of caution to this effect in the introductory note to the compilation published in 1994 by UNAFEI and AIC. (10) which embodies the results of the analysis of the responses to the Fourth United Nations Survey of Crime Trends and Operations of Criminal Justice in Asia and the Pacific Region, in following words:

"More and more countries find themselves in situations where scarce resource which otherwise could have been devoted to improving the quality of life of their citizens, are being required to deal with increasing crime.

To quote from a work on Criminology in Developing Nations (11):

"Development not only brings crime but specific types of crime as well. Drug offences are following the development flag, as are corruption, white collar and corporate crimes. Crime as a profession is also relatively new concept for Third World, except in the more open form of banditry and piracy. The spread of them as media makes it inevitable that whatever the type of crime in other parts of the world, it will have an imitative effect. As modern communications and global interdependence expand crime like heart disease, follows the affluent and most comfortable conditions."

It will thus be a vain hope to expect that the problems faced by the jail administration arising out of overcrowding, particularly in Tihar Jail, will get automatically reduced, if not solved, by some changing trends in crime pattern or by developmental process in society, or the economy. As a matter of fact the issue will have to be tackled by planning comprehensive strategies in all fields, relating to criminal justice system.

10. United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offender (UNAFEI) and the Australian Institute of Criminology (AIC)
In order, however, to make any attempt at jail reforms to be effective or the objective of rehabilitation and reformation an achievable goal, it became imperative that there is a cadre of competent, committed, educated and honest officials, because it is they who interact with the jail inmates most intimately, and are connected with the jail management at the grass-root level. Any effort at enlightened or innovative approach by the jail administrators or senior officers would be futile if the lower staff is a frustrated lot. At present there is no permanent cadre of jail staff, but from the level of Deputy Superintendent, downwards, they remain permanently posted in the jail from the beginning of their career till retirement, leading a claustrophobic existence. Normal span of service career of government service being 35 to 40 years - it is a pathetic situation that a jail official spends all this crucial period of life within the confines of Tihar, in the company of criminals, some of whom may be hardened or habitual or career criminals, with pronounced criminal proclivity or perversity.

No wonder that the lower category of jail staff attract adverse comments whenever any mishap in the jail comes to light, or whenever there is any focus on general mismanagement forgetting that per force these officials get socialised into a criminal culture, remaining in constant contact of jail inmates. They certainly call for a responsive and sympathetic administration, alive to their psychological needs for a change and furtherance of career prospects. The least that can be done is to have a permanent jail cadre formed, so that they have some promotional avenues, better prospects, or allowed deputations etc., so that there is opportunity for them to go to other Departments, and get exposure to different influence, in turn acquiring a better approach and develop
a humanistic attitude when they return back to the jail, after getting a whiff of fresh air in other departments. In addition, we have recommended that there should be opportunity of refresher courses, interaction with other State agencies connected with jail or any criminal justice administration. I vehemently press that this recommendation may not be considered as obiter vis-a-vis terms of reference of the Committee and be given a serious thought.

Lastly, the problem of overcrowding should be attended to with the urgency it deserves. The Apex Court had laid down comprehensive guidelines in a series of recent decisions (12). There is also the Report of the Law Commission on the subject of Congestion of Undertrial Prisoners in Jail’ (13), suggesting, amongst other remedial measures, adoption of alternates to prison sentencing or incarceration, such as parole, premature release, probation, etc. A thought could also be given to extension of principle of suspended sentence, viz., probation, to an experiment with system of suspended prosecution, particularly in the case of petty offences committed for the first time, which has been tried in Japan and South Korea with satisfactory results. But these are issues for higher policy decisions, in the backdrop of contemporary social milieu and environment of the country.

I conclude with the pleasant task of recording my deep appreciation for and thanks to all the Members of the Committee for their valuable contribution, ungrudging cooperation and keen interest taken. I must thank Dr. Hira Singh

12) Supreme Court Legal Aid Committee representing undertrial prisoners v/s Union of India, 1994 (6) SCC Op. 731; RD. Upadhyay v/s State of Andhra Pradesh 1996 (3) SCC P. 422; & lastly Common Cause v/s Union of India 1996(4) SCC. 33
13) 78th Report of the Law Commission of India presented on 22 1979
and Shri S.K. Batra for making available the benefit of their rich experience and knowledge. Thanks are also due to the official Member, Shri R.S. Gupta, Inspector General of Prisons, who has besides the keen interest taken in the deliberations of the Committee, furnished valuable inputs derived from his day-to-day functioning, displayed a very positive attitude in respect to jail administration.

I must also thank the Secretary of the Committee, Shri Jayadev Sarangi, Deputy Inspector General of Prisons, who worked very laboriously in furnishing information and statistical data in respect to Tihar Jail, as and when required by me or the Committee, collecting material from States and other sources as well as discharging all the duties satisfactorily in respect to the functioning of the Committee, and presentation of the Report.

The Committee is also thankful to the Government of National Capital Territory of Delhi, particularly, the Principal Secretary (Home) and all the officers of his Department, and also the Secretary, General Administration Department, for all the support given administratively and functionally to this Committee, which has made the task of completion of this Report possible.

The Committee also records its deep appreciation for all those who responded to the Questionnaire, came for discussions and gave valuable suggestions.

The Committee was also impressed with the fact that the students of Law Faculty, University of Delhi, who under the guidance of the Head of Department, Prof. (Dr.) B.B. Pandey, take keen interest in the inmates of Tihar Jail, pay visits to help the inmates in Legal Aid Work, some of them were deputed to coordinate with the Committee, though unfortunately their semester...
examinations intervened and visits discontinued. One of them, Shri Vijay Maurya, deserves mention because he persevered till the last, and took lot of interest and showed remarkable insight into the problems relating to jail inmates, and had his concepts very clear in so far as reforms in jails are concerned. We hope that he would be able to continue to take interest, though he has lost touch with the Committee. We also thank, through the Inspector General of Prisons, the jail staff who must have laboured to prepare the statistical data requisitioned by me from time to time during the preparation of the draft Report, particularly, Ms. Sonal Kapoor, Personal Assistant to the Dy Inspector General of Prisons, who very diligently assisted him as Secretary to the Committee. In the end, I must thank the staff of the Committee, who have been in their own way very obediently and painstakingly carried out the work, sometime under great constraint, particularly, my Secretary, Shri S. Rajamani, who has single handedly and without much assistance carried out the work of coordinating with the administration, jail authorities, Members of the Committee, keeping records, taking dictation and all other connected work. With sense of gratification in having accomplished the task entrusted to us, we present this Report.

March 31, 1997

Justice (Mrs.) S. Duggal
CHAIRPERSON