

REPORT
of the
ALL INDIA COMMITTEE
ON
JAIL REFORMS
1980—83
VOLUME—I

MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA

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1980—83

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* Resigned from the membership of the Committee on July 30, 1981 following his appointment as Governor of Assam and Meghalaya.

† Expired on January 4, 1983.

PREFACE

It was perhaps around 1930 that I wrote the following two verses :

*Unchi Diwaron Kay Pecchhey
Lohey Ki Salakhon Kay Ander,
Rehney Hein Muqaffal Kuchh Insan
Insan Jo Nahin Ek Ginti Hein.*

*Woh Dur Akhir Kab Aayega
Jab Badleyga Ye Mosame Gham,
Kuchh Bekas Roonen Aas Lagaye
Umr Ki Ghariyan Ginti Hein.*

An English rendering of these lines would be :

Locked behind high walls and iron bars,
An unfortunate human world slumbers ;
Here they have lost even their names,
And now they are just a roll of numbers.

When will their season of sorrow change,
When will the locks be broken ;
With every breath each one of them hopes and prays,
All these lost souls in agony unspoken ;
Counting each moment of their unending prison days.

At that time I could not even dream that the Goddess of destiny will have such a long memory and will exhibit such a puckish sense of humour that fifty years later I will be put to test and will be appointed the Chairman of a Committee on Jail Reforms.

2. Before dealing with the problems—and they are innumerable—when you take up this question of reforms I feel that the basic necessity is for the Government to be quite clear in its mind as to what is its attitude towards the unfortunate group of persons in prisons. Do they continue to be the citizens of the country or not, with all the rights guaranteed under the Constitution of India or have they become moral lepers and outcasts who have forfeited these rights?

Are they only wild beasts to be hunted or quite a large number amongst them are just ordinary cattle who have strayed away and who, with proper direction, can be brought back to the fold? Are they the diseased limbs which must be cut off from the community's body because they cannot be cured? So long as the Constitution of India exists, can these rights, apart from the Right of Liberty which has been suspended for a term as a punishment, be taken away from them? The Committee has come to the unanimous view that so long as the term of imprisonment lasts, a convict is only under an eclipse and the moment this period expires, he has the right to come out of the clouds of ignominy and take his due place in that sphere of life which he chooses, like any other member of the community. A duty is, therefore, cast on the Government to see to it that a prisoner, when he is released, is not materially handicapped in any way and he should be able to walk back straight to his place in the social structure of life after paying due price for his lapse.

3. The Committee feels that it is the old traditional approach based on outdated concepts and values in which the administrative services are steeped, that again and again places a vicious and terrifying picture of a rise in crimes that creates doubts in the mind of the Government and makes it hesitate to accept this view.

4. I am quite clear in my mind that unless the Government takes the initiative in this matter, no group of citizens left to themselves, and no Committee, can produce any results. I am fortified in this opinion by the observations of Mahatma Gandhi in the Weekly Journal "Young India" of 18th February, 1926 when he wrote:

"As an old and experienced prisoner, however, I believe that Governments have to begin the reform..... Humanitarians can but supplement government efforts. As it is, the humanitarian, if he attempted anything, will first have to undo the mischief done in prisons where the environment hardens the criminal tendency, and in the case of innocent prisoners they learn how to commit crimes without being detected. I hold that humanitarian effort cannot cope with the evil wrought in the jails."

5. It is no doubt true that the recommendations made by the Committee cover an extremely wide range and are almost revolutionary in character and their implementation will involve a huge amount of expenditure. But that should not deter the Government if it finds that they are well considered and necessary. It should be remembered that what should have been done in the past years was unfortunately not done and the accounts went on swelling and accumulating. If a beginning is not made today, I have a feeling, it would never be made. The Government can give priority to certain recommendations and make out a phased programme for implementing the others, with which it does not disagree. Here again I will

quote another extract from Mahatma Gandhi's opinion published in "Young India" of 8.5.24 in an article entitled "My Jail Experiences":

"I know that revision of classifications, according to my suggestion, means a revolution in the whole system. It undoubtedly means more expense and a different type of men to work the new system. But additional expense will mean economy in the long run. The greatest advantage of the proposed revolution would no doubt be a reduction in the crimes and reformation of the prisoners. The jails would then be reformatories representing to society sinners as its reformed and respectable members. This may be a far-off event. If we were not under the spell of a long-lived custom, we should not find it a difficult task to turn our prisons into reformatories."

The views of Pandit Jawaharlal Nehru on this point are even more clear and illuminating. In an article entitled "Prison Land" (Appendix I) published in 1934 and included in a book "India and the World", after suggesting a large number of changes in jail administration, he observed at page 126:

"It must not be thought that these changes will involve much extra expenditure. If properly run on modern industrial lines, the prisons cannot only be self-supporting but can actually make a profit after providing for all the additional amenities suggested. There is absolutely no difficulty in introducing the changes except one—the absolute necessity of having a competent, human staff fully understanding and appreciating the new angle of vision and eager to work it."

"I wish some of our people would study and, where possible personally inspect, prison conditions in foreign countries. They will find how our prisons lag far behind them. The new human element is imposing itself everywhere, as also a recognition of the fact that a criminal is largely created by social conditions and, instead of being punished, has to be treated as for a disease."

6. I venture to make a suggestion that a separate cell should be formed in the Ministry of Home Affairs to supervise the implementation of those recommendations which are acceptable to the Government at a fair speed, if not at a fast speed. I do so because I feel that if this is not done, this report will also share the fate of some earlier reports and then in some future year another jail commission will be appointed only to be ignored in the same way.

7. There is another hurdle which stands in the way of fruitful implementation of these suggested reforms and a serious attempt should be made to remove it also. The hurdle is that the problem of jail reforms cannot be satisfactorily tackled in isolation. Perhaps

this was one of the reasons why the earlier reports even when their recommendations were acceptable to the Government, could not produce any appreciable results. The Committee feels that it is a task in which all the branches of criminal justice administration are involved and unless appropriate changes occur in the thinking of those other branches also, the purpose cannot be achieved. You may tinker here and there, but the overall picture of jails and criminogenic atmosphere that prevails there shall remain the same.

8. I feel that if our desire to give a new face to the jails is genuine, then the whole criminal justice administration should act together in achieving that end. In my opinion, the prisons are the fourth and the last link in the chain of criminal justice administration and unless the earlier three links are made to act in harmony with the last link, the complexion of jails will not change. I will now enlarge the point that is in my mind.

9. The four links that form the chain of criminal justice administration are :

1. the Legislature ;
2. the Police ;
3. the Judiciary ; and finally
4. the Jails.

10. I will start by taking up the first link. In a democratic state, laws are enacted to protect and advance the interests of the community as a whole and, by and large, they represent the urge of the people. In the fast changing world of today, new challenges are constantly arising, new objectives are coming on the horizon and laws should try to keep pace with them. New values and new definitions must be given to old words. The rights of the citizens as guaranteed under our Constitution and the Directive Principles embodied in it can provide the guidelines for this change. It is really the protection of the civil rights of the people and their social values of the moment that define a crime and also its gravity. If the traditional values or social concepts no longer meet the requirements of the day or act as a hindrance to move towards the horizon in sight, the legislature should take a second look at the existing laws. The Indian Penal Code of 1860 has certainly outlived its utility. In my opinion the Indian Penal Code and the Code of Criminal Procedure need substantial changes if they are to reflect the present needs and harmonise with the rights of the citizens as guaranteed under the Constitution. Questions such as what is crime ; what is the gravity of that crime ; what should be its proper punishment ; what is the purpose of punishment ; should the amount of punishment be left to the sole discretion of judiciary, or should the legislature fetter its discretion by fixing minimum punishments ; how should a convict be treated ; what are the rights of a convict in spite of being convicted ; and so on, continue to arise and they constitute a long unending chain.

Merely polishing one link in this chain will only be an exercise in futility.

11. The Committee has drawn attention particularly to section 302 of the Indian Penal Code and the newly enacted section 433A of the Code of Criminal Procedure which need reconsideration and modification at a very early date if the reformatory purpose of jails, as stated above, is not to be ignored entirely. It has also drawn the attention of the authorities concerned to be more liberal in granting bails, remissions, parole and other facilities to prisoners whose behaviour shows improvement. It has also suggested that in many cases, especially in case of young offenders, alternatives to punishment should be found.

12. I cannot help feeling that the Parliament for some reasons was stampeded into enacting section 433A and it did not realise the consequences of this enactment. By fixing a minimum period of incarceration of 14 years the legislature was completely locking and sealing the doors of rehabilitation for every unfortunate person who has been sentenced to imprisonment for life. It did not realise that 14 years is a very big part of one's life and if the undertrial period is also included, it would be such a long term that it would be really an extraordinary person who, after remaining so long in the existing polluted atmosphere of a jail, can still resume the normal life of a citizen. It should be kept in mind that 'Goodness' has a very few followers even outside jails and 'Evil' immediately attracts a big mob around it. I here quote Pandit Jawaharlal Nehru again from 'Prison Land'* (Appendix I):

"High walls and iron gates cut off the little world of prison from the wide world outside. Here in this prison world everything is different; there are no colours, no changes, no movement, no hope, no joy for the long-term prisoner, the 'lifer'. Life runs its dull round with a terrible monotony; it is all flat desert land with no high points and no oases to quench one's thirst or shelter one from the burning heat. Days run into weeks, and weeks into months and years till the sands of life run out.

"All the might of the State is against him and none of the ordinary checks are available. Even the voice of pain is hushed, the cry of agony cannot be heard beyond the high walls."

By this enactment the legislature condemned him not only to a long term of imprisonment but made it impossible for him to be anything but a criminal all his life.

13. The consequences of a long term in jail are portrayed by Pandit Nehru in his article "The Mind of a Judge" (Appendix II)

written in 1935 when he was in prison and which also is included in the book "India and the World". At page 142 of the book he writes :

"Sentences of death and whipping impress us and pain us, but, after all, they affect only a very small number of the scores of thousands who are sentenced by our courts. The vast majority of these go to prison, mostly for long periods over which their punishment is spread out. It is a continuing torture, a never-ceasing pain, till mind itself grows dull and the body is blunted to sensation. The criminal type develops, the ugly fruit of our gaols and our criminal law, and there is no fitting him in then with the social machine outside. He is the square peg everywhere, with no roots, no home, suspicious of everybody, being suspected everywhere, till at last he comes back to his only true resting-place, the prison, and takes up again the tin or iron bowl which is his faithful companion there. Do our judges ever trouble to think of cause and effect, of the inevitable consequences of an act or decision? Do they realize that their courts and the prisons are the principal factories for the production and stamping of the criminal type?"

14. Sir Alexander Paterson while giving evidence before the Select Committee in 1930 (page 220 of the Royal Commission's Report) stated :

"Whatever means of education, stimulation and recreation may be employed, however you may seek to ring the changes on handicrafts and literature, skittles or chess or ping-pong, despite the invaluable labours of most devoted voluntary workers, it requires a superman to survive 20 years of imprisonment with character and soul intact I gravely doubt whether an average man can serve more than ten continuous years in prison without deterioration."

15. Most of the persons who are sentenced to a term of imprisonment for life are those who are classed as murderers and who have been convicted under section 302 of the Indian Penal Code. Our survey of jails shows that if the 'lifers' and the undertrials are not counted, the jail population will come down to between 25 and 30 per cent of its present strength. The Committee was, therefore, primarily concerned with these groups and, therefore, it has been suggested that the punishment clause of section 302 of the Indian Penal Code should be reviewed by the Government and suitably amended.

16. Who are these murderers? Instead of giving my reply to this question, I will first quote the answer given by the Royal

Commission on Capital Punishment (1949—53) in its report at page 216, paragraph 617:

“There is a popular belief that prisoners serving a life sentence after conviction of murder form a specially troublesome and dangerous class. That is not so. Most find themselves in prison because they have yielded to temptation under the pressure of a combination of circumstances unlikely to recur. “Taking murderers as a class” said one witness, “there are a considerable number who are first offenders and who are not people of criminal tendencies. The murder is in many cases their first offence against the law. Previous to that they were law abiding citizens and their general tenor of life is still to be law abiding” Many other witnesses with experience of prison conditions said the same thing. It is true that they were speaking of the state of affairs today, when the crimes of murderers serving sentences of imprisonment have all been of a sort that justified the commutation of the death sentence. But the Home Office, giving evidence to the Select Committee of 1930, expressed the opinion that, even if capital punishment were abolished, the greater number of prisoners serving sentences for murder would still be unlikely to ‘give any exceptional trouble’, though there would no doubt be some increase in that difficult class of prisoners ‘who have not only committed murder but have been of criminal habits or tendencies, or are of a generally violent and insubordinate or sullen and morose temperament.’ This accords with the experience of countries where capital punishment has been abolished; the evidence given to us in the countries we visited, and the information we received from others, were uniformly to the effect that murderers are no more likely than any other prisoners to commit acts of violence against officers or fellow prisoners or to attempt escape; on the contrary it would appear that in all countries murderers are, on the whole, better behaved than most prisoners. It must be remembered too that prisoners serving life sentences have a special incentive to good behaviour, since the time they have in fact to serve depends so largely on it.”

17. By enacting section 433A of the Code of Criminal Procedure, the legislature completely destroyed the incentive contained in the last sentence of the paragraph quoted above. The Royal Commission after visiting many countries and gathering its data made this observation on page 229 of its report:

“The evidence that we ourselves received in these countries was also to the effect that released murderers who commit further crimes of violence are rare, and those who become useful citizens are common”.

I will quote Pandit Nehru again from 'Prison Land' (Appendix I) to show how the picture of murderers came before him:

"Among men there is a large proportion of thoroughly non-criminal types, decent village folk who had a brawl over a land dispute and managed to get along sentences as a result."

I think I need not give my own assessment about the moral character of murderers as a class when compared to other criminals in spite of my intimate knowledge which now extends to more than 55 years. I would only say that the retributive and deterrent objective of punishment is still so dominant that everything else goes in the background and for every offence which falls under section 302 of the Indian Penal Code the least punishment that can be awarded is a sentence of imprisonment for life.

18. The outstanding defect in the present law is that a lesser sentence cannot be imposed, although there may be any number of extenuating circumstances to provoke the crime. Murder by itself does not indicate the extent of moral culpability involved and punishment cannot be divorced from the concept and degree of moral culpability, for the motive behind the murder has such an infinite variety that it ranges from the most atrocious to the most excusable. I will quote the opinion of the Royal Commission again: (page 6 para 21 of their Report):

"Yet there is perhaps no single class of offences that varies so widely both in character and in culpability as the class comprising those which may fall within the comprehensive common law definition of murder".

19. Sir John Beaumont who functioned as the Chief Justice of Bombay High Court, when giving evidence before the Royal Commission deposed (page 103 of the Royal Commission Report):

"there was 'no class of offence in which the degree of moral culpability differs more than in the case of murders' and that it was 'wholly illogical to require a judge to pass the same sentence in every case.'"

20. Today in a large number of countries persons sentenced to imprisonment for life can be released even after a short term. The Royal Commission on Capital Punishment found that in the U.K. it was by no means uncommon for life sentence prisoners to be released after a very short period of detention (page 227). In the United States the average period for a lifer was 10 years 7 months, and in Sweden it was 10 years (page 227). In Belgium the procedure adopted was that the judge first asked the jury whether the crime was committed with premeditation and intent to kill or not. "If the reply to both questions is in the affirmative the prosecutor must then ask the judges and jury to pass sentence. He may ask for the death sentence or, in a bad case falling short of the most heinous,

for life imprisonment. In less heinous cases he will often say that in his opinion there are extenuating circumstances, and will either ask only for a sentence of 15, 10 or even 3 years or indicate that he is content to leave the sentence to the decision of the court." (Page 477) The Commission further observed at page 479: "The effect of the system was that convictions were more frequent, although sentences were lighter, and there was no doubt that this had strengthened, not weakened, the law." Even in South Africa the theory of extenuating circumstances is introduced and if the judge finds these extenuating circumstances, he can reduce the term of imprisonment to a shorter period and his hands are not fettered.

21. It is, therefore, desirable that the newly added section 433A of the Criminal Procedure Code should be reviewed and deleted and a discretion should be given to the judiciary to pass a sentence lesser than imprisonment for life in a conviction under section 302 of the Indian Penal Code. The legislature may also consider whether a new offence under the title "manslaughter" or some other name be introduced in the Penal Code in which the sentence should be less at the discretion of the court. The present section 304 of the Indian Penal Code does not fulfil this requirement and is no answer to the question discussed above. Unless the overcrowding is lessened in jails, there is little chance of creating that atmosphere in jails which would be conducive to bringing about a mental regeneration of the long term prisoners.

22. I have confined myself to express my views in relation to the effect of the penal clause of the present section 302 of the Indian Penal Code and section 433A of the Code of Criminal Procedure only, for they together, if retained in their present form in our criminal law, are likely to defeat any attempt to bring about an atmosphere in our jails which we want to bring. There are other sections also in our penal laws which are crying for amendment, but it is not possible to deal with every one of them in this preface.

23. I will now take up the second link which I have classed under the head "Police". The basic truth should be accepted that if an erring citizen feels that he is likely to get a fair deal, he would be more inclined to mend his ways. But if he feels that this would be highly improbable, then it would be very difficult, if not impossible, for him to see the error of his past behaviour. A convict needs a fair deal not only inside the prison but also when he comes outside and the second part is not less important than the first. I will come to the first part later on. At the moment I am dealing with the second part. One of the biggest reasons for the increase of crime is unfortunately the strong link that exists between the criminal and the so called law officers. Unless the administration goes all out to break this link, there is hardly any prospect of a decrease in crime. The judiciary, which is the third link in this chain, could have been the best means of weakening, if not breaking, this link, but unfortunately by its observations and assessment of evidence in quite a few criminal cases, it has heartened the

police force instead of discouraging them in their criminal activities. I will dilate on this point when I come to the third link. At the moment I am expressing the view of the people of this country when I say that the police force does what it pleases in violation of every law and the option before a poor citizen, especially for one who is coming out of prison, is whether the police should be against him or not. I think everybody understands how one can be in the good books of the police. It is such a vicious circle that even when an criminal wants to reform, he is not permitted to do so and the result is that he cannot respect that law which cannot protect him. One would be evading to speak the truth if he does not say that today the confidence of citizens in the administration of criminal justice is getting eroded and a feeling is growing that goodness and honesty do not pay but are really a handicap. In this atmosphere, the task of reformation of convicts assumes Herculean proportions.

24. Perhaps there was no time when some innocent persons were not prosecuted and a few unfortunate ones were also not convicted. But today the number of innocent convicts in jails has appreciably increased. Does the Government not realise that it is our police force which is a major factor in brutalizing and corrupting our citizens? Today we have reached those conditions of life in which citizens do not need the protection of the law officers so much as protection from the law officers. In the 'Times of India' of 10.2.1983 under the heading "Concern over abuse of authority in India", the Associated Press of India sent this message from Washington, dated 9.3.83 about the view expressed by the U.S. State Department:

" 'Basic human rights are well established in India', said the Department's Annual Country Report on Human Rights Practices sent to the U.S. Congress. 'The main concern now in India is abuse of police authority', the Report said. 'Despite legal protections police brutality is widespread.' "

This report could have been wrong if it did not find confirmation of its truth in the echoing hearts of the people of our country. Only the rich—because they have direct access to those who hold power—escape it. But even they do not do so always. The middle class has to buy immunity. As the poor cannot afford it, they become a prey to this corruption and brutality and they are helpless and the resentment very often provokes them to retaliation against the state of affairs and take to a life of crime. Where law is not observed, lawlessness is bound to grow. Increase in crime is primarily the product of fast-increasing struggle of life due to population explosion and after that come other causes to which the conduct of our law officers makes a sizeable contribution. Not that this cannot be improved. If the Government and the judiciary apply themselves to this task, appreciable results can be achieved. Placed as we are today, the birth rate of crime is increasing at a tremendous speed while its death rate is not even noticeable. The appointment of a

high power commission to survey the whole of criminal justice administration and make fruitful suggestions is the prime need of the hour.

25. I will now take up the third link, namely the 'Judiciary'. Democracy is often defined as 'the rule of law' as opposed to rule of individuals or groups. The roof of a democratic state is supported by three pillars—the legislature, the executive and the judiciary. The legislature and the executive pillars change their flags and buntings seasonally, but the judicial pillar stands like a rock without any change in decorations. The other two pillars may become weak but they cannot destroy the basic structure; but if the judicial pillar shows any signs of crumbling, it would endanger the continuation of democracy itself. The laws of the land alone should be the yardstick with which to measure out justice to the people though I would not go to the length of saying what one Chief Justice of United Kingdom observed that if in doing so the heavens fall, let them fall. It is the judiciary, if it functions with independence and integrity, which is the real protector and defender of the rights of the people and the true symbol of a democratic state.

26. There is, however, one aspect which the judiciary should not ignore. The interpretation of law is not merely a wooden performance but a human act and when they are awarding punishments, they should first assess the degree of its gravity properly and then determine the amount of punishment. In assessing the gravity all the surrounding circumstances of life and society should be fully considered. In an article which I wrote about 20 years ago at the instance of late Dr. K. N. Katju, and which was published in some Delhi newspapers at that time, I had written that it is not the legislature alone that legislates. The judiciary also legislates when it gives a humane interpretation to the words of the statute. The judges cannot only do so but should do so in the fast changing social values of our times. The legislature by enacting section 235(2) of the Code of Criminal Procedure has clearly indicated that it wants the judiciary to do so. In spite of some very heartening observations made by some of the Supreme Court Judges, the judiciary, by and large, is still following the old norms of punishment because it has not been able to leave the ruts of tradition. It still believes in vengeance, retribution and deterrence as the main purpose of punishment.

27. As to what should be the real purpose of punishment is a question with which I will deal a little later. Here I am only trying to describe the approach of the judiciary and this approach only leads to brutalising a citizen and completely fails to serve the purpose for which a heavy sentence is inflicted.

28. It should be remembered that where the citizens feel that their rights and interests are safe in the hands of the judiciary, this feeling is likely to appreciably reduce the number of crimes. But where this confidence is weakened, it is bound to add to its numbers. The question arises, what is the image of the judiciary in the minds of the people today? The truthful answer would be

that it is certainly not as bright as it should be. There might be some other reasons also for this unhappy situation, but for the purpose of understanding the problems with which we are confronted while making our recommendations for jail reforms, they, broadly speaking, fall under two heads: one of them I have referred to above. This fact should be recognised that a criminal is largely created by the prevailing social and economic conditions of life and is really a person who could not adjust himself—not merely because of his own moral infirmities but also because of the failure of the community to give him a fair deal. He has become a mentally diseased person. He needs not only punishment but also treatment, and if this treatment is to be effective, it must also include the treatment of the society outside from where he got his infection. The courts are not keeping this fact in mind that quite an appreciable number of the so called criminals do not need any correctional treatment at all, for they are no different from those citizens who are outside—"perhaps in a few cases better than them"—and what is tragic is that quite a few amongst them are those who have been sentenced to imprisonment for life. In the words of Pandit Nehru in "Prison Land"* (Appendix I) :

"Why are punishments given—as society's or Government's revenge or with the object of reforming?"

"Do judges or prison officers ever think that the unhappy wretch before them should be made into a person capable of filling his place in society when he comes out of prison? It almost seems an impertinence to raise these questions, for how many people really care?"

29. I have no doubt in my mind that if the judiciary makes a more humane approach in dealing with criminals that come before them for trial, they would not only create a greater respect for the rule of law, but will also create a better atmosphere for the regeneration of those who have suffered from a lapse.

30. Unfortunately today the real dangerous criminals who pose a threat to our social and moral fabric are all outside the jails and not inside. The 'not-out centuries' of these dangerous criminals will never end, thanks to our police force, and unfortunately also to a few who hold power. These arch gangsters are too readily accepted as honourable members of our society. As I look at the picture of crime, I see that a vast ocean of crime with huge roaring waves surrounds us and only a few insignificant drops have been collected in jail bottles and they are being paraded as the criminals in our country. Even if all these drops are thrown back in the ocean, they will not appreciably affect the crime tempo of the huge crime rollers outside. My appeal to the judiciary is that it should deal with the police (the great gangsters are not likely to come before them) in a way that it should realise that its role is that of law officers and not that of law breakers, and if they adopt that role, they are not immune from punishment. Is the judiciary so innocent that it does not know that the police force is indulging

*Indle and The World; page 122.

in massive fabrication of evidence in criminal cases and it is becoming more and more difficult for a judicial mind to find the truth in the mass of falsehood that is placed before it? The falsehood is unfortunately accepted too readily in a majority of cases and even where it is not accepted only some slight criticism is made and the accused is given the benefit of doubt. Quite a few decisions, including some decisions of the High Courts, have come to my notice in which the courts have found that fabrication on vital matters have been made by the investigating agency and yet quite ununderstandably they have held that their investigation on the whole was fair and above board. The courts perhaps have come to the conclusion that the provisions in the Indian Penal Code under which action can be taken against the police officers for fabricating false cases do not exist and they are dead letters. Do not the courts realise that they have greatly lost the confidence of the people because of this approach? The situation with which we are confronted today is that the more the people are losing confidence in the fairness and honesty of the police force, the more the courts are readily accepting their words, and all sorts of explanations are given by the guilty members of the force for their unnatural and extraordinary conduct. The police witnesses are held to be as creditable as any other witness and even where the legislature wants that their uncorroborated statements should be doubted, the judiciary does not frequently adopt this rule of judicial caution. Take for example the evidence of recoveries after disclosure statements, in many cases, on exclusive police evidence, which are almost always false. If the police evidence was to be equated with other evidence, why should the statements made before the police be made inadmissible in evidence and why should confessions made to police be not accepted? Very often the police witnesses succeed in deceiving the courts with their fabrications which greatly encourages them to continue this normal and habitual pursuit. How can the people accept the judiciary as the dispensers of justice or the upholders of law under these circumstances? How can they avoid coming to the conclusion that they can escape punishment not by abstaining from crime but by making the police their partner in crimes?

31. I think that putting a fear in the minds of the police force that where they fabricate evidence they are also likely to be sent to jails will go a long way in restoring the image of judiciary in the minds of the people. I also believe that a humane treatment, instead of filling jails, will appreciably help in emptying them. Let me quote Pandit Nehru again from "Prison Land"* (Appendix I):

"So the question of prison reform leads us inevitably to a reform of our criminal procedure, and even more so, a reform in the mentalities of our judges who still think in terms of a hundred years ago and are blissfully ignorant of modern ideas of punishment and reform. That of course leads, as everything else does, to a change of the whole system of Government."

I fondly hope that the words of Pandit Nehru quoted above will be given due consideration by the Government and as earlier suggested in this preface a Committee to review the entire chain of criminal justice administration would soon be formed.

32. I now come to the fourth link which is 'Jails' and the reforms recommended by the Committee and the reasons behind these recommendations. Basically they can be placed under two heads :

1. What should be the purpose of punishment ?
2. What changes should be made to achieve this purpose ?

33. I will start with the first head. Perhaps everyone will agree that the basic objective of punishment is to provide security to the community as a whole by trying to give it the maximum protection so that every citizen may enjoy his rights without interference and feel that the rule of law prevails. The moment anybody tries to infringe upon any of his rights, he should feel confident that the State will not permit him to do so. Obviously it means a mental as well as an emotional integration and adjustment of the community with the prevailing laws and also with those who administer the laws. The greater this adjustment is reached, the lesser becomes the breach of law, for in such a case the community itself to a certain extent becomes the protector and defender of the law. The function of punishment, therefore, is to create an atmosphere in which the citizen will develop a sense of security and this produces a law abiding mood.

34. But after reaching this point of agreement two diametrically opposite lines of thought emerge. In some of the extracts from the writings of Mahatma Gandhi and Pandit Nehru which I have quoted above, the line which they want to be pursued is the approach of sympathy and understanding which may be called a humane approach. But the other line which is the brutal approach of pain and terror has been holding the field from time immemorial and the Committee has come to the conclusion that unless this second approach is given up and we follow the path suggested by Gandhiji and Nehru, it is idle to talk of jail reforms. This view is also voiced by people all over the world, at least in the democratic States today, for it alone is consistent with human dignity and human regeneration.

35. I will now dilate upon this brutal line of terror and pain which the Committee wants to be rejected. Among the different prisons, which the Committee visited in various States, there was also the Cellular Jail of Port Blair at Andamans. This jail which has a historical importance has seven wings and though the whole of it is no longer a prison, in a room there are pictures and ins-

criptions on the walls which tell their own tale. The very name 'Cellular Jail' is significant, for this jail had no dormitories for prisoners and contained only cells for them. As observed by Mahatma Gandhi in an article in *Young India* of 9-2-1922 (page 81) :

"When you are locked up in a cell, you are in a box with a few holes for just enough ventilation to keep you alive."

One of the inscription on the walls reads as follows :

"**Transportation.** Interpretation—Transportation entails hard labour under strict discipline with only such food as necessary for health, any mitigation of the above is an indulgence which may at any time be withdrawn in whole or in part."

An extract from the *Tribune* dated 3-5-1912 is also illuminating :

"The regulation about punishment is that if the prisoners are unable to go through the full quantity of work, they will be handcuffed for a week. This is the punishment for the first offence; for the second offence, a week's handcuffing with four days starvation diet; for the next offence, the punishment is fetters for a month or two, then cross bars for 10 days, a punishment which compels the victims to keep his legs apart, and for further repetitions of the offence fetters for six months and solitary confinement."

An extract from appendix 3, page 155 of the book "Prisons" written by Justice B. C. Bhattacharji also highlights this inhuman and brutal approach :

"The draftsmen of the Indian Penal Code explained the appropriateness of transportation as follows : 'The consideration which has chiefly determined us to retain that mode of punishment is our persuasion that it is regarded with peculiar fear. The pain which is caused by punishment is an unmixed evil. It is by the terror which it inspires that it produces good and perhaps no punishment inspires so much terror in proportion to the actual pain which it causes as the punishment of transportation in this country'."

36. I will not multiply any more extracts, for they are more than enough to illustrate my point that the whole purpose of punishment as conceived by one school of thought is to completely break and cow down the convict and thus cut him off completely from the community with no possibility of return to its fold. Thank God, we are not living in that age when this was the dominant ideology, but even today this line of thought is not dead and quite a few persons believe that this process which they call deter-

rent is the best way for lessening crime, protecting society and maintaining the rule of law.

37. Before I come to the other approach I would like to demolish the belief that deterrence can have any effect on the crime situation and that it is a totally exploded theory which has no legs to support it. The severest punishment that can be inflicted on a person is death and if death cannot be said to have any deterring effect, it is idle to say that a long term of imprisonment will have that effect. The very fact that in a very large part of the world capital punishment has been abolished is a clear indication that its brutality is clearly seen but its deterrent effect is not accepted. The British Royal Commission on Capital Punishment, after visiting many countries and collecting figures, wrote in its report at page 23 :

"We agree with Professor Sellin that the only conclusion which can be drawn from the figures is that there is no clear evidence of any influence of the death penalty on the homicide rates of these States, and that, 'whether executions are frequent or not, both death-penalty States and abolition States show rates which suggest that these rates are conditioned by other factors than the death penalty.'"

Again on the same page, they write :

"The general conclusion which we have reached is that there is no clear evidence in any of the figures we have examined that the abolition of capital punishment has led to an increase in the homicide rate, or that its reintroduction has led to a fall."

38. The United Nations also tried to collect data on this point and in its book "Capital Punishment" published in 1962 it was observed in paragraph 197 at page 54 :

"All the information available appears to confirm that such a removal has, in fact, never been followed by a notable rise in the incidence of the crime no longer punishable with death. This observation, moreover, confirms the nineteenth century experience with respect to such offences as theft and even robbery, forgery and counter-feiting currency, which have progressively ceased to be punishable with death: indeed, these crimes, so far from increasing, actually decreased after partial abolition. The same has been true of infanticide, which was formerly punishable as murder but which has progressively received more lenient treatment. It is even reported from Greece that banditry in fact decreased after it ceased to be punishable with death, though the

report adds that more efficient preventive action by the police also accounts for the decline in this offence. In Canada, rape ceased to be punishable with death in 1954 : it is reported that there were 37 convictions for rape in 1950, 44 in 1953 and only 27 in 1954, the year of abolition ; from 1957 to 1959 a steady decrease in convictions was noted (from 56 to 44), while in the same period the population of Canada increased by 27 per cent. In England, there has been since 1957 no increase in the crimes which ceased to be capital murders under the Homicide Act of that year. And Yugoslavia reports that the reduction in the number of capital crimes by the successive reforms of 1950 and 1960 did not result in any increase in the crimes previously punishable with death, despite an appreciable increase in the population."

In the same booklet it was given out at page 61 :

"Nor does the death penalty have the deterrent effect attributed to it : indeed, it is said, the statistics of crime show that its abolition does not lead to any increase in crime, and consequently capital punishment loses its basic traditional justification.

"Moreover, the penalty of death is a form of cruelty and inhumanity unworthy of a civilization which claims to be humane ; doctors report that even the most efficient methods do not result in instantaneous and painless death. Above all, the chief defect of the death penalty is that it is irrevocable, and in spite of all the official statements, sometimes repeated with complacency, judicial error is always possible, and a few have certainly occurred recently. In such cases, the penalty of death appears as a unpardonable crime committed by society."

39. I now come to Pandit Nehru's views in the article 'The Mind of a Judge'* (Appendix II) in which he writes :

"Sentence follows, and these sentences are remarkable. As the realization comes that crime is not decreasing, and may even be increasing, the sentences become more savage in the hope that this may frighten the evildoer. The judge and the power behind the judge have not grasped the fact that crime may be due to special reasons, which might be investigated, and that some of these may be capable of control ; and, further, that in any event a harsh penal code does not improve the social morals of a group, or a harsh sentence those of an individual who has lapsed from grace. The only remedy they know, both for political and non-political

offences, is punishment and an attempt to terrorize the offender by what are called deterrent sentences."

40. Those who believe in deterrent sentences also forget that deterrent punishment can only have some effect (if it has any effect at all) on premeditated crime and not on an impulsive act due to sudden loss of self control in some sort of quarrel (most murderers come in this category).

41. There is also a strong element of brutality in a deterrent sentence and brutality when practised brutalises not only the victim but also the person who inflicts that brutal sentence. There is a clear and noticeable change in almost the entire world against the concept of deterrence. At page 218 of British Royal Commission's Report on Capital Punishment, it is mentioned :

"But the term 'deterrence' has been 'revalued'. It is now based on two assumptions; first, that the general deterrent effect of the penal system on potential offenders lies less in the punitive treatment of the detected offender than in the total action of the system—fear of detection, public trial and conviction, and the possibility of punishment whether by imprisonment or otherwise; second, that the deterrent effect of imprisonment on the individual offender lies primarily in the shame of being sent to prison and the fact of being in prison, with all that that fact in itself implies — complete loss of personal liberty; separation from home, family and friends; subjection to disciplinary control and forced labour; and deprivation of most of the ordinary amenities and intercourse of everyday life. **An offender is sent to prison as a punishment and not for punishment.**"

42. The concepts of vengeance, retribution or atonement, therefore, should have no place in awarding punishment, as observed by Lord Templewood in a speech published in 8 House of Commons Official Report, 14th April, 1948, Columns 998-999 :

"The reforming element has come to predominate and that the other two are carried incidentally to the reforming element."

The Committee is, therefore, clearly of the view that the brutal method of pain and terror has made the situation worse and makes the task of reformation almost impossible.

43. I now come to the humane method of sympathy and understanding which alone can bring about the desired results. I have already mentioned above that this is the method suggested by Mahatma Gandhi and Pandit Nehru, and today almost the entire

world opinion is behind them. Quoting Lord Lytton on the subject of prisons Mahatma Gándhi wrote in the 'Young India' of 18-2-26 at page 67* :

✓ "Lord Lytton in recently speaking about jails to the Rotarians of Calcutta said that just as we send our sick in body to hospitals and not to jails, so must we 'provide moral doctors and moral hospitals' for the sick in mind, i.e. criminals. His Excellency thus introduced his subject:

"The ideal I wish to set before me, stated in the briefest and simplest form, is just this,—the substitution of reformation for retribution as the basis of our Penal Code. Punishment can instil fear and enforce habits—it cannot inspire goodness. As a means of moral regeneration, therefore, it is worse than useless and should be abandoned. A morality which is only enforced by pains and penalties is a false morality, and those who would secure the acceptance of moral standards should employ other methods.'

"Of the uses and limitation of punishment, Lord Lytton said:

"Punishment, if resorted to at all, must always be aimed at teaching habits necessary for the well-being of the individual or discipline necessary to the well-being of a community. I do not say that punishment will always succeed; the form of punishment selected in any particular case may be well or badly suited for the attainment of its object. Again, I do not say that punishment is the only way of achieving this object. What I say is that those are the only objects which can be obtained by punishment. This one thing which can never be acquired by coercion is goodness or moral conduct. All punishment therefore which aims at correcting wickedness or teaching goodness is definitely mischievous. Goodness is a condition of mind as health is a condition of the body. Moral defects of character are no more to be cured by punishment than defects of the body. It may be necessary in the interest of health of a community forcibly to segregate a person with an infectious disease; it may be necessary on the same ground to segregate persons whose moral defects are a danger to society."

4.1. Commenting on this speech of Lord Lytton, Mahatma Gandhi wrote:

"If as Lord Lytton correctly put it, punishment must be inflicted purely for protection of society, mere deten-

["STONEWALLS DO NOT A PRISON MAKE by M. K. GANDHI compiled and edited by V. B. Kher; pages 14—17"]

tion should be enough and that too only till the detainees can be fairly presumed to have been cured of their evil habits, or securities are found for their good behaviour. There can be no difficulty about a scientific classification of prisoners, apportionment of work from a humanitarian standpoint, selection of better-class warders, abolition of the system of appointing prisoners as warders, and a host of other changes that one might easily suggest."

45. Similarly, Pandit Nehru observed in "Prison Lands"* (Appendix I) :

✓ "Any reform must be based on the idea that a prisoner is not punished but reformed and made into a good citizen. If this objective is once accepted, it would result in a complete overhauling of the prison system. At present few prison officials have even heard of such a notion."

46. It would thus be seen that the reformation of a convict is the main purpose of punishment and any other consideration pales into insignificance before it.

47. How can this purpose be achieved? It was this question that was before the Committee and the recommendations made by it should be considered in that light.

48. I would like to make one thing quite clear at this stage. The Committee does not want that the offenders should not be punished, and that the prisons should be turned into 'holiday homes' for those who by committing a crime have injured the social fabric of the life of the community. Mahatma Gandhi on this aspect wrote in 'Young India' of 29-12-21 (page 13 of the book 'Stone Walls Do Not a Prison Make') :

"Let it be remembered that we are not seeking to destroy jails as such. I fear that we shall have to maintain jails even under Swaraj. It will go hard with us, if we let the real criminals understand that they will be set free or be very much better treated when Swaraj is established. Even in reformatories by which I would like to replace every jail under Swaraj, discipline will be exacted."

In the same vein, Pandit Nehru observed in "Prison Land" (Appendix I) :

✓ "Another error which people indulge in is the fear that 'if gaol conditions are improved people will flock in'! This shows a singular ignorance of human nature. No one

wants to go to prison however good the prison might be. To be deprived of liberty and family life and friends and home surroundings is a terrible thing. It is well known that the Indian peasant will prefer to stick to his ancestral soil and starve rather than go elsewhere to better his condition. To improve prison conditions does not mean that prison life should be made soft; it means that it should be made human and sensible. There should be hard work, but not the barbarous and wasteful labour of the oil pumps or water pumps or mills. The prison should produce goods either in large scale modern factories where prisoners work, or in cottage industries. All work should be useful from the point of view of the prison as well as the future of the prisoner, and the work should be paid for at market rates, minus the cost of maintenance of the prisoner. After a hard eight-hour day's work the prisoners should be encouraged to cooperate together in various activities—games, sports, reading, recitals, lectures. They should above all be encouraged to laugh and develop human contacts with the prison staff and other prisoners. Every prisoner's education must be attended to, not only in just the three R's, but something more, wherever possible. The mind of the prisoner should be cultivated and the prison library, to which there must be free access, should have plenty of good books. Reading and writing should be encouraged in every way and that means that every prisoner should be allowed to have writing materials and books. Nothing is more harmful to the prisoner than to spend twelve to fourteen hours at a stretch every evening locked up in the cell or barrack with absolutely nothing to do. A Sunday or holiday means for him a much longer period of locking up.

"Selected newspapers are essential to keep the prisoner in touch with the world, and interviews and letters should be made as frequent and informal as possible. Personally, I think that weekly interviews and letters should be permitted. The prisoner should be made to feel as far as possible that he or she is a human being and brutal and degrading punishments must be avoided."

49. The Committee wants that the existing crimogenic atmosphere that prevails in jails should be changed so that the reformatory process should not be hampered and it should be easy for a person who has taken a wrong turn to come back to the straight path again. Prisons may not be health resorts, but at the same time they should cease to be infection centres for the epidemic of crime, and they should not turn an erring individual into a determined law breaker. In my opinion the first step towards regeneration is the removal of tension from the mind of a convict. If he is made to open out, there would be no difficulty in bringing him back to a law abiding course. This can only be brought about by sympathy and

understanding, because in this way alone the moral sense which has become blunt can be revived. I will seek forgiveness for quoting a verse of mine again, written more than 30 years ago, which runs as follows :

*Dil Aitrafey Jurm Sey Phir Jagmaga Utha,
Sub Dagh Dhul Key Ashkey Pasheman Men Aa Gaye.*

Translated into English, it means :

Admission of guilt makes the heart regain its lustre again ;
The tears of remorse wash away every unclean stain.

To bring this result a new type of prison service should be recruited. The present service is so steeped in the old brutal methods that it cannot readjust itself to the demands which it has to meet in the present situation. At the moment the situation is that prisoners and the prison staff are divided into two groups which, if not actually at war, are definitely in hostile camps. Prisoners cannot open out to any member of this service. The prison service of the day has grown up in the tradition of maintaining discipline by terrorising the prisoners and causing pain. If tension is to be relaxed, a different kind of service which should also be trained in the new approach is needed. In several States the Committee found that it was the police force from which some of the Inspectors General of Prisons were drawn. Are the officers of the police force known for their human approach? The Committee could not approve of this just as it could not approve of the appointment of convicts as warders. It is with regret that I say that the attempt to reform the offender is really not being made at all and discipline is sought to be maintained only by terrorising him.

50. In an extract of Royal Commission's Report it was clearly mentioned that prisoners are sent to jail as a punishment and not for punishment, but our prison services are punishing the prisoners over and above the loss of liberty which they had to suffer for their crimes. How can this be remedied? It is true that a Mother Teresa touch cannot be given to prisoners, but surely a healing touch can be introduced in place of the brutal touch that exists. It is in the background of giving this healing touch that the recommendations made by the Committee should be considered.

51. Obviously, if after undergoing his term of punishment, a prisoner is going to take his place in society, it would be far easier to do so if his links with the outside world are not snapped. It is, therefore, imperative that his contacts with his relations and friends are not cut off and a reasonable opportunity should be given to him to maintain these ties during his term of imprisonment. In an extract of Pandit Nehru quoted above, the broad outlines of this treatment have already been given. The Committee has only enlarged this sphere according to present needs. Greater latitude for his being released on parole, liberal permission for interviews (and these

interviews not like mass interviews that exist today but separate interviews) and writing letters have to be given if continuous tension from their mind is to be removed. The living conditions inside the jails should also appreciably improve and the hours when prisoners are kept locked up, therefore, must be reduced. The prisoners should also be permitted to pursue their reasonable hobbies, play games and indulge in social functions and thus an atmosphere should be created where there is greater relaxation and the prisoners are not keeping their hearts and minds locked. They should also be employed in some useful work which would benefit both the State and the prisoners themselves and which can secure employment for them when they go out of jails. Greater care should be taken about their physical and also mental health so that they may not continue to brood but begin to feel that the string of life has not snapped for ever and they can pick it up again. Fairly wholesome food and healthy, clean dormitories should also be provided to them. I need not dilate on these points any more, for the Committee has after careful consideration made its recommendations which cover all these aspects of jail life.

52. There are, however, two recommendations about which a few observations made by me would not be out of place, even though they are dealt with in the report. These recommendations relate to classification of prisoners and construction of open air jails. In an earlier part of this preface I have quoted an extract from Mahatma Gandhi's writings where he has observed that a revision of classification, though it will mean additional expenditure, would mean economy in the long run. I think that unless a well-planned classification is made and habitual and hardened criminals who have adopted crime as a way of life are separated from the rest, it would be difficult to save the first offenders from the crime infection. Special care must be taken of the young offenders and children. I think prison is no place for children, and even young offenders, so long as the recommendations of the Committee are not implemented, should be completely segregated and every attempt should be made that they do not come into contact with other groups of prisoners. Women prisoners should also be well protected and there should be separate prisons for women manned (I think a new word 'womanned' should be added in the dictionary) by a female staff alone.

53. Obviously, this will mean a large expenditure for this cannot be done in the existing jails and new jails will have to be constructed. This question came up before the Royal Commission also and they in their report observed at page 210, thus :

"It is not easy to adapt the prisons of this country to the new ideas. Most were built under the old regime, and their structure is dictated by it; they are fortress like buildings within high walls; they contain large numbers of single cells with small barred windows and afford little opportunity for communal life in groups. They do not fit, either structurally or psychologically, with concepts of the purpose of imprisonment so different as those that

prevail today. 'Mitigation of the deformative effects of imprisonment, and training of men and women in self-respect and a sense of personal responsibility' are handicapped by 'the repressive conditions of a walled prison'. 'There is only one thing to be done with the prisons of Britain', said a former chairman of the Prison Commission in a speech made a few years ago, 'and that is to dynamite them'. Nevertheless they are likely for many years to have to house most of the prisoners in the country. But since the war the Commissioners have introduced a system of 'open' prisons for 'selected prisoners or classes of prisoners' such as is found in certain other countries, notably Sweden, some of the States of America and some Commonwealth countries. The largest and best known of these is at Leyhill in Gloucestershire. There are also 'satellite' open camps attached to some closed prisons, including Wakefield. For women there is an open prison at Askham Grange, and another has recently been opened at Hill Hall, in Essex. We understand that the Prison Commissioners will continue to develop the open prison system."

I think serious thought should be given to the construction of new jails and they should be designed to meet the requirements stated above.

54. The Committee was happy to find that in some States open air jails also exist though their number is not adequate. The Sangar Jail in Rajasthan is the outstanding jail in this class. There is no fencing and boundary wall in this jail; the prisoners who were housed there appeared to the Committee to be completely relaxed. They were living with their wives and children and also pursuing their work outside the prison during day time and they came back only in the evening. I was told that during the whole period since this jail came into existence, and this comes to about 20 years, only two prisoners escaped from the jail. They certainly gave the impression that they were completely reformed and will easily take their due place in the community again. I think this was the dream of Mahatma Gandhi when he wanted prisons to become reformatories.

55. According to the Muslim belief there are Seven Hells and Seven Heavens. Good persons according to the extent of their goodness are classified and accommodated in these seven heavens. Similarly the sinners are classified according to the gravity and magnitude of their sins and then lodged in these seven hells. In between the Hells and Heavens, there is a place called Airaf. God, even when He punishes, does not cease to be merciful and after a sinner has expiated for his sins, he is brought to Airaf and after keeping him there for some time, he is sent to one of the seven heavens. It is my fondest hope that these open air jails will be the Airaf on earth and their numbers will increase more and more. They will be the bridge between the prisons and the outside world. It is true that what is

easy for God is very difficult for human beings. Still an attempt should be made to follow the godly path as far as possible.

56. Only a pleasant duty now remains to be fulfilled. First of all I will thank the Ministry of Home Affairs which was responsible for the Committee on Jail Reform's coming into existence. The Home Ministry helped us at every turn and without its continuous help it would not have been possible for us to present this report. I would also thank the Ministry of External Affairs, Indian Missions abroad, and some Governments of other countries, who willingly furnished to the Committee material on correctional administration which helped it to come to its conclusions. All the State Governments and Union Territory Administrations also come under this head. To whichever State we went to gain knowledge regarding the questions that were before us, the Chief Ministers and other Ministers of that State were not only considerate but also helpful and hospitable. They also made the services give us all the information that we sought. This included the full cooperation of the officers of the Prison Departments, officers of other departments also, and in some cases even members of the judicial service. Without this kind and generous cooperation we could not have collected the large amount of material that we did.

57. I would also like to express my sincere gratitude to the large number of prisoners whom the Committee met and interviewed during its visit to various jails. They gave information about that side of the picture which was very much needed. I was touched by the confidence that they exhibited in the Committee, for without this confidence they would not have opened out but would have remained silent. As Pandit Nehru observed in Prison Land (Appendix I) :

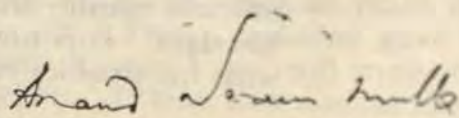
"In theory there are some checks, and visitors and officials from outside go to inspect. But it is rare for a prisoner to dare to complain to them, and those who dare have to suffer for their daring. The visitor goes, the petty gaol officials remain, and it is with them that he has to pass his days. It is not surprising that he prefers to put up with his troubles rather than risk an addition to them."

58. Then there were quite a few eminent persons, judges, lawyers, social workers, legislators and others who drew upon their experience and placed their well considered views before the Committee which, to a certain extent, has played a part in influencing it in formulating its views. I must thank them for this valuable assistance. Those who replied to the Opinionnaire issued by the Committee but could not be called as witnesses also merit our thanks. As the questions to be answered were not few but many so it was considered advisable to form separate Study Groups in which the Committee also invited some non-Members who were considered to be specially qualified to help that particular Study Group by their expert knowledge of that particular problem. Those who responded to our invitation and agreed to work in these Study Groups cannot be ignored and I express my gratitude to them also.

59. In the end I come to the Members of the Committee and the secretariat officers and staff. I have served in several parliamentary and other kinds of committees during the last 16 years, but the zeal to do a public duty to the best of their ability which I noticed amongst the members of this Committee was not present in other committees. Every member was more than eager to do his part and this produced an atmosphere of harmony in the meetings of the Committee which was really conducive to bring an accord in our discussions and which enabled us to produce this Report. I shall always remember the support and cooperation which I received from all the members and the Report itself is the best evidence of what they did and achieved. The officers and staff of the secretariat were completely in tune with the members and their efficiency in initiating relevant discussions and preparing agenda at the various stages of the Committee's deliberations as well as their own contribution in preparing the report was a very happy chapter in our association. The Committee and the staff worked as members of one family and the result speaks for itself.

60. During the time the Committee worked it was deprived of the services of two of its Members. Shri Prakash Mehrotra parted from us as the Government was pleased to appoint him the Governor of Assam and Meghalaya. We were sorry to lose him because if he had remained in the Committee, he would have made valuable contribution to the Report; but this parting was on a happy note. The other parting came on an extremely tragic note. Shri H. C. Saksena expired suddenly when we had almost finished our work. The Report bears the imprint of his mature views.

61. The Committee's task is over. Those unfortunate citizens who are at the moment prisoners in jails and whose lips are sealed are now looking with questioning eyes towards the Government.



(ANAND NARAIN MULLA)

NEW DELHI

March 31, 1983.

CHAPTER I

INTRODUCTION

1.1 Prison administration in India has been, off and on, a subject of criticism in the press, the Parliament and the judiciary. Overcrowding in prisons, prolonged detention of undertrial prisoners, unsatisfactory living conditions, lack of treatment programmes and allegations of indifferent and even inhuman approach of prison staff have repeatedly attracted the attention of the critics over the years.

1.2 The Judiciary, as the agency responsible for the lawful deprivation of an offender's liberty, has occasionally denounced the degeneration of a term of sentence into servitude. Through some of its recent judgements, it has extended its jurisdiction over the execution of the term of sentence to ensure that a prisoner is not subjected to dehumanized treatment in jail, nor is he incapacitated for future social re-integration. It has observed that a sentenced offender cannot be treated as a person denuded of all his fundamental human rights and that his restoration to the law-abiding community is, and ought to be, the ultimate policy behind judicial sentencing.

1.3 Prisons are expected to re-educate one who has been declared a criminal in order to help him eventually to be rehabilitated in an atmosphere of healthy social interactions and to promote the prospects of his reclamation in the social milieu. The existing prison conditions in general are, however, not conducive to the fulfilment of the desired objective. The unsatisfactory situation existing in jails had attracted the attention of the Government of India and the State Governments from time to time. Valuable recommendations were made by various bodies at the national and state levels for effecting improvement in prison administration but progress in the follow-up action and implementation of the recommendations has been slow in most of the States and Union Territories. In the recent past there were widespread agitations both by prison staff and the prison inmates demanding improved service conditions and better living conditions in the prisons. There were even reports of occasional violence from some of the States and Union Territories. The States and Union Territories which witnessed large-scale and protracted incidents of prison violence and indiscipline include Bihar, Madhya Pradesh, Manipur, Orissa, Rajasthan, Tamil Nadu, Chandigarh and Delhi.

1.4 The Government of India, taking stock of the situation, and motivated by the desire for improvement in the prison administration decided to set up a Committee to study all aspects of prison administration in the country and to devise measures for its effective improvement, with particular emphasis on the care of women, adolescents, children and mentally sick persons in jails. The Ministry of Home Affairs accordingly set up the present Committee on Jail Reforms under its resolution No. VI. 14016/3/80-GPA. IV of July 25, 1980 under the Chairmanship of Shri Justice A. N. Mulla, Retired Judge of the Allahabad High Court and a former Member of Parliament, consisting of the following:

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| 1. Justice A. N. Mulla (Retd.) | Chairman |
| 2. Shri Yogendra Sharma, M.P. | Member |
| 3. Miss Saroj Khaparde, M.P. | Member |

4. Dr. (Mrs.) M. Sarada Menon,
former Director,
Mental Hospital, Madras. Member
5. Shri C. S. Mallaiah,
I. G. (Prisons)
Karnataka. Member
6. Joint Secretary in the Ministry of Home Affairs Member-Secretary

1.5 A copy of the above-mentioned resolution of the Government of India is at Appendix. III.

1.6 Bibi Amtus Salam, Chairman, Kasturba Mandir Trust, New Delhi, was a permanent invitee to the deliberations of the Committee.

1.7 Shri K. S. Rastogi, IAS, Joint Secretary, Ministry of Home Affairs, Government of India was appointed as Member-Secretary with effect from October 15, 1980.

1.8 The above-mentioned resolution of the Government of India vested the Committee with powers to co-opt members as and when necessary. Accordingly the Committee, in its meeting held on December 12, 1980 co-opted the following six members:

1. Shri Prakash Mehrotra,
Member of Parliament.
2. Prof. Rasheeduddin Khan,
Member of Parliament.
3. Shri D. J. Jadhav,
Retired Member,
Maharashtra Public Service Commission and
former I. G. Prisons and
Director Social Welfare,
Maharashtra.
4. Shri H. C. Saksena,
Retired I. G. Prisons,
Uttar Pradesh.
5. Dr. Hira Singh,
Director,
National Institute of Social Defence &
ex-officio Prison Adviser,
Ministry of Home Affairs.
6. Shri K. L. N. Reddy,
Director,
Regional Institute of Correctional
Administration,
Vellore.

1.9 Shri Prakash Mehrotra, on his appointment as the Governor of Assam and Meghalaya, tendered resignation from the membership of the Committee on July, 30, 1981 and his resignation was accepted at the seventh meeting of the Committee held on August 14, 1981.

1.10 In its meeting held on January 24, 1982 the Committee co-opted Dr. (Mrs.) Jyotsna H. Shah, Retired Director, Social Defence, Government of Gujarat, as a member.

1.11 Shri H.C. Saksena, Retired Inspector General of Prisons, Uttar Pradesh, who made valuable contribution to the work of the Committee, expired on January 4, 1983. This deprived the Committee, in the final stage of its work, of the benefit of his vast knowledge and experience in the field of prison administration.

1.12 The terms of the Committee as laid down in the Government of India resolution of July 25, 1980 are: -

- (i) to review the laws, rules and regulations governing the management of prisons and the treatment of prisoners and to make recommendations keeping in view the overall objective of protecting the society and rehabilitating the offenders;
- (ii) to examine the living conditions of prisoners with specific reference to their basic needs and provision of facilities compatible with the dignity of human life and to suggest improvements as considered necessary;
- (iii) to reappraise the policies governing the recruitment, training and development of prison personnel in relation to the objective of custody and correction and to find ways of ensuring that persons with requisite talent, aptitude and ability man the prison service ;
- (iv) to look into the procedure regarding the internal management of prisons with a view to raising the present level of prison security and institutional discipline and to suggest appropriate change ;
- (v) to review the programmes of institutional treatment, education, vocational training, industry, agriculture and such other occupational activities and to suggest measures with a view to develop prisons as correctional centres ;
- (vi) to suggest measures for the specialised treatment of women, adolescents, children and mentally sick persons ;
- (vii) to review the working of open-air prisons and to suggest measures for improvement ;
- (viii) to scrutinise the system of remission of prison sentence, parole and probation and to lay down guidelines for bringing about uniformity and standardisation in approach;
- (ix) any other matter relating to prison administration that the Committee may like to consider.

1.13 The Committee was specifically asked to look into the affairs of Tihar Jail, and to make recommendations with regard to improvement in its administration within one month.

1.14 The Central Jail, Tihar, Delhi had been a subject of unprecedented scrutiny by the Supreme Court of India especially on the grounds of mismanagement, indiscipline and corruption. The Committee recognised that the Central Jail, Tihar had been widely criticised on account of maltreatment of, and indiscipline amongst, prisoners

on the one hand and improper attitudes, incompetence, corruption and abuse of power by the staff on the other. These aspects received a close attention of the Committee in its enquiry in regard to this Jail. The Committee, while submitting its report on Tihar Jail, came to a definite conclusion that the problems of the Central Jail, Tihar were peculiar in nature and needed immediate attention. It recommended that the maladies of corruption, indiscipline and intrigues that had plagued the management of the Jail should be immediately dealt with. The Committee in its report submitted on December 19, 1980 had formulated a plan of action for improving the present situation in that particular jail.

1.15 Since the enquiry referred to in the foregoing paragraph was limited in character, restricted only to the Central Jail, Tihar, that report did not include the whole spectrum of jail improvement in the country.

1.16 The Committee was initially constituted for a period of six months. However, its term was extended from time to time, finally ending on March 31, 1983.

1.17 The Committee made all possible efforts and explored diverse avenues to study existing conditions in prisons. The modus operandi adopted for this study included :

1. Visits to prisons and other institutions in various States and Union Territories;
2. Meetings with Chief Ministers, Ministers in charge of Jails, Chief Justices of High Courts and other members of higher judiciary and non-officials;
3. Meetings with Chief Secretaries, Home Secretaries and Heads of various Departments;
4. Meetings with officers and staff of prison departments;
5. Meeting prisoners and discussing with them problems of prison administration;
6. Collection, classification and analysis of views on matters relating to prisons through opinionnaire (Appendix IV);
7. (a) Collection and analysis of basic information on prisons; and
(b) Collection of views of State Governments, Union Territory Administrations and Inspectors General of Prisons on important aspects of prison administration; through statistical returns (Appendix V);
8. Discussions with eminent persons;
9. Formation of study groups for intensive deliberations on specific subjects;
10. Collection of secondary data from reports and material on prison administration furnished by State Governments;
11. Study of literature on correctional administration in other countries;
12. Screening of films on correctional administration in some foreign countries; and
13. Study of proceedings of Second Asian and Pacific Conference of Correctional Administrators held at Bangkok.

1.18 The Committee visited prisons and other institutions in the States of Andhra Pradesh, Bihar, Jammu & Kashmir, Karnataka, Maharashtra, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal and the Union Territories of Andaman and Nicobar, Chandigarh, Delhi, Goa and Pondicherry. A list of these institutions is at Appendix VI.

1.19 During its visits to States and Union Territories the Committee held discussions, wherever possible, with the Chief Ministers of States, Ministers in charge of Jails, Chief Justices of High Courts and other members of higher judiciary, non-officials and officers connected with prison administration. A list of important persons whom the Committee met to ascertain their views on various aspects of prison administration is at Appendix VII.

1.20 In order to elicit views from a cross-section of the society on some important aspects of prison administration and prison reforms, the Committee had devised an Opinionnaire, about 3000 copies of which were mailed to judges, public representatives, general administrators, prison personnel, prisoners, social workers, educationists, police personnel, journalists, lawyers and others. The response (602) was quite encouraging and exhibited public interest in the problems of prison administration and prison reforms. The opinions received were compiled and classified and were taken into consideration while making our recommendations.

1.21 Statistical returns received from States and Union Territories contained basic information about physical conditions, staffing patterns, employment of prison labour, financial implications of prison management, and so on. This information helped the Committee in assessing the gaps in the system and making suitable recommendations.

1.22 A list of eminent persons who were interviewed by the Committee for eliciting their valued opinion on important aspects regarding prison administration is at Appendix VIII.

1.23 An important step taken by the Committee during the early stages was the formation of small study groups for intensive thinking on some vital aspects of prison management. These study groups comprised members of the Committee and other experts in the field. The Committee had also in its meeting held on December 12, 1980 decided that a few officers of the National Institute of Social Defence might be associated with the work of the study groups as and when their services were required. Accordingly some officers of the Institute were associated as resource persons with the study groups. The composition of the study groups and the subjects allotted to them are at Appendix IX. These study groups submitted their reports for the consideration of the Committee.

1.24 The State Governments of Assam, Haryana, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu and West Bengal had furnished us with a copy each of the reports submitted by Prison Reforms Committees/Commissions appointed by them. The State Government of Bihar made available to us the interim report submitted by the Committee appointed by it. These reports contain useful suggestions and we have kept them in view while making our recommendations.

1.25 The Committee had also taken into consideration the literature on correctional administration received from Australia, Canada, Hongkong, Japan, Netherlands, Norway, Singapore, Sweden and the United Kingdom.

1.26 The Committee received some audio-visual material from Canada and Sweden. Two Canadian video films giving a background of correctional services and innovative projects in that country and two Swedish films namely "According to Law" and "People Outside" depicting important aspects of prison and correctional administration in that country were seen by the Committee.

1.27 Shri K. S. Rastogi, Member-Secretary of the Committee, was deputed by the Government of India to represent the country at the Second Asian and Pacific Conference

of Correctional Administrators hosted by the Government of Thailand in Bangkok from July 6 to 10, 1981. The agenda items discussed in the Conference included Prison Industry; Remands; Status of Prison Officers and Human Rights; Prisoners' Exchange Arrangements in Asia and the Pacific; the Problems of Drug Offenders; and Accreditation and International Status. A brief account of the discussions was circulated to the members of the Committee for their consideration.

1.28 Attempt has been made to make the Report of the Committee fairly comprehensive including specific recommendations on various aspects of jail administration and major problems of jail life. We have borne in mind the fact that in a country like ours striving for the fulfilment of basic objectives of wide-ranging socio-economic transformation, we cannot lose sight of the proper scale of priorities for national development. However, we are convinced that the administration of prisons within any rational scale of reform assumes critical importance particularly in view of the fact that our people are citizens of the world's largest democracy. Whenever their liberty is taken away due to certain requirements of law, they must be given a humane, positive and a corrective treatment, if we desire to receive them back in the community of free and equal citizens as improved and better human beings after the traumatic experience of jail life. In spite of financial constraints, funds will have to be provided for rescuing these unfortunate fellow citizens from perpetual degeneration. With this in mind, we have made certain recommendations for immediate implementation and others for implementation over a period of time in order to achieve the required transformation in prison administration. We presume that the Central and State Governments and the Union Territory Administrations will share with us the concern over the deterioration of the prison system at the present time, and shall commit themselves to provide adequate financial outlays to improve it, in consequence of our democratic ethos and the vision of the founding fathers.

1.29 All along its deliberations, the Committee has been conscious of the continental dimension of our sovereign republic, inhabited as it is by one-fifth of mankind, whose social milieu is marked by diversities of culture, language, ethnicity, regional specificities, inter-caste and inter-community equations, living standards, patterns of social set-up and group-life, and variations in administrative structure and the physical needs of the people living in different parts of the country. We have also not been unmindful of the fact that the basic needs of men and organisations, despite other range of diversities, have nevertheless much in common. While making recommendations, therefore, we have tried to lay down general principles and have left details to be worked out by the respective State Governments and Union Territory Administrations according to their situation and requirements.

1.30. We would like to mention here that this Report should not be taken as a panacea for all ills, present and future, of the prison system. It is our considered view that the process of prison reforms is a continuous one. Prisons like other institutions that have to deal with human beings are continuously faced with a dynamic situation requiring constant and appropriate change in form, content and needs. There is an apparent need for constant vigil, continual thinking and concerted effort to respond to the new problems, situations and challenges that come up in the very process of social change. We do hope and believe that with due care and caution, coupled with proper education and training, appropriate physical conditions and social contacts, constant watch and welfare activities, most of the maladies that pester the present prison system can be cured, rendering the system more firm, more humane, more receptive, more adaptable to the changing needs of the society and more efficacious in the restoration of the offender to the mainstream of normal, healthy, responsible, law-abiding community. It is with this hope and belief that we have made our recommendations in this Report.

CHAPTER II

REVIEW OF PRISON REFORMS

2.1 Our contemporary prison administration is a legacy of the British rule. Lord Macaulay, who later became the author of the Indian Penal Code which provides for imprisonment as the most commonly used instrument of penal treatment, while presenting a note to the Legislative Council in India on December 21, 1835, pointed out for the first time the terrible conditions then prevailing in Indian prisons. He vehemently subscribed to the idea that "the best criminal code can be of very little use to a community unless there be a good machinery for the infliction of punishment". He stressed that "it is, therefore, of the greatest importance to establish such regulations as shall make imprisonment a terror to wrong-doers and shall at the same time prevent it from being attended by any circumstances shocking to humanity." The horrid conditions in Indian prisons obtaining in the middle of the 19th century can be well judged by the fact that Lord Macaulay, while giving an account of the conditions prevailing at Alipore Jail at Calcutta condemned them as "shocking to humanity" and "a great dishonour on our Government". "Hundreds of the worst and most desperate criminals" he wrote, "are collected in one great body and no visitor could enter the gates without danger".¹

2.2 Lord Macaulay recommended that a Committee be appointed to suggest measures to improve discipline in prisons. Consequently, on January 2, 1836, a Committee was appointed by Lord William Bantick to study the conditions of discipline in Indian prisons. Lord Macaulay and some other most distinguished statesmen and jurists of the day constituted the Committee.² This Committee known as Prison Discipline Committee reported in 1838 to Lord Auckland, the then Governor General, and noted with great disapprobation the rampant corruption in the subordinate establishment, the laxity of discipline, and the system of employing prisoners on extra-mural labour on public roads. Presumably, under the influence of a reaction from these abuses, the Committee recommended increased rigours of treatment and rejected all notions of reforming criminals through moral and religious teaching, education or any system of rewards for good conduct. It advocated construction of central prisons "where the convicts might be engaged not in manufactures which it condemned on somewhat theoretical and unsound grounds but in some dull, monotonous, wearisome and uninteresting task in which there shall be wanting even the enjoyment of knowing that quicker release can be got by working the harder for a time."³ Sentences were sought to be executed in such a way as to deter both the actual perpetrator of crime and the potential offender from committing crimes. The result was that the prisons bore a look of regimentation occasioned with physical torture.

2.3 In 1864, Sir John Lawrence's examination of the conditions of jails in India led Lord Dalhousie to appoint the second Commission of Enquiry into Jail Management and Discipline.⁴ It is interesting to note that the British regime was interested in the prisons only from the point of view of administration and discipline. The sociological ideas of reformation or welfare of inmates had not crystallised till then. The report of the Commission of 1864, therefore, proceeding on the lines of the report of the previously constituted Committee (1836) laid down a system of prison regimentation which with some modifications may be said to be still in operation in the name of prison discipline. The Commission

also made some specific recommendations regarding accommodation for prisoners, improvement in diet, clothing, bedding and medical-care only to the extent that these were incidental to 'discipline' and 'management'. The Commission recommended separation of prisoners — males from females and children from adults. Prison discipline was codified in specific terms and violations were made prison of offences, attracting punishment of solitary confinement, reduction in diet, whipping and hard labour.

2.4 A Conference of experts met in 1877 to enquire into prison administration. By that time there were five enactments available in the country governing the management of prisons in various States: An Act for the better control of the Jails within the Presidency of Bombay (1856); an Act for the regulation of Jails in the City and Presidency of Bombay and enforcement of discipline therein (1864); an Act for the regulation of Jails and enforcement of discipline therein, (Bengal-1864); Madras Jails Act (1869); and Prisons Act (1870). Prisons Act 1870 was made by the Governor General in Council and the rest by the Governors in Council for their respective jurisdictions. These Acts differed *inter se* on various important points governing the principles and practices of prison management. The remedy proposed by the Conference of 1877 was the enactment of a prison law which could secure uniformity of system at least on such basic issues as the reckoning of terms of sentence. On the basis of the recommendations of the Conference, a draft Bill was actually prepared but as "circumstances were unfavourable to legislation, the matter was postponed."⁵

2.5 In 1888, the Fourth Jail Commission was appointed by Lord Dufferin to enquire into facts on prisons. The object and scope of this Commission as given out in the Resolution appointing the Commission make an interesting reading particularly in view of the fact that after a lapse of almost a century we are still groping for a solution to the same problems:

"The administration of jails with respect to economy, sanitation and discipline has for many years received the careful attention of the Governor-General in Council. Three Commissions (in 1836, 1864 and 1877) have under the orders of the Government of India, considered and reported on the general principles which ought to be observed in the management of Indian jails. There is on the part of Governor-General in Council no wish to reconsider the principles so laid down, but an examination of the statistics of jails in different provinces and even of prisons in the same province shows that great diversity of practice exists in carrying the principles into effect. The Governor-General in Council is not to be understood as advocating absolute uniformity of administration in all provinces in connection with jail administration. He admits that local circumstances must always give rise to diversities of practice. But an examination of the provincial reports for some years satisfied him that the divergencies in regard to the cost of maintaining prisoners in regard to their sanitary conditions and in regard to discipline points to the existence of defects which it is desirable to remove. There being no longer doubt regarding principles and the question being one of practice, it appears to His Excellency in Council that improvement can best be effected by means of a careful and thorough examination of experts on the spot into the causes which operate in certain provinces and certain jails to produce a variation."⁶

2.5.1 The Jail Commission of 1888 visited various provinces and made an exhaustive enquiry into all matters connected with jail administration. It was of the opinion that uniformity could not be achieved without enactment of a single Prisons Act.

2.5.2 On the basis of the recommendations of the Jail Commission of 1888, a consolidated Prisons Bill was prepared. Commission's recommendations in regard to jail offences and punishments were specially examined by a Conference of Experts on Jail