

Management from all provinces, which was convened for the purpose in 1892 at Calcutta. They provided in the Bill for such prison punishment as gunny clothings, imposition of irons on hand and feet, penal diet, solitary confinement and whipping.

2.5.3 The draft Bill was circulated to the local governments with a letter addressed by Mr. C. J. Lyall, the then Secretary to the Government of India, Home Department on March 25, 1893 requesting the local governments to forward their observations on it and after incorporating such observations as were necessary, the Bill was presented to the Governor-General's Council.⁷

2.6 Thus came into being the Prisons Act, 1894 which is the current law governing management and administration of prisons in India. The Britishers had found it efficacious for the achievement of their political ends to run prisons according to the provisions of this Act. Even after 35 years of Independence it has hardly undergone any substantial change in the hands of our own government, although a lot of new thinking has emerged on the objectives, management and administration of prisons.

2.6.1 There is no doubt that the prisons Act of 1894 had some good points too. It sought to streamline prison administration and put it on a general uniform footing throughout the country. As a measure of administrative reforms, it provided that in prisons where prisoners under the age of 21 were confined those "who have arrived at the age of puberty" should be separated from "those who have not". It also provided for the separation of civil prisoners from criminal prisoners and of unconvicted criminal prisoners from those convicted. The Medical Officer was required to visit daily each prisoner confined in a cell for more than 24 hours. The employment of criminal prisoners sentenced to rigorous imprisonment was restricted to nine hours on any day. The Act placed upon the Medical Officer the responsibility to see that the prisoner's health was not injured by the work on which he was employed. The power of the lower executives staff in the matter of inflicting punishment for prison offences was done away with. No officer subordinate to the superintendent was given the power to award any punishment. Female and civil prisoners were specially excluded from the punishment of handcuffs or fetters or from whipping. The erring prison staff was also made liable for punishment on certain counts with a view to forging discipline. However, the Act was largely based on deterrent principles concerned more with prison management than with treatment of prisoners and gave more consideration to prison offences and punishment than to their effect.

2.7 The process of review of the prison problems of the country continued even after this. The first ever comprehensive study of these problems in the present century was made by the Indian Jails Committee 1919-20. This Committee produced a report which is indeed a land-mark in the history of prison reforms in India. It can in all fairness be called the corner-stone of modern prison reforms in the country. For the first time in the history of prisons 'reformation' and 'rehabilitation' of offenders were identified as the objectives of prison administration. The Committee recommended that the care of criminals should be entrusted to adequately trained staff, selected and recruited after careful scrutiny. It recommended that the salary of prison personnel should be sufficient to secure and retain faithful service. The Committee rejected the idea of excessive employment of convict officers and recommended the reduction of such excessive employment. Executive and clerical duties were recommended to be separated. The Committee also recommended the induction of technical staff in jail service.

2.7.1 As for improvement of physical conditions the Committee recommended diversification of institutions stating that separate jails should be marked for various categories of prisoners. It recommended a minimum area of 75 sq. yards per inmate within the enclosing wall of the jail.⁸ It deprecated over-crowding and recommended remedial measures to prevent it. The Committee strongly repudiated the presence of children in jails meant for adult prisoners. It recommended the creation of Children's Courts for hear-

ing all cases of Juvenile delinquents and their housing in Remand Homes. The Committee made a forceful plea for introduction of warning, probation, fine for work in lieu of short-term imprisonment. With a view to continuing the process of evaluation of prison problems and bringing in jail reforms the Committee recommended that a Conference of Inspectors General of Prisons be held every alternate year.

2.7.2 The recommendations of the Indian Jails Committee, though radical in the light of the sociological thought of the day, could not be implemented due, particularly, to two reasons. In the first place the diarchical system introduced by the Government of India Act of 1919 left the subject of prisons to the consideration and judgement of the provincial governments without any effective supervision and control of the Central Government. As an obvious result most of the provincial governments relegated the administration of prisons to a lower priority, neglecting the valuable recommendations for prison reforms made by that Committee. Only the presidencies of Bombay, Calcutta and Madras could achieve some innovation in the field of criminal justice by enacting Children Act in the early twenties. In 1923, section 562 of the Code of Criminal Procedure, 1898 was also amended to facilitate the suspension of sentences in selected cases.

2.7.3 The other reason why the recommendations of the Indian Jails Committee 1919-20 could not have a substantial impact on prison administration in the country was the political atmosphere that prevailed throughout the nation during the decades following the submission of the report. Widespread political agitations and government's pre-occupation in quelling them over-shadowed the question of prison reforms. People were generally pre-occupied with the wider and more important problem of achieving political independence and their attention was drawn to the prevailing bad conditions of prisons only when they were imprisoned during their political struggle.

2.8 The constitutional changes brought about by the Government of India Act of 1935, which resulted in the transfer of the subject of jails to the control of provincial governments, further reduced the possibilities of uniform implementation of the recommendations of the Indian Jails Committee 1919-20 in the country. However, the period from 1937 to 1947 was important in the history of Indian prisons because it aroused public consciousness and general awareness for prison reforms at least in some progressive States. Efforts of some of the eminent freedom fighters who had known the conditions in prisons succeeded in persuading the governments of these progressive States to appoint committees to further enquire into prison conditions and to suggest improvements in consonance with their local conditions. Some of the Committees appointed during this period were (i) The Mysore Committee on Prison Reforms, 1940-41; (ii) U.P. Jail Reforms Committee, 1946; and (iii) The Bombay Jail Reforms Committee, 1946-48. It was around this period that such progressive legislations as (i) The Bombay Probation of Offenders Act, 1936; (ii) The C.P. and Berar Conditional Release of Prisoners Act, 1936; and (iii) The U.P. First Offenders Probation Act, 1938, were passed. In the late thirties, the U.P. Government appointed a Jail Enquiry Committee and in pursuance of its recommendations, the first Jail Training School in India was established at Luknow in 1940 for the training of jail officers and warders.

2.9 When India gained independence in 1947, the memories of bad conditions in prisons were still fresh in the minds of political leaders and they, on assumption of power, embarked upon effecting prison reforms. However, the Constitution of India which came into force in 1950 retained the position of the Government of India Act, 1935 in the matter of prisons and kept 'Prisons' as a State subject by including it in List II-- State List of the Seventh Schedule.

2.10 The first decade after independence was marked by strenuous efforts for improvements in living conditions in jails. A number of Jail Reforms Committees were appointed by the State Governments, apparently to achieve a certain measure of humanisation of pri-

son conditions and to put the treatment of offenders on a scientific footing. Some of the Committees which made notable recommendations on these lines were :

- (i) The East Punjab Jail Reforms Committee, 1948-49;
- (ii) Madras Jail Reforms Committee, 1950-51;
- (iii) Jail Reforms Committee of Orissa, 1952-55;
- (iv) Jail Reforms Committee of Travancore and Cochin, 1953-55;
- (v) U.P. Jail Industries Inquiry Committee, 1955-56: and
- (vi) Maharashtra Jail Industries Reorganisation Committee, 1958-59.

2.11 Unfortunately, the spirit and enthusiasm with which the subject of prison reforms was taken up by various governments did not last long. The reports and recommendations of these Committees, desirable and important though they were, were not implemented in an effective manner. However, a few new ideas of prison reforms were introduced in the country. The prisoners could now avail of furlough and parole. They were granted wages, even though nominal, for the work done by them. The introduction of Panchayat system led to improvement in the living conditions of prisoners. One of the major prison reforms introduced and which, we feel, is still an important modality of treatment of prisoners, was the development of open prisons serving as a half-way house for long-term prisoners for their transition from prison to open society. A Jail Officers Training School was set in at Pune in 1955. A few conscientious prison administrators also rose to the occasion and undertook some innovative experiments through their own individual efforts; but such efforts and innovations were only sporadic and short lived. The total impact of these measures on prison administration was not discernible upto any appreciable extent.

2.12 The changing circumstances on the socio-economic scene of the country after independence did not allow much to be done on a subject like prisons. The policy of the British raj of running prisons in as cheap a manner as possible continued as a hang-over even after the advent of freedom. The prisons always received the lowest priority in the State budgets. On each spell of financial stringency, the prisons were the first casualty. In their efforts to bring about an economic transformation in the country it somehow crept into the minds of the planners and administrators that prisons were a non-productive department. People entrusted with the task of planning for socio-economic change could never visualise that prevention of crime and treatment of offenders was an integral part of the bigger problem of social development and that, therefore, it deserved proper governmental attention, both administrative and financial. It sometimes began to appear that the appointment of Prison Reforms Committees was being used as a palliative for agitated public opinion for a temporary period and when reports and recommendations were received, they were shelved in the name of financial stringency.

2.13 While local Committees were being appointed by State Governments to suggest prison reforms, the Government of India invited technical assistance in this field from the United Nations. Dr. W. C. Reckless, a U. N. Expert on Correctional Work, visited India during the years 1951-52 to study prison administration in the country and to suggest ways and means of improving it. His report 'Jail Administration in India' is another landmark in the history of prison reforms. He made a plea for transforming jails into reformation centres and advocated establishment of new jails. He opposed the handing of juvenile delinquents by courts, jails and police meant for adult offenders. He advocated that a cadre of properly trained workers was essential to man prison services. His recommendations gave a fillip to specialised training of correctional personnel. The revision of outdated jail manuals and introduction of legal substitutes for short sentences were recommended by him. He advocated the development of full-time probation and revising boards for the after-care services and also the establishment of

selection of prisoners for premature release. He recommended the establishment in each State of an integrated Department of Correctional Administration comprising prisons, Borstals, children institutions, probation services and after-care services. He also recommended the establishment of an Advisory Board for Correctional Administration at the Central Government to help the State Governments in development of correctional programmes. Another important recommendation made by Dr. Reckless was about the creation of a national forum for exchange of professional expertise and experience. He suggested that a conference of senior staff of correctional department be held periodically at regular intervals. The year 1952 witnessed a break-through in national coordination on correctional work as in that year the Eighth Conference of the Inspectors General of Prisons was held after a lapse of 17 years.

2.14 In pursuance of the recommendations made by the Eighth Conference of the Inspectors General of Prisons and also by Dr. W. C. Reckless, the Government of India appointed the All India Jail Manual Committee in 1957 to prepare a model prison manual. The All India Jail Manual Committee was also asked to examine the problems of prison administration and to make suggestions for improvements to be adopted uniformly throughout the country.

2.14.1 The Report of the All India Jail Manual Committee 1957-59 and the Model Prison Manual prepared and presented by that Committee to the Government of India in the year 1960 are commendable documents on prisons. They not only enunciate principles for an efficient management of prisons but also lay down scientific guidelines for corrective treatment of various classes of offenders. The committee examined the laws affecting the custody and treatment of offenders and suggested amendments to provide a legal base for correctional work. While laying down the guiding principles for prison management the committee wrote:

The institution should be a centre of correctional treatment, where major emphasis shall be given on the reduction and reformation of the offender. The impacts of institutional environment and treatment, shall aim at producing constructive changes in the offender, as would be having profound and lasting effects on his habits, attitudes, approaches and on his total value schemes of life.

2.14.2 The committee made a forceful plea for providing a net-work of diversified institutions for different categories of prisoners in order to fulfil appropriate requirements of security and treatment for them. It also recommended introduction of a scientific system of classification based on a careful study of a number of factors including offenders' personal background and their response to institutional treatment. The committee recommended various measures relating to accommodation, buildings, equipment, education, work and employment, discipline and prison management. The establishment of a Central Bureau of Correctional Services was strongly advocated. The committee further suggested that correctional administration should be given due place in the Five-Year Plans of the country.

2.15 In pursuance of the recommendations made by Dr. W. C. Reckless and also by the All India Jail Manual Committee, the Central Bureau of Correctional Services was set up under the Ministry of Home Affairs in 1961. The functions assigned to it were:—

- (i) to formulate a uniform policy and to advise the State Governments on the latest methods relating to jail administration, probation, after-care, juvenile and remand homes, certified and reformatory schools, Borstals and protective homes, suppression of immoral traffic, etc. ;
- (ii) to standardise statistical forms and collect, collate and interpret statistical data relating to prevention of crime and treatment of offenders on an All India basis;
- (iii) to exchange information between India and foreign Governments and with the United Nations;

- (iv) to promote research and staff training including establishment and control of Central Institutions (when possible), afford aid and guidance to such other institutions as undertaking studies, survey and any required research and experimentation in the field; and
- (v) to disseminate information and stimulate interest by publication of bulletins, promotion of conferences, etc., for the above purpose with a view to secure the necessary appreciation of progressive correctional methods and public cooperation for rehabilitation of offenders and prevention of crime.

2.15.1 The Central Bureau of Correctional Services followed up vigorously with the State Governments matters relating to prison reforms with particular emphasis on the implementation of the recommendations made by the All India Jail Manual Committee and the revision of the State Jail Manuals on the lines of the Model Prison Manual. In order to review the progress of implementation of these reforms it also organised an All India Seminar on Correctional Services in 1969. To ensure effective deliberations at the seminar, seven study groups were constituted each under the Chairmanship of a senior Inspector General of Prisons or other expert in the field of correctional services on the following subjects:

- (i) Review of the progress in revising the State prison manuals on the basis of the recommendations of the All India Jail Manual Committee.
- (ii) Prison programmes, classification of institutions and prisoners, education, training and treatment.
- (iii) Changes in legislation.
- (iv) Open Prisons.
- (v) Service conditions of correctional personnel.
- (vi) Probation, after-care and welfare services in prisons.
- (vii) Training and research.

2.15.2 The Central Bureau of Correctional Services also organised Inter-State Study Teams on open prisons and other correctional services.

2.15.3 The Bureau made an important contribution in the development of training facilities for prison and correctional personnel at regional level when it was able to persuade the States of Andhra Pradesh, Karnataka, Kerala and Tamil Nadu to agree to set up a regional institute for the southern zone, which ultimately came into being in 1979 and is currently known as the Regional Institute of Correctional Administration, Vellore.

2.15.4 The Bureau organised the year 1971 as "Probation Year" all over the country. The purpose was to create a general awareness amongst the principal branches of the criminal justice system, viz., the judiciary, the police, the prosecution and the correctional administration about the use of probation as an effective non-institutional mode of treatment.

2.15.5 In 1972, the Ministry of Home Affairs, Government of India, appointed a Working Group on Prisons which presented its report in 1973. The Central Bureau of Correctional Services functioned as the base, offering all data and background and all administrative and technical services to the Working Group in drafting and finalising its report.

2.15.6 The Working Group on Prisons brought out in its report the need for a National Policy on Prisons. It suggested that government should make effective use of alternatives to imprisonment as a measure of sentencing policy.

It re-emphasised the desirability of proper training of prison personnel and improvement in their service conditions. It also made important recommendations with regard to classification and treatment of offenders and laid down principles of follow-up and after-care procedure. The Working Group emphasised that development of prisons and correctional administration should no longer remain divorced from the national development process and the prison administration should be treated as an integral part of the social defence components of national planning process. The Working Group suggested an order of priority for the development of prison administration. It recommended the inclusion of certain aspects of prison administration in the Five Year Plan, the amendment of the Constitution to include the subject of prisons and allied institutions in the Concurrent List, the enactment of suitable legislation by the Centre and the States, and the revision of State prison manuals.

2.16 In 1964 the Central Bureau of Correctional Services was transferred from the Ministry of Home Affairs to the newly created Department of Social Security, now known as the Ministry of Social Welfare. However, the Bureau continued to be attached to the Ministry of Home Affairs for various matters concerning jail administration and reform, its Director being later designated as Ex-officio Prison Adviser. In 1975, the Bureau was re-organised into the National Institute of Social Defence with the following objectives :—

- (i) to review policies and programmes in the field of social defence;
- (ii) to anticipate and diagnose social defence problems;
- (iii) to develop preventive, rehabilitative and curative policies in the field of social defence ;
- (iv) to identify and develop the instruments for realising the objectives of social defence policies;
- (v) to review and evaluate the implementation of social defence policies and programmes; and
- (vi) to develop and promote voluntary effort in social defence.

2.16.1 In keeping with the above-mentioned objectives, the functions assigned to the Institute were:

- (i) to undertake research on social defence;
- (ii) to compile, process and analyse statistics on social defence;
- (iii) to develop, promote, sponsor and undertake training/orientation in the field of social defence;
- (iv) to draft model legislation and rules in the field of social defence;
- (v) to advise the Central and State Governments/Union Territory Administrations on social defence problems and provide technical services, facilities for preparation of schemes, formulation of projects, drafting of legislation, etc.;
- (vi) to provide a forum for the exchange of information on social defence among States/Union Territories and voluntary organisations and thus to serve as a clearing house for information in the field of social defence ;
- (vii) to create public awareness on social defence problems specially in regard to preventive and rehabilitative role of the community ;
- (viii) to assist the Government of India for the exchange of information on social defence with other countries and with the United Nations or other specialised agencies ;

- (ix) to establish liaison with universities, research institutes and voluntary organisations for appropriate attention to social defence ;
- (x) to organise conferences/seminars/workshops on social defence ; and
- (xi) to bring out publications in the field of social defence, both popular and scientific.

2.16.2 The functions of the Institute are based on the premise that crime and deviance can be understood and tackled effectively only within the frame-work of the socio-cultural and economic life. The strategies in this field have to be evolved through a constant study and analysis of the field realities and factors associated with criminal behaviour, which continue to vary in space and time. Accordingly, the Institute has been concerned with a wide range of preventive, curative and rehabilitative services in various areas of social defence, including welfare of prisoners, prison reforms and administration, juvenile vagrancy, delinquency and crime, probation, beggary, social and moral hygiene, alcoholism, gambling, suicide, and drug addiction. As the subjects relating to economic and social planning as well as criminal law and criminal procedure come within the concurrent responsibility of both the Central and State Governments the Institute as an organ of the Central Government has been playing a significant role in this regard. While through the Ministry of Home Affairs, it deals with the administration and management of prisons, as a technical agency of the Ministry of Social Welfare it assists the Government in the prevention and control of juvenile delinquency, welfare services in prisons and probation and allied measures.

2.16.3 Since its beginning, the Institute has been making vigorous attempts to bring uniformity in the rules and regulations governing jail administration and to standardise services in keeping with their overall objective of the reformation and rehabilitation of offenders. The main thrust has been to incorporate the guidelines contained in the Model Prison Manual, prepared by the All India Jail Manual Committee 1957-59, in the State prison manuals and to follow up the conclusions of the Working Group on Prisons 1972-73 in the country.

2.16.4 In spite of the fact that the administration and management of prisons falls under the jurisdiction of State Governments and Union Territory Administrations, the Government of India, has, of late, been seriously concerned about the depressing prison conditions obtaining in many parts of the country. The scheme for the modernisation of prisons and improvement in the living conditions of prisoners initiated by the Ministry of Home Affairs during 1977-79 was indicative of a growing awareness for providing a thrust towards the development of prisons in keeping with certain minimum norms. This trend took a definite shape when the Seventh Finance Commission went into the question of upgrading the standards of jail administration on the basis of a comprehensive assessment of the requirements in this regard.

2.16.5 The Seventh Finance Commission in its Report of 1978, on an analysis of the material received from the Ministry of Home Affairs and the Department of Social Welfare in the Government of India and that obtained by it from the State Governments, recognised that jails had been neglected for too long and that there had been practically no improvement in their environments or in the method of handling inmates. Although the Commission did not regard itself competent to lay down the requirements of modernisation of jails and of correctional services, it identified certain basic areas needing urgent attention. It took a view that priority should be given: firstly to ensure that adequate direct expenditure was incurred on the prisoners; secondly, to bring improvements in amenities in respect of water supply, sanitary facilities, electrification, etc. and, thirdly, to provide for the construction of additional jail capacities in States where these were found short of the minimum requirements. It

considered necessary that a norm of Rs. 3 per head for diet and Re. 1 per day per prisoner for other items like medicine, clothing, etc. should be a minimum, and that inclusive of prison overheads (not including the headquarters cost of direction and administration) a minimum of Rs. 6 per day per prisoner should be provided for in all the States. Accordingly, the Commission recommended an allocation of Rs. 48.31 crores for the States which were found backward in these respects.

2.16.6 The National Institute of Social Defence, through the Ministry of Home Affairs, has been associated with the planning and monitoring of the scheme of financial assistance to State Governments provided by the Ministry as also the schemes recommended by the Finance Commission.

2.17 Although the governments, both at the Centre and in the States, were in possession of a large number of reports and recommendations coming from Prison Reforms Commissions/Committees, Working Groups, Seminars, Conferences, etc., touching on almost every aspect relating to prisons and prisoners, not much was done because in most of the States such recommendations as involved financial implications were either dropped or deferred. Further, as a result of administrative lethargy and weakening of supervision and control, the problems and sufferings within the closed world of prisons kept on mounting and failures of the system began to surface.

2.18 Amnesty International, Civil Liberties Movement, free-lance journalists, lawyers and jurists came down heavily on the prison system and tore it thread-bare on the test of law and international standards of human dignity. The question of preservation of fundamental human rights of prison inmates was repeatedly raised in the courts of law. Prison administration came to be a subject of severe criticism in a number of judgements of the Supreme Court. The Court declared that "the writ of the Rule of Law runs within the Jail system and it (the court) shall not permit inhumanity" in the prisons. It further declared that "the judicial process will call to order the prison authorities to make them respect the fundamental rights of the appellants (Prisoners)".

2.19 The Government of India convened a conference of Chief Secretaries of all the States and Union Territories on April 9, 1979, in order to assess the gaps in the system and to lay down guidelines for standardisation of prison conditions throughout the country. This Conference made a through examination of the issues pertaining to prison administration and on the basis of the consensus arrived at the Conference, the Government of India requested the State Governments and Union Territory Administrations:

- (i) to revise their prison manuals on the lines of the Model Prison Manual by the end of the year;
- (ii) to appoint Review Committees for undertrial prisoners at the district and state levels;
- (iii) to provide legal aid to indigent prisoners and to appoint whole-time or part-time law officers in jails;
- (iv) to enforce existing provisions with respect to grant of bail and to liberalize bail system after considering all aspects of it;
- (v) to strictly adhere to the provisions of the Code of Criminal Procedure, 1973 with regard to the limitations on time for investigation and inquiry;
- (vi) to ensure that no child in conflict with law be sent to the prison for want of specialized services under the Children Act;
- (vii) to have at least one Borstal school set up under the Borstal Schools Act for Youthful offenders;

- (viii) to create separate facilities for the care, treatment and rehabilitation of women offenders ;
- (ix) to arrange the treatment of lunatics in specialised institutions ;
- (x) to provide special camp accommodation under conditions of minimum security to political agitators coming to jails ;
- (xi) to prepare a time-bound programme for the improvement in living conditions of prisoners with priority attention to sanitary facilities, water supply, electrification and to send it to the Ministry of Home Affairs for approval.
- (xii) to develop systematically the programmes of education, training and work in jails ;
- (xiii) to strengthen the machinery for inspection, supervision and monitoring of prison development programme and to ensure that the financial provisions made for upgradation of prison administration by the Seventh Finance Commission are properly utilised ;
- (xiv) to organise a systematic programme of personnel training on State and Regional level ;
- (xv) to abolish the system of convict officers in a phased manner ;
- (xvi) to mobilise additional resources for modernization of jails and development of correctional services in jail ;
- (xvii) to set up a State Board of Visitors to visit jails at regular periodicity and to report on conditions prevailing in the jails for consideration of the State Government ;
- (xviii) to examine and furnish views to Government of India on proposal for setting up of the National Board of Visitors.

2.20 While the above matter was being pursued with the State Governments and Union Territory Administrations, the Government of India considered it necessary that a comprehensive review of prison administration in the country should be made and suitable measures for its improvement suggested and hence, they, in July, 1980, constituted this Committee.

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CHAPTER III

REALITIES IN INDIAN PRISONS

3.1 Prisons are, in a way, an epitome of society ; various trends in anti-social behaviour are reflected in a concentrated form in the prisons. India has, for the past few decades, been undergoing a series of social and economic transformations. Some of our social institutions like family have undergone fundamental changes. The pattern of life in rural areas has almost been metamorphosed. The growth of urbanisation and industrialisation has considerably changed the tempo of our urban life and has given rise to a number of new problems. Industrial conflicts have taken new dimensions while socio-economic and political agitations have grown both in number and magnitude. Caste, minority and various other tensions have also assumed distressing proportions.

3.2 In this fast changing social order there is a continuous interaction between the traditional value schemes and the new value premises of modernisation and technology. As a consequence of these interactions, new aspirations and value schemes have been emerging in the society. During an era of fast socio-economic changes such as our society is witnessing, there are bound to be consequential psychological changes in the patterns of human behaviour. The conflict in value systems and changes in the pattern of human behaviour are discernible in the pattern of crime and the types of offenders confined in prisons.

3.3 The characteristics of prison population, which to a large extent determine the functioning of prison system of a country, flow directly from the pattern of crime in the country. In order, therefore, to make any rational assessment of the realities of our prisons we must have before us a general view of the main features of the incidence of crime in the country.

3.4 Crime in India is showing an increasing trend. Annexure A to this chapter shows estimated mid-year population, total cognizable crime under the Indian Penal Code and the rate of crime per lakh of population during the period 1969 to 1979. This annexure reveals that there was an increase of 53.9 per cent in cognizable crime during the decade 1969—79 while the increase in population was 24.6 per cent in the same period.

3.5 The incidence of IPC crime under important heads of crime in 1969, 1974—78 and 1979 along with percentage variations over 1969, over the quinquennial average of 1974—78 and over 1978 is at Annexure B to this chapter. All heads of crime except 'criminal breach of trust' and 'counterfeiting' registered an increase in the total number of crime in 1979 over 1969, highest being under 'robbery' (117.7%) followed by 'dacoity' (110.1%), 'other IPC crimes' (99%), riots (48.5%), 'kidnapping and abduction' (39.9%), 'cheating' (37.5%), 'thefts' (37.2%), 'murder' (35.3%), and 'burglary' (9.0%).

3.6 A comparison of this increasing trend of crime in the country with the inmate population of prisons during the past some years (Annexure C attached to this chapter) reveals an intriguing and interesting situation. We find that while there is an increasing trend in the reported crime, there is an overall downward trend in prison population. This is a matter which needs study and research specially with regard to extent of crime reported, procedures for investigation, and policies of arrests and award of sentences.

3.7 According to the statistics supplied by various States and Union Territories there were 76 central prisons, 250 district prisons, 822 sub-jails, 20 special jails and 27 open jails in the country as on December 31, 1980. The sanctioned inmate capacity of these institutions was 79,544, 63,654, 26,057, 6,640 and 4,626 respectively. There were only 6 institutions for women offenders with a sanctioned inmate capacity of 975. There were 8 juvenile jails and 11 Borstal schools in the country with a sanctioned inmate capacity of 1827 and 2102 respectively.

3.8 The number of persons lodged in Indian prisons on December 31, 1980 was 1,59,692. Their category-wise distribution was as follows :

Sl. No.	Category	Male	Female	Total
1.	Convicts	63235	855	64090
2.	Undertrials	89639	2637	92276
3.	Detenus	420	15	435
4.	Criminal lunatics	297	21	318
5.	Non-criminal lunatics	1543	534	2077
6.	Civil prisoners	249	2	251
7.	Others	236	9	245
		155619	4073	159692

3.9 Of the convicts, 984 were below the age of 16 years ; 4,845 were in the age group of 16 to 21 ; 21,583 in the age group of 21 to 30 ; 21,361 in the age group of 31 to 40 ; 9,973 in the age group of 41 to 50 ; 3,997 in the age group of 51 to 60 ; and 1,347 were 61 years or above.

3.10 The offence-wise distribution of these convicts was as follows :

Sl. No.	Category of offence	Total
	Under IPC	
1.	Murder	25698
2.	Culpable homicide	3419
3.	Rape	811
4.	Kidnapping and abduction	505
5.	Dacoity	3793
6.	Robbery	1707
7.	Burglary	7567
8.	Theft	6126
9.	Riot	489
10.	Criminal breach of trust	335
11.	Cheating	602
12.	Counterfeiting	198
13.	Others	3600
	Total (i)	54850

Sl. No.	Category of offence	Total
Under local and special laws		
14.	Arms Act	962
15.	Opium Act	764
16.	Gambling Act	625
17.	Excise Act	1413
18.	Prohibition Act	1689
19.	Explosive and Explosive Substances Act	220
20.	Suppression of Immoral Traffic Act	66
21.	Motor Vehicles Act	296
22.	Customs Act	145
23.	Prevention of Corruption Act	217
24.	Indian Railways Act	2843
Total (ii)		9240
Grand total (i) + (ii)		64090

3.11 The number of prisoners sentenced to rigorous imprisonment of varying lengths was 59,586, of which 58,958 were men and 628 women. The number of prisoners sentenced to simple imprisonment of varying lengths was 4,504 of which 4,277 were men and 277 women.

3.12 The distribution of 59,586 convicts sentenced to rigorous imprisonment by length of sentence was as follows :

Length of sentence	Male	Female	Total
Upto 6 months	7941	123	8064
More than 6 months upto one year	10700	76	10776
More than 1 year upto 3 years	5264	43	5307
More than 3 years upto 5 years	4303	36	4339
More than 5 years upto 7 years	3235	28	3263
More than 7 years upto 10 years	1808	15	1823
More than 10 years upto life imprisonment.	25707	307	26014
Total	58958	628	59586

3.13 The distribution of 92,276 undertrial prisoners on the basis of the period spent in prisons as on December 31, 1980 was as follows :

Upto one month	33910
1 to 3 months	21758
3 to 6 months	21030
6 to 12 months	8608
1 to 2 years	4499
2 years and above	2471
Total	<u>92276</u>

3.14 During our visits to various prisons in the country we noticed that a majority of the persons lodged in prisons consisted of people belonging to the under-privileged sections of the society. It is felt that persons who have means and influence generally manage to remain beyond the reach of law even if they are involved in violation of the law. We also noticed that majority of the prison population was from rural areas with agricultural background.

3.15 Another feature of the prison population is that a large number of persons coming to prisons consists of first offenders involved in technical or minor violations of law. Such offenders, by and large, need no incarceration from reformatory point of view. However, in spite of various provisions in law, such as probation, for diversion of such offenders from institutional treatment to treatment in the open community they continue to be sent to prisons in large numbers.

3.16 More than half of the total prison population in the country consists of inmates awaiting or standing trial. They languish in jails unnecessarily because of delay in trials and their failure to furnish necessary security for getting a bail. They constitute more than 60% of the total inmate population. The presence of such a large number of undertrial prisoners is the main reason for overcrowding in prisons resulting into multiple problems for prison administration—smuggling of contrabands, indiscipline, violence and diversion of prison staff to routine jobs of searches, distribution of food, interviews, locking and unlocking.

3.17 Overcrowded prisons tend to be unmanageable on correctional lines. In some of the States prison barracks are so overcrowded that inmates have to sleep in shifts. Under such conditions, custody of inmates becomes the primary, and probably the only, concern of the staff and even the care and welfare of inmates is neglected. The frequent influx of large number of agitators further worsens the situation and aggravates the problem of prison management.

3.18 Conditions of living in most of the prisons are sub-human. Overcrowding of inmates and dilapidated condition of prison buildings render sanitary conditions and the state of personal hygiene extremely bad. Shortage of water supply, open drainage system, conservancy latrines and dearth of scavengers make prison environs unbearable in a large number of institutions. Since the system of quarantine is not effectively followed, a number of contagious diseases brought by new-comers easily spread in overcrowded barracks.

3.19 We found that at present a mass approach towards various problems of prisoners is in vogue. To facilitate the development of different types of correctional approaches

the inmate population has to be classified on scientific basis into homogeneous groups. We observed that there is no clarity regarding the contents of correctional treatment programmes amongst prison personnel at various levels. In the absence of such clarity, certain activities in prisons are equated to treatment programmes. It is our opinion that this confusion is a major hurdle in the development of proper programmes of correctional treatment in the prisons in the country.

3.20 The Committee was shocked to find that all categories of inmates were huddled together in most of the prisons. Even women, children, young offenders and adults were not effectively segregated. There is absence of proper classification of prisoners and diversification of institutions to facilitate treatment of prisoners according to their needs.

3.21 The Committee has felt special concern about the plight of women, children and young offenders in prisons. In the entire country there are only six institutions for the confinement and treatment of women offenders. Most of the States have only a section of one of the central or district prisons for keeping women prisoners under the overall control of male staff. There is utter lack of proper treatment programmes for them. Their stay in enclosures right inside the prison meant for male prisoners often exposes them to all sorts of undesirable risks.

3.22 The presence of destitute, vagrant and delinquent children in prisons of some States was shocking. We found that in some prisons destitute children of even five years of age were kept. It is surprising that in a welfare State with a national policy on children and legislation for special care and treatment of delinquent, neglected and wayward children, thousands of them are confined in prisons.

3.23 It has for long been recognised that young offenders in the age group of 16 to 23 years can be redeemed from a life of crime with proper care. They require a different kind of approach in institutions specially meant for their training and treatment. Borstal Schools Acts were passed in the past for this purpose. But the implementation of the provisions of these Acts has not been satisfactory. Necessary infrastructure under these Acts has not been created to deal adequately with the problems of young offenders. There are only 11 Borstal schools and 8 juvenile jails with inmate capacity of 3929 for the treatment of young offenders in the entire country which has about 16800 young offenders in this age group. Eight States and all the nine Union Territories have no Borstal schools or juvenile jails. As a result, most of the young offenders are confined in prisons with adults and are, thus, exposed to the degenerating impact of prison atmosphere.

3.24 Inadequate medical services and the absence of psychiatric services in prisons add to the difficulties of prison administration. There is a lack of proper facilities for segregation and treatment of inmates suffering from infectious diseases and mental disorders. While the lot of average prisoner leaves much to be desired, that of the criminal lunatic is much worse. These individuals are huddled together under the most unhygienic conditions, totally uncared for and quite frequently ill-treated. Psychiatric treatment is afforded in a very few jails and, therefore, in most jails these inmates, bereft of reasoning and with poor capacity of communication, are neglected more than the normal prisoners. Some of the criminal lunatics have stayed in the prisons for more than 20 years without their trial having even begun.

3.25 In some jails there are mentally ill persons who have not committed any crime. The State does not provide adequate psychiatric services and so these "wandering and dangerous lunatics" (section 13, Indian Lunacy Act) are sent to jails and kept there indefinitely. These unfortunate non-criminal lunatics receive hardly any treatment and are under the care of persons untrained in psychiatric methodology. They are exposed to the unhealthy environment of prisons, and are deprived of the care and treatment which any mental hospital in the country could provide.

3.26 The existing prison buildings are not functionally suitable. Most of them were constructed with the point of view of custody but even such buildings are by and large in a dilapidated condition. It is particularly difficult in these buildings to adhere to the basic standards of security and discipline ; they do not even meet the basic requirements of life compatible with human dignity.

3.27 Prison industries and work programmes are archaic and devoid of any rehabilitative value for inmates. Industrial equipment and manufacturing processes are generally crude, and modernisation of prison industries has not received any attention. The jobs are monotonous and the incentives to work are either absent or very meagre. In a number of district prisons there are no industries at all and the inmates just idle away their time doing nothing. Our impression about prison industries and work programmes is that they are ill planned, antiquated, wasteful and unproductive and are little suited to equip inmates with any useful skill which would help them in finding gainful employment after their release.

3.28 Some useful corrective programmes initiated by imaginative prison personnel in the past are now fading into disuse. Even such purposeful institutions as open prisons have deteriorated, offering hardly any incentive even to long term prisoners. Mismanagement of these institutions has resulted in the loss of their basic character as a progressive measure for reformation and rehabilitation of prisoners.

3.29 The facilities of leave and remission which were designed as incentives to offenders for improving their conduct during their stay in the prison have also degenerated into meaningless routines.

3.30 The predicament of life convicts is much worse. The insertion of section 433A in the Code of Criminal Procedure, making it mandatory for most of the lifers to serve at least 14 years of actual imprisonment before being considered for premature release, has had an adverse effect on them. It has damped their spirits for improving their behaviour and work skills. A recent ruling of the Supreme Court of India that the period spent by lifers in custody during investigation, enquiry or trial shall not be set off against their sentence has further aggravated their plight.

3.31 During our visit to various prisons in different States and Union Territories, and during our interviews and discussions with inmates and staff, complaints were made to us regarding corruption and malpractices in prisons and maltreatment of prisoners. It was alleged that trafficking in drugs, use of intoxicants, favouritism, unwarranted use of force, and deprivations are common things in our prisons. The prison staff has generally become callous and insensitive. It even uses bad characters, hardened criminals and 'dadas' in perpetrating atrocities on other prisoners and indulging in corrupt practices. The institution of convict officers only helps in perpetuating these nefarious and objectionable activities. The common prisoner generally makes no complaints for fear of reprisal from the staff. There is no effective system or machinery for looking into even the genuine grievances of prisoners.

3.32 On a number of occasions, prisoners have gone on strike and have resorted to riots in several States during the past some years to press their demands for better prison conditions and for redressal of their grievances. They have struck work in the factories and have assaulted prison personnel to demonstrate their anger against corruption, malpractices and mal-treatment.

3.33 The condition of sub-jails and police lock-ups is extremely deplorable. A large number of these institutions have no arrangements even for the basic needs of life. They are the most neglected institutions of the criminal justice system.

3.34 The Committee found that there is no one to help or guide prison inmates on legal matters affecting their criminal cases in law courts. A number of inmates just cannot afford a lawyer because of their poverty. Even at places where there are voluntary Free Legal Aid Societies, the communication gap between them and the needy inmates renders such societies ineffective.

3.35 The organisational structure of the department of prisons in various States and Union Territories is not only divergent but is also inadequate and ineffective. The scope of functions of the department differs from State to State. Adequate attention has not been paid to develop prison service as a career service. It was observed that training programmes in most of the States have deteriorated very much and do not serve the purpose in view. Consequently, there is an acute shortage of professionally qualified and trained prison personnel who could properly understand their job requirements and help in achieving the objectives of the department. Even where sufficiently senior departmental officers are available, the prison department is generally headed by officers from other services including the police. Consequently inspections of prisons have become nominal, infrequent and ineffective, and provide little professional guidance or leadership to staff. Conditions of service in the department are so unattractive that persons of requisite qualifications and talents do not come forward to join the prison service. Discipline and morale of prison personnel are very low. There is lot of dissatisfaction amongst them. The accumulated discontent of prison staff has on several occasions erupted in the form of strikes and agitations during the past some years.

3.36 The organisation and administration of prisons in the country is still governed by the antiquated Prisons Act of 1894. It has not undergone any substantial change during of the past almost one century. The provisions of this Act do not meet the needs of contemporary correctional thinking. Most of the States and Union Territories have not revised even their jail manuals in accordance with the provisions of the Model Prison Manual.

3.37 The Committee observed lack of coordination among the police, prosecution, judiciary, prisons and probation. There is no common forum at district, state or national level where field staff or policy planners of these inseparably related branches of the criminal justice system could meet and discuss common problems periodically.

3.38 The institution of prison visitors was created long back and it was expected that official and non-official visitors will regularly visit prisons and apprise the Inspectors General of Prisons and the Government about the conditions prevailing there. We are, however, distressed to record that the system of prison visitors has become almost defunct in most of the States and Union Territories. At many places boards of visitors have not been constituted and at places where such boards exist they seldom visit prisons.

3.39 Voluntary public participation by welfare organisation in the treatment and correction of offenders cannot legitimately be expected when the Government institutions set up for the purpose do not themselves feel interested in the achievement of departmental objectives. Any attempt by voluntary agencies to extend their services for the welfare of prisoners is looked upon with suspicion by prison personnel. They construe such attempt as intrusion in the administration of prisons and are afraid that involvement of voluntary organisations in prison programmes might expose their mismanagement and weaknesses.

3.40 After an overall view of the existing conditions in prisons, we are constrained to record that prison organisation in India does not conform to the required standards of a correctional department. As has come to the knowledge of the Committee through its visits to prisons in various States and Union Territories and through other methods of study, the existing prison organisation in the country is in disarray and is not properly equipped to achieve its objectives.

3.41 It is not that thought was never given in the past to the maladies of the prison system of our country. In the preceding chapter we have given a brief history of prison reforms. During our deliberations we have examined and made use of a number of invaluable suggestions and recommendations made by various committees/commissions constituted in the past at state and national levels to reform the system. At relevant places in this Report, we have quoted or reiterated these suggestions to emphasise the need and necessity of their implementation. It is unfortunate that during the intervening long period these recommendations have generally not been implemented due to lack of will on the part of State Governments and Union Territory Administrations. This demonstrates lack of seriousness about prisons reforms which constitute a pressing need of an awakened society. We must here mention that inspite of various attempts made in the past by the Ministry of Home Affairs, Government of India, the work of development of prisons and correctional programmes on scientific lines has not been included in the Five Year Plans.

3.42 We have discussed in detail, in subsequent chapters, the problems faced by prison administration in the country and have made specific recommendations to remedy its maladies. We have also proposed, in a separate chapter, a plan of action for effecting improvements in prison administration.

3.43 The Indian prison system is in a state of crisis. We would like to emphasise that the dimensions of the problems faced by our contemporary prison system are such as require prompt and effective action. However, before embarking upon the task of making detailed recommendations in subsequent chapters, we would like to broadly identify the pre-requisites for an efficient and efficacious prison system in which it would be possible to achieve the modern objectives of punishment through a correctional approach.

3.44 Protection of society as an objective of punishment has been universally accepted and this can be achieved through reformation and rehabilitation of offenders. A large number of offenders who are sent to prisons do not stand in need of therapeutic correctional treatment; they are as normal as the citizens outside the prison world. Therefore, they need only to be protected from the harmful effects of exposure to prison life. There is another category of offenders, however small, who do not respond to any kind of correctional treatment; such hardened, habitual, dangerous, recidivist prisoners have to be kept out of circulation for a longer time. The rest of them, however, need and deserve a treatment which would bring them out of the life of crime and resettle them in the community as normal citizens. A progressive prison system has, therefore, to operate keeping in view the aforesaid two aspects, viz., the protective aspect and the corrective and rehabilitative aspect.

3.45 The foundations of a progressive prison system have to be laid through certain essential pre-requisites. Having visited various prisons in the country and having discussed the problems of prison administration with prison personnel and other persons, we have come to the conclusion that unless certain conditions essential for a good prison system are created, prison administration as it exists in our country at present cannot function efficiently; it cannot protect prisoners from the harmful effects of life in prisons and it cannot claim that it is operating as an effective correctional system. It is our considered view that before thinking in terms of making our present prison system conducive to the achievement of desired objectives, certain basic pre-requisites have to be ensured to constitute the foundations on which the Indian prison system can be re-structured. Some important pre-requisites are identified as follows:—

3.45.1 The objectives of punishment, namely, protection of society and reformation and rehabilitation of the offender as have been emerging during modern times are not empty slogans. Since times immemorial crime has been a social problem, and social problems cannot be tackled merely through legislation or pronouncement of laudable objectives. Unless a large section of the society believes in the reformative and rehabilitative approaches, a progressive and modern system of prisons cannot become a reality. Public opinion

has to be built up in such a way that people accept that rehabilitation of wrong-doers in society as useful social units will, in the long run, be in the interest of the society itself. This can be achieved through the education of people regarding the all pervading implications of crime as a social and economic problem. People must be informed about the progressive and modern methods of dealing with the wrong-doers. Only when people are oriented and educated on these lines that a positive and wholesome culture favourable for the rehabilitation of offenders will permeate the society. Without such a favourable culture the prison system, howsoever modern and progressive, will not be able to achieve the desired results. We therefore, recommend that a regular plan aiming at creating a favourable rehabilitation culture in the society should be drawn up and implemented by the prison administration.

3.45.2 Crime is a social problem and the rehabilitation of offenders necessarily involves social work and social welfare approach. Social work succeeds only when people have intrinsic faith in it. People at the helm of affairs, the intelligentsia, the law-makers, those responsible for laying down prison policies, prison administrators, prison visitors, other components of the criminal justice system namely, the police, the prosecution and the judiciary, voluntary organisations working in the field of after-care of released prisoners, members of the Bar, and other persons and organisations connected with the prison system must necessarily have faith in the improbability of human beings. We recognize that such a faith cannot be built overnight. It takes decades of conscious effort to build up such a positive faith. During the course of our visits to the states and Union Territories, we did meet some people who believed that our prisons should adopt modern and progressive approach and techniques for dealing with offenders. These persons were some Members of Parliament, members from the Bar, some retired police officers and some eminent social workers. We are, however, constrained to record that at the higher echelons of governmental hierarchy there was a near total absence of anxiety about treating prison work as an area of social work needing a specialised approach. We strongly recommend that the Government of India should provide effective and forceful leadership in this field to state Governments and Union Territory Administrations. We believe that strong faith in the improbability of human beings, effective will and determined administrative action are essential for improving our prison system.

3.45.3 In the most of the prisons, corruption has become a way of life and inmates believe that without taking recourse to corrupt practices they cannot cope with the culture that prevails in and outside prisons. Needless to say that where such conditions prevail, corrective processes will not be effective at all. In fact corruption in prisons not only corrodes the whole prison system but also creates an atmosphere of total degeneration, affecting the thought processes of prisoners adversely. A prison system can effectively save inmates from dehumanizing experiences and can help in their ultimate rehabilitation in the society only when it is clean and purposeful. Each State and Union Territory should, therefore, immediately identify the areas of prison administration where corruption is rampant and take suitable measures to root this evil out.

3.45.4 Scientific approach towards treatment of offenders has not yet been accepted and adopted by prison administration anywhere in India. The techniques of psychotherapy, social work and social implantation should be adopted in prisons, depending on the requirements of individual cases of offenders. These techniques should be applied in a concrete and purposeful manner. Personnel with expertise and specialisation in these areas should be inducted in prison services.

3.45.5 Despite the multiplicity of functions and responsibilities of prison personnel and the complexities of prison work, the principles of modern management have not yet been introduced in any prison in India. Prisons are run on archaic methods of management. We, therefore, recommend that a special study of every institution and of the prison system as a whole in every State and Union Territory should be undertaken by management experts and a plan should be drawn up for introduction of modern principles of management

in the entire correctional system right from the office of the Inspector General of prisons to the remotest sub-jail in the State/Union Territory.

3.45.6 Overcrowding, whether periodic or chronic, adversely affects prison management. Decongestion of prisons should, therefore, receive high priority in all States and Union Territories.

3.45.7 To become an efficient unit and a centre of protection and correctional treatment a prison must essentially be a manageable unit. Without this, homogeneous grouping of prisoners for individualization of treatment will not become a practical proposition. We, therefore, recommend that the norms suggested by the All India Jail manual Committee regarding maximum population of a central prison (750) and that of a district prison (400) should be adopted by every State and Union Territory.

3.45.8 Living conditions of inmates have an important bearing on the protective and rehabilitative roles of prisons. Where conditions of living are sub-human, it would be practically impossible to organise any programme for the reformation and rehabilitation of offenders. We are, therefore, of the strong view that the living conditions in prisons must be improved and should be compatible with human dignity.

3.45.9 Training of prison personnel has remained woefully neglected in India. A cadre of devoted prison personnel, with positive attitude and faith in the improvability of offenders, can be created only if properly planned basic initial training and refresher courses are organised for them. A positive and constructive staff attitude is essential not only for bringing about all-round efficiency but also for developing prisons as centers of protection and correctional treatment.

3.45.10 Deep dissatisfaction prevails among prison personnel regarding long hours of duty, low pay scales and other poor conditions of service. A dissatisfied group of prison personnel having their own problems can hardly function effectively in areas such as re-education, guidance, counselling, behaviour modification and implantation of new and wholesome values among offenders. Improvement of service conditions and creation of a sense of satisfaction and security among prison personnel of all categories are factors essential for putting the prison system on a sound and efficient footing.

3.45.11 We had the occasion to discuss prison problems with senior prison administrators in the secretariate of States and Union Territories and except in a few cases we found that generally persons at the helm of affairs did not have a full grasp and appreciation of the problems faced by the prison administration. But for making certain general and platitudinous statements these persons could not make any significant contribution in terms of suggesting solutions to the chronic problems of prison administration. This is indicative of a very casual and superficial approach to problems of prisons at the level of policy formulation in most of the States and Union Territories. In order that the ministers, legislators and senior administrators dealing with prisons might have full grasp and correct perspective of the present situation in prisons, the problems faced by the system and their possible solutions, the government should regularly organise seminars, conferences, study tours, etc., for them.

3.45.12 State Advisory Boards for prisons assist the State Governments/Union Territory Administrations in formulation of prison policies. Such boards have not been set up in many States and Union Territories. Even where such boards have been set up, they are not functioning properly. There is no uniformity either in the constitution of these Advisory Boards or about their objectives and functions. Board meetings are few and far between, and there is almost no follow-up of the decisions taken. Constitution and strengthening of such boards will go a long way in the formulation of appropriate prison policies by the State Governments and Union Territory Administrations.

3.45.13 Internal and external audit are important tools for improving efficiency of institutions like prisons. We strongly recommend that the system of concurrent/internal audit and comprehensive audit by the organisation of the Accountant General should be established for every prison. This is essential not only for ensuring proper financial discipline and control but also for minimising corruption in the department.

3.45.14 Regular and thorough inspection of prisons is necessary to improve the tone of their management. Inspection is not merely a fault finding procedure. Inspecting officers should locate where the system has failed and suggest necessary remedial measures. Our general observation about the existing system of inspections is that it has become diluted and weak, the so-called inspections of prisons having become a mere ritual. In some States even this ritual is not observed. Sometimes a mere visit to a prison is now equated to an inspection. The difference between any such casual visit and a thorough inspection needs no detailed elaboration. If prisons have to be improved the system of thorough inspections has to be introduced. We recommend that daily inspection of the prison by the prison superintendent and periodical inspections by the Deputy Inspector General of Prisons and the Inspector General of Prisons should be made statutory responsibilities. Detailed guidelines for inspection of prisons, the frequency of inspections, the points and the areas to be inspected, the areas for development of a prison as centre of protection and correctional treatment, follow-up action on inspection reports, etc., should be incorporated in statutory rules. Senior officers who fail in the performance of their duties of inspection should be severely dealt with as we believe that weakening of the system of inspections is one of the main reasons for the present malaise in our prisons.

3.45.15 Protective and correctional objectives of prisons can be achieved only when an atmosphere of wholesome opportunities surcharged with positive values is created in these institutions and prisoners are exposed to such an atmosphere. In Chapter X on 'Treatment Programme's we have discussed as to how such an atmosphere can be created in an institution like the prison.

3.46 It is our firm belief that the development of Indian prison system on the desired lines would be possible only if the Government of India, the State governments and Union Territory Administrations accept these pre-requisites as tenets of inspection faith and base prison policies on them.

INCIDENCE OF COGNIZABLE CRIME UNDER THE INDIAN PENAL CODE AND POPULATION IN INDIA 1969 to 1979

Sl. No.	Year	Estimated mid-year population in millions	Total cognizable crime under the Indian Penal Code	Rate of crime per one lakh of population
1	2	3	4	5
1.	1969	522.5	845167	161.8
2.	1970	534.3	955422	178.8
3.	1971	551.2	952581	172.8
4.	1972	563.5	984773	174.8
5.	1973	575.9	1077181	187.0
6.	1974	588.3	1192277	202.7
7.	1975	600.8	1160520	193.2
8.	1976	613.3	1093897	178.4
9.	1977	625.8	1267004	202.5
10.	1978@	638.4	1310704*	205.3*
11.	1979@	651.0	1300859	199.8
		Percentage change in 1979 over 1969.		
		+24.6	+53.9	+23.5

@ Figures for 1978 and 1979 are based on Quarterly Crime Reviews.

* Includes figures for Assam on the basis of Crime in India 1978 as quarterly figures are not available.

SOURCE : CRIME REVIEW—1979 : Bureau of Police Research and Development, Ministry of Home Affairs, Government of India.

INCIDENCE OF CRIME, VOLUME OF CRIME PER ONE LAKH OF POPULATION AND PER-
TO 1978 AND

Sl. No.	Heads of Crime	1969	1974	1975	1976	1977
1.	2.	3.	4.	5.	6.	7.
	Total Cognizable Crime	855167 (161.8)	1192277 (202.7)	1160520 (193.2)	1093897 (178.4)	1267004 (202.5)
1.	Murder	14732 (2.8)	18649 (3.2)	17563 (2.9)	16673 (2.7)	18376 (2.9)
2.	Culpable Homicide not amounting to murder	N.A.	2514 (0.4)	2502 (0.4)	2584 (0.4)	2616 (0.4)
3.	Kidnapping & Abduction	8464 (1.6)	10543 (1.8)	11139 (1.9)	11250 (1.8)	12240 (2.0)
4.	Dacoity	6049 (1.2)	13697 (2.3)	12500 (2.1)	10910 (1.8)	12599 (2.0)
5.	Robbery	9922 (1.9)	22286 (3.8)	21656 (3.6)	17974 (2.9)	22725 (3.6)
6.	Burglary	145429 (27.8)	199878 (34.0)	192854 (32.1)	168655 (27.5)	193622 (30.9)
7.	Thefts	300140 (57.4)	436918 (74.3)	421891 (70.2)	365138 (59.5)	432049 (69.0)
8.	Riots	55796 (10.7)	80547 (13.7)	67241 (11.2)	63675 (10.4)	80449 (12.9)
9.	Criminal Breach of Trust	21118 (4.0)	22274 (3.8)	23267 (3.9)	23656 (3.9)	22868 (4.7)
10.	Cheating	12001 (2.3)	15388 (2.6)	17772 (3.29)	19588 (3.2)	19623 (3.1)
11.	Counterfeiting	739 (0.1)	718 (0.1)	951 (0.2)	887 (0.1)	7841 (0.1)
12.	Other I.P.C. Offences	270777 (51.8)	368873 (62.7)	371158 (61.8)	392907 (61.4)	449057 (71.8)

III-B

CENTAGE VARIATION DURING 1979 OVER 1969, OVER QUINQUENNIAL AVERAGE OF 1974 OVER 1978

1978*	Quinquennial average 1974-1978 (Q.A.)	1979*	Percentage varia- tion in 1979 +(increase) -(decrease)		
			Over 1969	Over Q.A.	Over 1978
8.	9.	10.	11.	12.	13.
1310704 (205.3)	1204939	1300859 (199.8)	53.	+8.0	-0.7
19133 (2.0)	18079	19939 (3.1)	+35.3	+10.3	+4.2
7000 (1.1)	3443	7340 (1.1)	N.A.	+114.3	+5.4
12685 (2.0)	11571	11839 (1.8)	+39.9	+2.3	-6.7
11749 (1.8)	12292	12706 (2.0)	+110.1	+3.4	+8.1
22088 (3.3)	21345	21597 (3.3)	+117.7	+2.2	-2.2
173204 (27.1)	185659	158484 (24.3)	+9.0	-14.6	-8.5
438499 (68.7)	418898	411834 (63.3)	+37.2	-1.7	-6.1
82362 (12.9)	74855	82878 (12.7)	+48.5	-10.7	+0.6
20475 (3.2)	22512	18359 (2.8)	+13.1	-18.4	-10.3
19095 (3.0)	18292	16506 (2.5)	+37.5	-9.8	-13.6
821 (0.1)	832	465 (0.1)	-37.1	-44.1	-43.4
503513 (78.9)	417992	538872 (82.8)	+99.0	+28.9	+7.0

*Figures are provisional.

SOURCE : CRIME REVIEW 1979 : Bureau of Police Research and Development, Ministry of Home Affairs, Government of India

STATEMENT OF INMATE POPULATION IN PRISONS IN INDIA ON VARIOUS DATES

Date	Total number of inmates	Source of information
1-1-1975	2,20,146	Ministry of Home Affairs
1-4-1977	1,84,169	Do.
1-1-1978	2,11,963	Do.
31-12-1978	1,85,655	Do.
31-12-1979	1,57,824	Do.
31-12-1980	1,59,692	Statistical data collected by this Committee.
30-6-1981	1,41,761	Ministry of Home Affairs

CHAPTER IV

LEGISLATION

4.1 We are living in an age when human values and human considerations are becoming more and more pronounced in determining the approach of the state towards its subjects in all relationships including administrative contacts. In modern times human rights have assumed a new significance and perspective. The United Nations Charter of Human Rights has been adopted and endorsed by many countries. India had taken a leading role both in the United Nations System and other world forums in articulating and promoting the ideals and values of human rights, in its wider range. The Indian national movement had always been in the forefront in the cause of human rights and freedom, as a basic condition for the growth of a democratic and healthy society. Our founding fathers had enshrined fundamental rights in the Constitution of India. Through the judgements of the Supreme Court, over the years, a new perspective of prison jurisprudence is gradually taking shape.

4.2 It is recognised that crime is an important and urgent social problem. After the advent of freedom, though various social legislations have been passed with a view to tackling the different social problems of India, a progressive legislation regarding the management and administration of prisons and the treatment of prisoners has not yet been passed. We strongly feel that the absence of a progressive legislation pertaining to prison administration is one of the principal causes as to why prison administration has not yet been modernised and put on a scientific basis in our country.

4.3 The Prisons Act of 1870 was amended in 1894 and consolidated under the Prisons Act, 1894. Prison administration is governed by this Act at present. Legislation pertaining to the management and administration of prisons is scattered in different Acts as follows:—

- (i) Prisons Act, 1894.
- (ii) Prisoners Act, 1900.
- (iii) Transfer of Prisoners Act, 1950.
- (iv) Prisoners (Attendance in Courts) Act, 1955.
- (v) Indian Lunacy Act, 1912.
- (vi) Borstal Schools Acts.
- (vii) Habitual Offenders Acts.
- (viii) Civil Jails Act, 1874.

4.4 The Prisons Act was enacted during the period of British raj in the nineteenth century. For obvious reasons the policies of the then British raj were reflected in the legislation. Since the beginning of the twentieth century a lot of new thinking has emerged regarding the objectives of punishment, management and administration of prisons and treatment of offenders. The objectives and policies as reflected in the legislation formulated during the British regime have now not only become outdated and

regressive but they have also been obstructing proper development of prison administration.

4.5 The Indian Jails Committee 1919-20 identified reformation and rehabilitation of offenders as the main objectives of punishment. During the succeeding decades, especially after the advent of freedom, jail reforms committees and commissions were appointed by various States with a view to improving conditions in prisons. The thinking behind the recommendations of all these committees and commissions was mainly directed towards humanising conditions of living in prisons. Converting Prisons into centres of correctional treatment on a scientific basis was not the main thrust of the recommendations of these committees and commissions. Following the reports of these committees and commissions some sporadic measures for humanising prisons were introduced. However, the Prisons Act of 1894 remained substantially unchanged. Minor amendments made by some States to the Act have touched only the fringe of the problem. To sum up, prison legislation is not only inadequate to meet the current problems of administration and management of Prisons and treatment of offenders but is also far behind the requirements of our contemporary times.

4.6 The All India Jail Manual Committee 1957-59 had made various recommendations pertaining to prison legislation. They had recommended that the Prisons Act, the Prisoners Act and other Acts relating to prisons and prisoners should be revised and incorporated in a single unified Act to achieve basic uniformity in prison administration and that the Government of India might prepare a comprehensive Bill combining all relevant provisions connected with Prison administration. The Committee had suggested that the Bill should be circulated to all the States for adoption. Pending enactment of such a comprehensive legislation the Committee had recommended some modifications in the existing Prisons Act, 1894, Prisoners Act, 1900, and Transfer of Prisoners Act, 1950.

4.7 In accordance with the recommendations of the All India Jail Manual Committee, the Central Bureau of Correctional Services, later reconstituted as the National Institute of Social Defence, prepared draft of a new prison legislation. On the basis of this preliminary draft, a Model Prisons Bill was prepared and circulated by the Ministry of Home Affairs, Government of India, to all States and Union Territories. We have studied this Model Prisons Bill and we are of the view that this Bill will have to be expanded so that the new proposed legislation incorporates the current trends of criminological thinking about a progressive and modern prison system and lays down scientific procedures regarding training, treatment and re-education of Prisoners aiming at their re-assimilation and rehabilitation in society as useful and law-abiding citizens.

4.8 The new progressive legislation should deal with all aspects of prison management and administration and treatment of prisoners. Unless such a legal frame work is provided ad-hoc efforts towards prison reforms would not solve the grave problems and deep rooted maladies of prison administration.

4.9 The rules and regulations governing management and administration of prisons and treatment of prisoners have been embodied in the a jail manuals and executive instructions issued by the Inspectors General of Prisons from time to time for the guidance of prison personnel. The All India Jail Manual Committee 1957-59 had prepared a Model Prison Manual which was circulated in 1960 by the Government of India to all the States and Union Territories for the purpose of revision of their jail manuals. The necessity of revising jail manuals had been emphasised time and again but with little result. Twenty years later in the Conference held in 1979 the Inspectors General of Prisons expressed their concern about the failure of the State Governments and Union Territory Administrations to revise their jail manuals. The position has not changed much since then.

4.10 The position regarding revision of jail manuals in the States, as made available to us, is enclosed at Annexure A to this chapter. Some States have informed that the jail manuals have been revised while some others have stated that the work of revising the jail manuals is in progress. The fact, however, remains that the jail manuals of most of the States have not been revised and updated. Even some Union Territories are following the jail manuals of neighbouring States. In States and Union Territories where jail manuals have been revised, their provisions are not being fully implemented. Even the provisions of the unrevised old jail manuals are not being fully implemented in proper spirit in States and Union Territories where they have not been revised.

4.11 There are wide variations in prison rules and regulations in various States and the Union Territories. Concerted measures are urgently needed to establish minimum standards, uniform practices and procedures regarding the management and administration of prison and treatment of offenders through revision of jail manuals. The efforts so far made by the Government of India have not been wholly successful and there is need for greater thought in this direction.

4.12 A thorough reform of the prison law and administration at the national level will still leave unsolved certain basic problems of correctional administration and criminal justice system. Prison reform, if not accompanied by some fundamental thinking and action on the reform of the administration of criminal justice system, will not by itself achieve substantial results. The basic strategies of criminal law reform can be summed up under four rubrics: delegalization (or deregulation), decriminalisation, depenalization and deinstitutionalisation.

4.13 There exists in India a tendency towards over legislation. It is generally felt that for every social problem laws and regulations have to be enacted. The statutes provide the executive with vast rule-making powers; some of these rules even create offences and have vital bearing on correctional and criminal justice systems. Proliferation of law brings in its wake additional work for police, prosecutors, judges and prison personnel at a time when adequate manpower planning and resource outlays based on such planning do not seem possible. Over-recourse to legislation adversely affects the legal system in two principal ways. First, to the extent that a substantial number of laws remain unimplemented or unenforced, people's respect for law is likely to be diminished. Second, to the extent that the evergrowing laws are enforced, the enforcement involves, necessarily, disregard to some of the values of the rule of law including human rights. No jail administration, for example, can act in accordance with jail manual if more and more behaviours are designated criminal and entail prison sentences. In this sense also, in the long run, the image and authority of law suffer in the public mind.

4.14 Decriminalization is an aspect of deregulation. It suggests that not all activities or conduct sought to be regulated by the legal order need to be so regulated by recourse to criminal law. In other words, it invokes legislative process liberating certain conduct previously described as prohibited by criminal law. In India large areas of human behaviour are regulated by criminal law, and for every problem perceived to be a major problem new categories of offences are created. Decriminalization policies invite attention to a constant review of why certain conducts should be, and remain, criminal offences.

4.15 Depenalization invites legislative activity "by which certain criminal offences are converted into matters to be dealt with administratively or by civil agencies, thus reducing the stigmatizing effect inherent in the criminal law and easing the burden of the criminal courts". Not all behaviour needs to be controlled, or can really be controlled, by criminal law sanctions. Civil sanctions involving loss of status or of privileges or of benefit (e.g. for unfair means at examination, instead of making it a criminal offence, it may be made a civil wrong where the student resorting to it has to pay a fine or his admissions and

degrees may be cancelled); or effective censure for breach of certain norms; or cancellation of licences, permits and quotas for certain offences might prove more effective.

4.16 Even if certain conducts are to be regulated by criminal sanction, it is not necessary that the sentence of imprisonment should be the standard sentence. All over the world there is now considerable rethinking on the future of the prisons. Available empirical data suggest that the tasks of rehabilitation and resocialization may be effectively performed only if there are small and manageable prison populations, with adequate personnel and other resources, with fuller provision for after-care arrangements, and with a general spread of the culture of rehabilitation in the society as a whole. On the other hand, in the absence of these conditions prisons everywhere are regarded as criminogenic and even brutalizing systems, imposing heavy resource and moral costs on society, and serving no other useful function than a temporary incapacitation of the offender.

4.17 Desinstitutionalization means simple alternatives to prison and related institutions. Deinstitutionalization necessarily involves new approaches to penal reform. Measures of deinstitutionalization may include, as identified in the Sixth United Nations Congress on Prevention of Crime and Treatment of Offenders held at Caracas in 1980, the following:—

- (i) Pre-trial alternatives, that is, “procedures and facilities for suspending criminal Proceedings on the understanding that the offender accepts guidance or treatment from agencies outside the system of criminal justice”;
- (ii) liberalized systems of bail and sureties ;
- (iii) Sentencing alternatives (fines, suspended sentences, probation, “shock Probation” combining Probation with short periods of incarceration, mandatory reporting to prisons, community service orders and corrective labour, and periodic detention); and
- (iv) Post-judicial alternatives (e.g., conditional release, parole, half-way houses, after-cares programmes).

4.18 Even a bare enumeration of these measures of deinstitutionalization suggests viable programmes for penal reform in India. There is tremendous scope for exercise of legal imagination in this area. Deinstitutionalization will greatly help prison administration in achieving its objectives effectively.

4.19 The Committee notes with alarm the tendency towards prescription of short term imprisonment in most statutes. It has been established all over the world that short term imprisonment is neither deterrent nor corrective. Indeed, it might further criminalize short term prisoners who constitute a large percentage of prison population. The Committee draws attention to the proposed amendment to section 53 of the Indian Penal Code suggested by the Report of the Joint Committee on the Indian Penal Code (Amendment) Bill, 1972. The amendment suggests in addition to imprisonment, alternatives such as

- (i) community service;
- (ii) disqualification from holding office;
- (iii) order of payment of compensation;
- (iv) forfeiture of property;
- (v) fine; and
- (vi) public censure.

4.20 This very laudable attempt, which needs to be carefully examined and expanded in the light of penological literature, at providing an alternative structure of non-institutional sentences has yet to be approved by the Indian Parliament. All these measures are intended to ensure a policy of deinstitutionalisation, which is now accepted as a major goal of civilised criminal justice system everywhere, as evidenced by the deliberations and resolutions of the Sixth United Nations Congress on Prevention of Crime and Treatment of offenders. Measures of this kind help to minimise the staggering overloaded on correctional institutions and equip them better to handle the short and long term rehabilitative objectives.

4.21 In addition, measures such as release on probation, payment of fine through instalments or through the employer or through work in work centres, etc., offer possibilities as alternatives to short term imprisonment. Work in attendance centres or in work camps can also be a viable alternative to short term imprisonment. We are of the view that all such alternatives to short terms of imprisonment should be explored and incorporated in the criminal law. Details in regard to new concepts such as community service, work centres, etc., may have to be worked out so that they become practical propositions. Adequate and effective infrastructure for the implementation of these new approaches will also have to be established in all these fields.

4.22 Section 303 of the Indian Penal Code lays down that whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death. We have given thought to the provisions of this section and are in agreement with the opinion of the Joint Committee on the Indian Penal Code (Amendment) Bill, 1972 that "there should not be a provision to the effect that a sentence of death should invariably be passed on a person who committed a murder while under sentence of life imprisonment and the question whether in such a case a sentence of death or imprisonment for life should be awarded would depend upon the circumstances of the case and left to the discretion of the court". Accordingly as suggested by the Joint Committee, section 303 of the Indian Penal Code should be deleted and its provisions brought suitably under section 302.

4.23 (a) Section 302 of the Indian Penal Code says that whoever commits murder shall be punished with death or imprisonment of life and shall also be liable to fine. Since this section prescribes death as one of the punishments, a person, sentenced to imprisonment for life under this section, has necessarily to stay in prison for 14 years in view of the provisions of section 433 A of the Code of Criminal Procedure. We have discussed in detail the question of treatment of prisoners sentenced to life imprisonment in Chapter XVI of our Report and have observed that incarceration for 14 years is not necessary from the point of view of the protection of the society and will totally destroy the chances of reformation and rehabilitation of offenders in almost all cases. In view of this position we are of the view that section 302 of the Indian Penal Code should be suitably amended so that it is only in cases with extremely aggravating circumstances that death is prescribed as one of the punishments. In this regard we agree with the amendment of section 302 of the Indian Penal Code suggested by the Joint Committee. However, we feel that even after the amendment of section 302 of the Indian Penal Code there would be need for suitable amendment of section 433A of the Code of Criminal Procedure. It is not unrealistic to say that some prisoners, who might be sentenced to imprisonment for life under sub-section 2 of the proposed section 302 of the Indian Penal Code, would respond to the treatment in prisons and their release before 14 years of actual imprisonment would not constitute any danger to the society; on the other hand it may be helpful in their re-assimilation and rehabilitation in the society. Therefore, even after the amendment of section 302 of the Indian Penal Code, amendment of the section 433A of the Code of Criminal Procedure as recommended by us elsewhere would be necessary.

(b) When section 302 of the Indian Penal Code is amended as suggested in sub-para (a) above, it will prescribe punishments for two degrees of murder: (i) murder in which

imprisonment for life would be retained as a maximum punishment; and (ii) murder with highly aggravating circumstances in which death would be one of the punishments. In this regard we feel that under the first category, imprisonment for life should not be a mandatory punishment. There might be some cases under this category in which a punishment less than imprisonment for life could meet the ends of justice. Therefore, courts should be given discretion to impose imprisonment for a lesser term in suitable cases under this category. While amending section 302 of the Indian Code this should also be kept in view.

(c) As the law is interpreted by the courts today the sentences of imprisonment for life means incarceration till death unless the appropriate Government exercises its discretion under section 432 of the Code of Criminal Procedure for premature release. Thus there is an element of indefiniteness about the maximum period which a person sentenced to imprisonment for life has to spend actually in the prison. In any case under the present law it cannot be less than 16 to 19 years including the period spent under custody during investigation, inquiry or trial. We feel that the imprisonment for life should be imprisonment for a fixed term extending over a reasonable period of time which may be determined by the legislature and incorporated in the Indian Penal Code. This will also help persons sentenced to imprisonment for life in getting benefit of section 428 of the Code of Criminal Procedure.

4.24 The Code of Criminal Procedure has been substantially amended. But despite the far reaching amendments to this Code a large number of undertrial prisoners are detained in prisons in many States for years together. It, therefore, needs to be examined whether the amended Code of Criminal Procedure has been fully implemented and that too in the proper spirit in various States.

4.25 The addition of section 433 A to the Code of Criminal Procedure has cast a dark shadow on the lives of prisoners sentenced to life imprisonment. A person convicted after December 18, 1978 and sentenced to life imprisonment cannot now normally hope to be released earlier than 14 years of actual imprisonment. This means that the remission system which is expected to function as an incentive for good behaviour, self-discipline and reformation, has no meaning to this group of prisoners. This has created many typical problems for prison administration. Lifers now interpret that life imprisonment is virtual entombment for 14 long years in prison. This feeling has killed all the hopes and initiative of lifers. They have no interest in prison programmes such as work, vocational training, education, etc. Bereft of all hopes for their future life they are simmering with discontent. They harbour antifeelings towards everything around them. In a decade or so a large block of lifers sans all hopes for early and premature release on the basis of their good behaviour and self discipline will get concentrated in prisons all over India. It will be naive to expect that lifers hereafter will be interested in their self-improvement and social re-education. A chronic discontent amongst lifers, apart from having adverse effects on prison discipline and morale, is bound to explode into violent prison riots.

4.26 The Committee recognises that there existed two reasons for enacting section 433 A, Code of Criminal Procedure.

(i) It enabled judges in case of capital offences to give a substantial life sentence in lieu of death sentence; in that sense section 433 A was pro-abolitionist measure.

(ii) It tried to take care of many an aberration created in the exercise of remission powers by the Executive which sometimes resulted in persons sentenced for life in lieu of death sentence being released even before they had served 8 to 10 years, and sometimes much less, for their crimes.

4.27 The Committee, however, feels that in achieving the objective of correcting aberrations either in sentencing or in remission policies, or in both, section 433A of the Code