PRISON VISITING SYSTEM IN INDIA

(*community intervention into prisons*)

One of the main objectives of incarceration, right from the inception of this concept in a sovereign state, was to curtail the liberty of movement and the freedom of initiative of a person, if he was found to have violated the established law of the land. Prisons took shape as institutions of state retribution as a natural outcome of the materialization of this objective.

Resultant segregation of 'offenders' from the society, and the obligation of prison guards to restraint their movement against escape from lawful custody, constrained the architects of prison buildings to burden them with high walls, narrow galleries, labyrinths, shutters, locks, chains, fetters, cells and places of solitary confinement. This physical structure of prisons and the archaic rules of management of these 'punitive' institutions endowed them with a cover of obscurity in which fundamental human rights could be unofficially violated and officially denied.

Prisons grew to be places of low visibility where inhuman and even cruel conditions could prevail. The possibility of inflicting injury and injustice on inmates always lurked in these closed institutions. State supervision over day-to-day happenings within such institutions became a mere formality and the surveillance of the society was conspicuous by its absence.

In spite of the fact that prison system has, during the past some decades, undergone a massive change both in its objectives and in its physical structure, the basic character of prisons -- as closed institutions with little public scrutiny -- continues to this day.

The need for non-government intervention in prisons was recognized as early as 1894 when the Prisons Act accepted that a system of visitors would be of value in providing humanitarian aid to prison inmates secluded from the society. The Cardew Committee appointed by the British Government in that year devoted a whole chapter to making this system more effective and efficacious.

As a result **the concept of non-government intervention in the management of prisons was for the first time conceived in The Prisons Act of 1894**. Although this concept did not find place in the body of main provisions of the Act, but in Section 59, which speaks of powers to frame rules consistent with this Act, the State Governments were empowered to make rules "for the appointment and guidance of visitors of prisons" in sub-section (25). The present provisions for official and non-official visitors in Prison Manuals of various states are the result of this sub-section (25) of section 59 of The Prisons Act of 1894.

The first comprehensive work of studying prison conditions and of making remarkably suitable recommendations for the reformation of both prisons and prisoners was done by the Indian Jails Committee, 1919-20 appointed on the 28th day of April, 1919 under the chairmanship of Sir Alexander G. Cardew, ICS, Member of the Executive Council, Madras, with six distinguished members. Quite a large number of recommendations made by this committee still hold good after the expiry of 80 long years. This Committee devoted a whole chapter (Chapter XXVIII) to the improvement in the system of 'Visitors' of prisons.

Addressing the need for external supervision on prisons the Committee wrote :

> *The plan of appointing persons, official and non-official, to serve as visitors to jails seems to us to form a very valuable part of the Indian system of jail administration. In the first place, it insures the existence of a body of free and unbiased observers, whose visits serve as a guarantee to the Government and to the public, that the rules of the Prisons Act and Prison Manuals are duly observed, and that abuses, if they were to spring up, would be speedily brought to light. In this respect the Indian system is, we think, superior to that followed in other countries where the visitors become a part of the prison organization, with definite powers and duties, and so become more or less identified with the prison administration. In India, they remain impartial and independent. In the second place, the existence of non-official visitors is specially valuable as supplying a training ground where members of the public can obtain an insight into jail problems and learn to take an interest in prisons and prisoners.* ***It is of great importance to create such an interest in the public mind and the appointment of non-officials is one of the best methods of promoting this end****. Although, therefore, some of our witnesses have criticized the system, we think it has only to be extended and improved in order to be productive of even greater advantages in the future than in the past.*
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> *(Report of the Indian Jails Committee, 1919-20 – para 511.)*

Legal Provisions

Sub-section (25) of section 59 of The Prisons Act, 1894, the current basic law for the management of prisons in the country provides for the framing of rules for "the appointment and guidance of visitors of prisons". The Indian Jail Committee, 1919-20, had laid down guidelines for the appointment of prison visitors stating that –

> *The person selected for the position of a non-official visitor of a jail should be chosen on the ground of* ***definite qualifications****, such as an interest in prison matters or other social work, or ability and willingness to assist in finding work for prisoners on release. …… Selection should not be made solely on the ground of social position, wealth or political influence, but on the basis of special fitness….* (515 – Report of the IJC- 19-20)

Only a few states of independent India incorporated these guidelines as legal provisions for the appointment of non-official visitors. One such state was Maharashtra. Rule 6 of Chapter XV – Prison Visitors – of the Prison Manual of Maharashtra dealing with 'Appointment of Non-official Visitors' says :

> *The appointment of non-official visitors (other than members of the Maharashtra Legislature) shall, subject to the provisions of sub-rule (4), be made by the State Government* ***from amongst persons who in its opinion, are interested in the administration of prisons and are likely to take interest in the prisoners and their welfare both while they are in prison and after their release****.*

These guidelines and some of the other rules governing the operation of prison visiting system in Maharashtra need to be emulated by other states. Rules in most of the other states of the country do not specify any qualification for a person to be eligible for appointment as non-official visitor of a prison. They empower the State Government to appoint non-official visitors, six for each Central Prison, three for each district prison and two for each lock-up jail, on the recommendations of the Divisional

Commissioner or Collector and District Magistrate of the district in which the jail or lock-up is situated'.

Inter alia these rules provide for the duties of visitors, procedure for the removal of a non-official visitor and the powers of the District Magistrate to cause the preparation of a 'Roster for monthly visits' and to form a Board of Visitors for each prison in the concerned district. A visitor, so long as he retains his official connections with the jail, is precluded from giving publicity in the press or otherwise to matters connected with its administration.

The rules also provide detailed guidelines on the points to be noticed by visitors during their visit to prisons, but, unlike the rules of Maharashtra, there is no mandate about giving a copy of these rules to non-official visitors at the time of their appointment.

Duties and Functions of Prison Visitors

Prison Rules of various states prescribe what the prison visitors should do and what they should not. Generally speaking these duties and restrictions are as follows:

Do's

- It is the duty of a visitor to satisfy himself that the law and rules regulating the management of prisons and prisoners are duly carried out in the prison;
- To visit all part of the prison and to see all prisoners;
- To hear and inquire into any complaint(s) that any prisoner may make; he may for this purpose talk to any prisoner out of the hearing but in the full sight of the officer accompanying him;
- To see, if necessary, any book, paper or record (other than those of confidential nature) connected with the administration of the prison;

Don'ts

- No visitor may issue any order or instruction to any subordinate jail officer;
- No visitor shall touch prisoners' rations in the kitchen, but he can taste the food if he so desires.
- Non-official visitors may not visit prisoners on hunger strike or prisoners who are ill and are not allowed to be interviewed on medical grounds or those detained under the Preventive Detention Act.
- Non-official lady visitors shall not visit men's portion of the prison and shall confine themselves only to the women's section;
- Non-official or official visitors shall not, without the previous sanction of the Superintendent, hold conversation with any under-trial who may happen to be their client or relation.

Now, there are some provisions which are out-dated and do not fit in the present democratic system. Why should an NOV be debarred from visiting a prisoner on hunger strike? May be that this prisoner has taken resort to hunger strike as a last option for seeking redress to some unresolved complaint, and a non-official visitor has a right to listen to such complaint. Similarly, the restriction on non-official visitors to meet prisoners kept under the Preventive Detention Act (or any such preventive law) is also an archaic provision that suited the British rule in India, and should now be lifted.

Even the ban on visitors to touch rations in the kitchen, or on lady non-official visitors to visit the men's section are uncalled for. If a visitor properly washes his hands, why should he not be allowed to touch and feel the quality of rations. And, in an age when there are women superintendents at men's jail, why should lady visitors be not allowed to visit the entire prison with appropriate security arrangements.

There is yet another controversial provision in rules which says that a visitor, so long as he retains his official connections with the jail, is precluded from giving publicity in the press or otherwise to matters connected with prison administration. There is a strong argument that this provision is a violation of the fundamental right of speech and expression that every citizen enjoys under the Constitution and it cannot be withdrawn from a person only because he has been appointed a visitor of prison.

Such restriction could perhaps be permissible or even justifiable a hundred years ago when it served the interests of British Rule because the visitors provided a cross check on prison administration and the government did not want any criticism to pass to the media without proper censor. Democratic principles had not come into play then, and the government wanted all infirmities to be kept within the system created by it. But, in a democratic set-up, any flaw in administration or neglect on the part of concerned authorities that deserves public notice for an accelerated remedial measure, should be brought to light through media, particularly when we have accepted the principles of transparency in administration through citizens charters and the right to information. And, if the institution of prison visitors (official or non-official) that has been introduced to break the obscurity of prisons, is forced under law to conserve the same obscurity, the very purpose of its institution shall be defeated.

Matters in this respect shall automatically improve if the qualifications, antecedents, experience and social status of persons appointed as prison visitors are duly considered at appropriate levels and nominations are made strictly according to the procedure laid down in the rules.

Board of Visitors

Obscurity to society has perhaps been the main reason why it has been so difficult and sluggish to bring about improvement in prison conditions. This obscurity results partly from the basic nature of prison institutions and partly from the predisposition of management combined with the complete disinterest of society in general. This was perhaps foreseen by the framers of the Prisons Act a hundred years ago and therefore they slid a provision in the Prisons Act to bring about the institution of prison visitors. It is also for this reason that some kind of extra-departmental and social intervention has been sought through the appointment of visitors of prison from out side the prison set-up.

The formation and involvement of a board of visitors by the state is the only area where the prison bumps into society. The way, state provided for the formation and functioning of the board of visitors tells us something about the nature of the role it expected society to play in the process of the management of prisons.

Rules provide for the constitution of 'Board of Visitors' through the office of the District Magistrate/Divisional Commissioner. The purpose of the constitution of these Boards is –

- To regulate prison visits by official and non-official visitors through the 'roster of visitors' ,

- To ensure at least one visit of the prison per month by an agency other than the officials of the department,
- To involve all persons nominated as official or non-official visitors and to give each one of them some occasions of visiting prison, and
- To provide a forum for discussing problems of prisons and prisoners outside the intervention of the prison department.

All non-official visitors of a jail except those debarred by the Government are eligible to be on the Board of Visitors. Rules provide that a Board of Visitors shall be selected biennially by the Collector and District Magistrate of the concerned district from amongst the official and non-official visitors of each prison and this Board (in entirety) shall inspect the prison twice a year on dates to be fixed by the superintendent in consultation with the President and members of the Board. The Board shall consist of two official and two non-official members, one of whom shall be nominated Chairman by the Collector and District Magistrate. At the District level, the Collector himself is the chairperson of this Board but at lock-ups (sub-jails) the Sub-divisional Officer, City Magistrate, Extra-Magistrate or Judicial Magistrate is the Chairperson. A meeting of the Board of Visitors is required to be held once in a quarter.

In Sunil Batra case the Supreme Court expressed that the Board of Visitors comes in handy for the protection of the rights of prisoners. It thought that the board, which includes judicial officers and people from varied social backgrounds and is vested with visitorial powers, could be instant administrative grievance mechanism to protect the rights of prisoners. It specifically cautioned visitors that the pressure of warders or officials were inhibitive and must be avoided. It also suspected that open inquiry of prisoners in the presence of the prison official would lead to reprisal. Whatever have been the directions of the court, the prison department has been following only the colonial document of prison manual in the manner it conceived and has structured the role and scope for intervention of society and judiciary in its own way.

The prison manual explicitly and in unambiguous terms subjects all possible means of communication between the prisoners and the outside society to restrictions. It conferred unbridled and unguided powers to the level of absurdity in the hands of prison superintendent. These rules fail to stand the test of articles 14, 19 and 21, of the Constitution, which subject the actions of state to non-arbitrariness, reasonableness and principles of natural justice. This draconian document based on the notions of 19th century criminality, is yet be revised. It continues to be applicable as it still serves the purpose of present state. A look into the kind of social arrangement made in the prison by the law gives us a hint about the true nature of its functioning in the society.

Court Rulings on the Role of Prison Visitors

The role of prison visitors as independent observers of the functioning of prisons has been repeatedly recognized by the higher and apex judiciary. It came into sharp focus in Ranchod Vs. State of M.P. (1986 16 Reports M.P. 147) in which the callous behaviour of jail doctors, maltreatment by jail staff and tampering of jail records came up for judicial scrutiny. All this went on for years with the Prison Visitors and Visiting Boards apparently oblivious of it all. According to the facts of the case an inmate of the Central Prison of Indore had died of utter negligence on the part of prison administration and the medical staff posted there. A letter written by two co-inmates of the deceased was admitted by the High Court of Madhya Pradesh as a writ petition and was decided by Hon'ble Justice V.D.Gyani and Justice B.B.L

Shrivastava. Reacting sharply to the facts on record Justice V.D. Gyani, Judge of M.P. High Court observed :

> *"The petition has many facets exposing the negligence of authorities, callous disregard to duty by all concerned, including the jail staff, the Executive Magistrate, the Visitors to jail appointed by the State Government, the District Judge, the police and the unethical conduct of doctors……*
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> *xxx xxx xxx*
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> *"This letter petition brings into sharp focus and throws light on many other ills besetting the system. Do our District and Sessions Judges, who are ex-officio visitors to the jail within their respective jurisdiction, the Director of Health Services, the Civil Surgeon or Medical Officers, the representatives of people representing particular urban or rural constituency in the State Legislature and the non-official visitors, as appointed ……do they satisfy themselves that the law, rules regulating the management of prisons and prisoners are duly carried out? Their duties are enumerated in……the Jail Manual. They can call for and inspect any book or other record in the jail. Have they regularly visited the jail so as to apprise themselves of the genuine problems the prisoners are facing and their grievances.* ***The non-official visitors to the jail, appointed by the State Government, have they justified their appointment by getting themselves acquainted with the prisoners' problems and making efforts for amelioration of their lot, within the framework of the Jail Manual itself; if all this had been going on smoothly, as is expected and sought to be, possibly there was no need for… this letter petition.*** *The question looms large, who bothers…"*

In spite of such eye opening judgments and judicial aspersions, prison conditions in the country continue to be appalling. The system of prison visitors is still considered by prison staff as an un-necessary intrusion in their work, and non-official visitors reduce their functions to mere clerical formality in the absence of any accountability.

In order to shun the rejective attitude of prison staff NOVs prefer not to visit the prison at all. After all what do they lose if they knowingly evade uncomfortable situations that could arise in confronting a non-cooperative prison staff. If they have to wait for long to meet a prison superintendent who thinks it a waste of time to cause his jailor to take them round the prison on a lawful visit, it is better to avoid visiting such jail.

Even the visits of ex-officio visitors of prison are not as regular and purposeful as intended in the rules. Hon'ble Justice J.S. Verma, former Chief Justice of India and later Chairperson of the National Human Rights Commission, addressing a letter to the Chief Justices of all High Courts with regard to human rights in prisons, wrote on January 1, 2000 :

> *"The state Prison Manuals contain provisions for District and Sessions Judges to function as ex-officio visitors to jail within their jurisdiction so as to ensure that prison inmates are not denied certain basic minimum standards of health, hygiene and institutional treatment. The prisoners are in judicial custody and hence it is incumbent upon the Sessions Judges to monitor their living conditions and ensure that humane conditions prevail within the prison walls also. Justice Krishna Iyer has aptly remarked that the prison gates are not an iron curtain between the prisoner and human rights. In addition the Supreme Court specifically directed that the District and Sessions Judges must visit prisons for this purpose and consider this part of duty as an essential*

function attached to their office. They should make expeditious enquiries into the grievances of the prisoners and take suitable corrective measures.

During visits to various district prisons, the Commission has been informed that the Sessions Judges are not regular in visiting prisons and the District Committee headed by Sessions Judge / District Magistrate and comprised of senior Superintendent of Police is not meeting at regular intervals to review the conditions of the prisoners."

He implored Chief Justices to consider giving appropriate instructions to the District and Sessions Judges to take necessary steps to resolve this acute problem as it has the impact of violating a human right which is given the status of constitutional guarantee.

The Negative Viewpoint

Even today one could find a significant number of persons working in the criminal justice system, or in the open society, who hold the view that the image of a prison must inspire awe and fear in the minds of offenders. They try to convince that the life in prisons should be demonstrably torturous to deter a prospective criminal. Reformation of a criminal, they say, is impossible and that rehabilitation is a hollow imagination of some non-practical persons. In order to generalize their perception they have a few examples to quote. They forget that their views are more sentimental than scientific. Studies in social science have proved beyond doubt that harshness of punishment has never been a deterrent to a prospective law breaker. While the continuance of death penalty for murder has not been a curb on the rate of the incidence of homicides, the abolition of this harsh punishment in a large number of federating states in the U.S.A has not increased the number of murders there.

The loss of liberty by itself is sufficient to prevent a common man from indulging into violation of rules of the society. We all know that the society itself plays an important role in inducing some people into deviant behaviour, and that a large number of prisoners do not commit the second crime after their release because they have had the lesson of their life in a single incarceration. According to the statistics gathered by the National Crime Records Bureau, MHA, the number of inmates in prisons who had two or more previous convictions at the end of the year 2002 was only 2.7% of the total prison population in the country.

To those who do not believe in improving prison conditions or in the conservation of basic human rights in custody, Pandit Jawaharlal Nehru wrote in *India and the World* –"Prison Land" (pp.108-129) –

> "Another error which people indulge in is the fear that if gaol (*jail*) conditions are improved people will flock in ! This shows a singular ignorance of human nature. No one wants to go to prison however good the prison might be. To be deprived of liberty and family life and friends and home surroundings is a terrible thing. It is well known that the Indian peasant will prefer to stick to his ancestral soil and starve rather than go elsewhere to better his condition. ***To improve prison conditions does not mean that prison life should be made soft; it means that it should be made human and sensible*.**"

Cruelty does generate cruelty. It undoubtedly has the tendency to squeeze all compassion out of a person and to make him unsocial. Prison conditions must therefore adhere to certain norms in which an inmate could be prevented from being

dehumanized. It is for restoring prisons to these basic minimum norms that the institution of Prison Visitors is so necessary and useful.

How the decay has set in

In spite of all meticulousness in the procedural details of prison rules, transparency in the management of these impermeable institutions has always been lacking. Since secure custody of inmates is the basic function of prisons, anything that is a threat (or *supposed* to be , or even *presumed* to be a threat) to security is laid off.

How can prison management be transparent, it is argued, when secrecy is the key-word of security. High walls and wards and cells and locks and keys and stringent rules are all for keeping inmates out of the reach of their kin and the society. Easy access to public eye could infringe upon this age-old system of segregation and obliterate the very purpose for which prisons were conceived.

Secure management has thus slowly but consciously slipped into *obscure* management and, once transparency is shadowed, accountability becomes a farce. Prison management could, if it so preferred, become repressive and yet pass un-noticed. No inmate could complain of repression for fear of more repression. How can one dare to harness enmity with the system in which one has to live a substantial period of life in seclusion from the society.

It is common knowledge that this obscurity becomes the breeding ground of several evils. If atrocities, corruption and irregularities go un-noticed, they flourish. Misuse of authority for unlawful gain becomes the order of the day. One can create discomfiture and charge for ease. (*It is well known about certain prisons in the country where inmates have to pay for stretching their legs for a comfortable sleep at night*.)

Cliques are formed in which old-time inmates become party with the staff and run an unholy ‘business’, the gains of which are distributed among ‘stakeholders’, who, in fact, have nothing at stake except their conscience. The network spreads. The higher it goes, the more it is necessary to extract, and therefore new methodologies are evolved to keep the game plan going. Those few who prefer to keep away from this degradation, are ridiculed. They are disdained, isolated, rejected, placed in unimportant positions and sometimes punished on false grounds.

But atrocities in prisons are not all of the making of prison staff. A substantially large number of them result from the system itself and the neglect to which it is subjected by all concerned – the courts, the police, the probation system, district administration, the PWD and so on.

Physical and psychological torture resulting from overcrowding, lack of space for segregation of sick, stinking toilets for want of proper supply of water, lack of proper bedding, restrictions on movement resulting form shortage of staff, parading of women through men’s wards for lack of proper separation, non-production of under-trial prisoners in courts, inadequate medical facilities, neglect in the grant of parole, rejection of pre-mature release on flimsy grounds, and several such afflictions result not from any malfeasance of the prison staff but from the collective neglect of the whole system. Those who can deliver goods do not know. Those who know have no means to remedy the ills. There is lack of effective communication. Those who communicate lack perseverance. There is no accountability for non-performance. There is no linkage, no monitoring, no deadlines, no evaluation and therefore no result.

Reformation – the change is slow but obvious

In spite of the fact that there are several maladies in the prison system in the country, it would not be appropriate to totally condemn the whole set-up. Obviously, there are difficulties of man-power, funds, training and right kind of attitude to deal with socially handicapped inmates, but all these ills need to be corrected with the joint effort of the government, the people and the staff manning prison institutions. Some prisons are an example of the best utilization of the resources available, and it is educative to see them. Prison visitors of different states should be given an opportunity to visit such prisons to see how they function and how those conditions can be emulated in other prisons.

Housed in comparatively new buildings constructed on the principles laid down with regard to minimum space per person, and having appropriately provided facilities of sanitation, medical care, hygienic kitchens, play grounds, separate entrance for women section, space for vocational training and prison factories, adequate staff quarters, and suitable dormitories for single-person security staff, these prisons present an image of a scientifically built custodial institution.

Reformative programmes are regularly conducted in these prisons with the help of local non-government agencies and philanthropic organizations. *Preksha-dhyan*, *Vipasyana*, spritual discourses, lectures and preaching on issues of healthy social life, literacy classes and de-addiction programmes, adult education classes, plantation, horticulture and environment improvement with the material assistance provided by government and non-government agencies, are some of the regular features of the prison. Services of educated prisoners are availed to promote literacy and to hold regular education classes for those who wish to appear at Board or University examinations as private candidates. All fees and other expenses on the education of these inmates is borne by voluntary organizations such as Rotary Club, Lions Club or by public welfare section of established banking institutions. All these activities are geared and monitored by prison management with the personal efforts of some well-intentioned prison personnel supported by active and effective prison visitors. Such correctional programmes not only break the monotony of prison setting but charge the atmosphere with an urge for betterment.

These prisons do not present a dismal picture of human beings languishing in idle confinement, but are places buzzing with activity, both administrative and correctional. There appears to be a horizontal coordination of prison officials with the officers of other departments and with functionaries of other organs of the criminal justice system. The jail Superintendents and other staff have amiable informal relations with other district level local officers. This facilitates their official functioning. They leave no occasion, official or informal, to meet these district level officials and invite them to all functions held at the prison. Problems of prison are introduced to concerned officials during courtesy meetings to draw their appropriate attention and an early solution. Such congenial ambiance prevents unnecessary delay of bureaucratic procedures in getting things done for the prison and prisoners.

One can visualize here that a purposeful and constructive local cooperation of officials of prison, police and the judiciary can go a long way in ameliorating the sufferings of prison inmates. And, if some well-meaning non-government social organizations are involved in the corrective process of prisons, it can make the rehabilitation of offenders after their release, much smooth.

It is in the creation of this congenial atmosphere that the role of Prison Visitors – both official and non- official – can be best appreciated and obtained. It is they who can best (and in the spirit of constructive approach) bring to the notice of the government, the deficiencies of the system at appropriate time so that they do not accumulate or grow to unmanageable proportions. It is they who can help prison administration in securing the cooperation of non-government agencies engaged in philanthropic work for extending their activities within prison walls where a neglected mass of human beings waits for the support of society. It is they, again, who can prepare the society in shedding off their rejective prejudices for casual offenders who make mistakes in haste and repent at leisure.

The institution of Prison Visitors is, thus, not only desirable but essential for the development of a correctional atmosphere in prisons. It has to be retained and reinforced, if we want to open a casement on prisons for involving the society in general to improve prison conditions and help our less fortunate brothers and sisters in captivity to make their period of incarceration less dehumanizing and more productive.