

FIELD REPORT

# STATE OF HUMAN RIGHTS IN THE PRISONS OF MAHARASHTRA

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By

ARUN FERREIRA

(Nagpur Central Prison, Nagpur 440020)  
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### Introduction

I have been incarcerated as an under trial in the Nagpur Central Prison, for more than three years. Due to which, I have come in close contact with the workings of our criminal justice system and all its constituents - be it the police, judiciary or prison administration. Incarcerated for my political belief and convictions, I along with other political prisoners have continuously sought to stand up and speak against human rights violations, especially those perpetuated by the State. We have tried to expose such violations by numerous legal representations, petitions, press statements, public appeals and symbolic hunger strikes. Experience in prison has exposed us to blatant injustices and violations by the administration which are at times unbelievable to the larger public.

Behind the high walls of prison and sheltered from the public gaze, such violations mostly go unreported, giving the oppressor greater immunity and courage to continue such practice. It is for this reason, I have chosen to illustrate some aspects of human rights violations of the Maharashtra prison administration. I have concentrated on emerging trends in such practice and procedure of prison administration which violate a prisoner's fundamental rights. Considering that the Nagpur Central Prison is one of the oldest Central prisons in Maharashtra, its practice of prison administration is representative of that prevalent in other prisons of the state. Interactions with other prisoners from other prisons of the state have contributed in this study.

To highlight the conditions of Human Rights, I have chosen those aspects of prison administration which directly concern under trials. Other aspects such as the system of Furlough and Parole, Review and Remission of sentences, Employment of Prisoners, Conditions of prisoners sentenced to death, Open Prisons, Educational and Vocational training, Conditions of women prisoners, Reformation and rehabilitation measures, etc, have been willfully avoided. Inclusion of such aspects, though of utmost importance, needs a deeper and wider study. Hence it would be improper to claim this present study as exhaustive and complete. It would be best to view it as an eye-opener, urging further discussion and action.

## An overview of Maharashtra prisons

Rules and procedures for prison administration like the Penal codes and criminal procedures were the first to be codified by the British in the latter part of the 19<sup>th</sup> century.

Enacted by the British for imprisoning the natives, The INDIAN PRISONS ACT, 1894, still remains the principal legislation of prison administration even post-1947. After the adoption of the Constitution, the administration of prisons became a state subject, by its inclusion as item 4, under List II, in Schedule VII of the Constitution of India. Thereafter the Maharashtra Government has enacted numerous rules in exercise of the power vested in it vide Section 59 of the Prisons Act, 1894, and the same have come into force in administration of prisons in the State. These rules constitute what is called the "Maharashtra Prison Manual".

Maharashtra ranks the highest among all states of the country in terms of number of prisons, followed by Tamil Nadu and Andhra Pradesh. As of 2007, Maharashtra had 153 prisons throughout the state, categorized as follows:

• Central prisons	8	
• District jails	23	
• Sub jails	115*	
• Women jails	1	
• Borstal schools	1	
• Open jails		3
• Special jails	1	
• Others	1	
total	153	

\*(A Majority of the above mentioned sub jails are of one time use and therefore have no actual significance.)

As per figures supplied by the National Crime Records Bureau (henceforth NCRB) a total of 25,892 inmates including 9,203 convicts and 16,539 under trials were lodged in the prisons of Maharashtra during 2007.

For the purpose of Prison administration, the State prisons are divided into three geographical regions viz. Western Region, Central Region and Eastern region, each headed by a deputy Inspector General (Prisons) headquartered at Mumbai, Aurangabad and Nagpur, respectively. The Inspectorate General (Prisons) headquartered in Yerawada, Pune is the

office responsible vide section 5 of the Prison Act., for the administration of prisons throughout the state. Similarly each prison in turn is administered by the Prison superintendant vide Section II of the Prison Act, and other prison staff such as senior jailors, jailors, prison guards, employees, medical officers, etc; as the case may be.

### **Conditions of prisoners rights**

On the question, whether Part III of the Constitution of India is also guaranteed to prisoners, the Supreme Court has time and again categorically stated that:

“Even the convicts do not lose all their fundamental rights which the citizens are otherwise entitled to, excepting of course those which cannot be possibly indulged, on account of the fact of incarceration. Obviously, on account of imprisonment, right to move freely or right to practice a profession which is otherwise available under Article 19(1) (b) or 19(1)(g) could be curtailed. Nevertheless, various other fundamental rights including the right to freedom of expression or the right to read and write subject to the limitations imposed on account of imprisonment would continue to be enjoyed by the prisoners. The most important right to life guaranteed under Article 21 which includes prohibition against deprivation of such right except according to the procedure established by law, is always available to such prisoners”.

[Shersingh v/s State of Punjab, AIR 2000 SC 2083; AIR 1983 SC 465]

The Supreme Court has also held that a mere existence of a lawful procedure of deprivation of the right to life is not sufficient. It must also be reasonable, just and fair, or else it would amount to a violation of Article 21 (Maneka Gandhi case). What follows is an attempt to evaluate a few aspects of prison administration and practice in Maharashtra, in the light of the above and other similar elucidations of the Judiciary.

#### **A. Accommodation:**

Like the prisons throughout the country, the Maharashtra prisons too face a chronic problem of overcrowding. As per 2007 figures released by the NCRB, the Maharashtra prisons had an occupancy rate of 123.9 %. Such a figure is grossly incorrect and does not represent the actual ground reality. The NCRB, in such a calculation, has incorrectly included the capacity of those presently non-functional prison buildings and barracks, thus lowering the official figure. In reality, prisons and barracks are occupied to more than twice and

sometimes almost thrice their capacity. A more realistic occupancy rate would range between 200% to 300%.

This problem of overcrowding immediately effects a particular inmate regarding his space in prison and overloads existing facilities of water, latrines, sanitation, ventilation, etc. According to the Prison manual, the minimum space per prisoner in sleeping barracks 'shall be 3.71 sq. meters and 15.83 cu. meters and in hospital wards 5.58 sq. meters and 23.75 cu.meters.' [Chapter V, Prison Building & Sanitary Arrangements, Rule 13]

However in practice, it is normal for 3 inmates to sleep in the area specified above. Due to overcrowding, the position of an inmate's bedding space is cause of corruption and extortion. If the Barrack In-charge Warder (convict Overseer) is duly paid in cash or kind, one can manage to secure a reasonable clean, well ventilated position under the fan in the Barrack. On the other hand poorer and less influential inmates have to make do with space near the barrack latrine, barrack water tank or in the aisle. Of course, such less fortunate prisoners would also have to do with lesser space ie. huddled with a few more of their kind. The Jailor in-charge also extracts his 'commission' from this 'real estate business'.

The Maharashtra Prison administration also has cellular confinement, commonly used in prison punishments, or for High Security prisoners or for medical quarantining purposes. Prisoners sentenced to death, pending appeals and mercy petitions are also confined to such cells. Except for those sentenced to death, here too, due to overcrowding 3 to 5 inmates are kept in a single cell. Contrary to the provisions of the prison manual, which states 'under no circumstances shall two or more male prisoners be confined to one cell.' [Chapter XXVII, Punishment Rules, Rule no.13]

At present, nearly all prisons in Maharashtra have not installed electric fans in separate cells. Without such a facility, life in cells becomes torturous given the heat, lack of prescribed ventilation and mosquitoes. Confinement in such conditions constitutes inhuman treatment and punishment.

The overall condition of sanitation, especially in barracks is deplorable. The construction of Night latrines and water storage facilities in barracks causes foul odour to dominate the air throughout the day. Water supply in Barracks for the purpose of drinking and latrines is highly inadequate. Such unhygienic conditions are a fertile ground for water and air borne contagious illnesses.

**B. Bedding, clothing and other equipment:**

One of the unreasonable and unjust features of the Jail Manual in Maharashtra is regarding clothing for under trials. The Manual compulsorily lays down that under trials accused for murder are to wear prisoner's uniforms [Chapter XXIII, Bedding, Clothing and Equipment, Rule no.6]. This is in total violation of the general principle of jurisprudence, that all under trials are to be assumed innocent, until proven guilty, and hence should be treated as such. The United Nations Standard Minimum Rules for the treatment of prisoners also allows the untried prisoner 'to wear his own clothing if it is clean and suitable'.

The Bombay High Court had also declared this rule as violative of Article 14 & 21 of the Constitution of India. However, the state Government has not complied with this judgment and has instead openly declared their intentions to legally challenge it.

The clothing and bedding provided is also inadequate. During winter, when temperatures reach extremes in many prisons, extra blankets are a necessity, and have to be procured illegally through influence or favors. For prisoners involved in manual labor, the cotton clothing provided regularly gets worn out before the sanctioned period of acquiring new ones ie. 8 months (Chapter XXIII, rule No. 21). Such prisoners have to degradingly make do with torn clothes for months on end.

Rule no.5 of the above mentioned chapter also provides that each prisoner be supplied with an aluminium mug, katora and plate for eating purposes. Aluminium utensils are known to be medically unsuitable for food as they are suspected to cause Alzheimer's disease and memory loss. Similarly other equipment, necessary for consumption of food such as spoons, steel glasses, etc are not sanctioned by the manual and are therefore confiscated from a prisoner if found by the authorities.

The Jail Manual, overtly categorizes prisoners by prescribing particular coloured arm bands to be stitched on the prisoners clothing. Life sentenced prisoners have yellow bands, those who have previously escaped or attempted to escape have red bands, etc. [Chapter XXIII, Rule no.17]. As an extension of this logic, the Eastern Region Prison authorities have enforced green arm bands to be worn by those under trials accused of naxal-related crimes. This explicit categorization has no lawful sanction of the Jail Manual and has been enforced on the mere directions of the Police. Such a blatant interference of the Police in prison administration is unlawful, unreasonably discriminatory and violative of an under trial's rights.

Overall the bedding, clothing, and equipment provided by the Maharashtra Prison administration needs reform, as its present provisions are not in step with minimum living and Human Rights standards.

C. Prison diet:

The food sanctioned for prisoners in Maharashtra has undergone changes since the relevant provisions of the Prison Manual were enacted in 1970 [Chapter XXIV, Diet for Prisoners]. The present diet is as per the Government Resolution passed in 2005, and provides prison inmates a daily quota of:

Breakfast - tea, milk, poha, upma or sheera.

Lunch - roti, rice, dal and vegetable

Dinner- roti, rice, dal and vegetable.

Fruit - a single banana.

Although intended to constitute a balanced diet, the above list conspicuously lacks any egg or meat items. Such meat items are common in most cultures and also form part of an individual's minimum standard of living. They are also a rich source of proteins. Prison administrations of Andhra Pradesh, Tamil Nadu, Karnataka and other states have already included such non-vegetarian diets once a week. However Maharashtra has yet to make such a change despite various legal representations and demands of prisoners.

In one such petition before the Bombay High Court the IG (Prisons) had strongly opposed any inclusion of meat items in the prisoners diet on the absurd grounds that it would encourage violence and make the sentence of rigorous imprisonment 'soft' [Sardar Shahvali Khan v/s State of Mah., writ petition no. 1054/2009]

While the administration rightly differentiates food quantities between under trials and laboring convicts, it incorrectly discriminates against women whilst providing wheat for the purpose of rotis. Male under trials are sanctioned 300 gms, whereas women under trials are sanctioned only half the amount. Similarly male convicts are sanctioned 350 gms and women convicts 200 gms. Such a discrimination based on gender had no logic and is violates the fundamental right to equality under law.

Another serious problem is the timing of food distribution. According to the prison Manual [Chapter XIX, Prison Routine, rule no. 2] the evening meal is to be served and eaten

between 4:45pm and 5:45pm i.e. before the barracks are locked i.e. 'bandi'. Thereafter the prisoner is not provided a meal for nearly fourteen hours until the next morning at 8am. Such a routine is not only medically damaging but also inhuman. If the prisoner chooses to eat his dinner a little later, he, then has to do with a cold meal. The situation is much more aggravated on Sundays, when the time for 'bandi' of the barracks is 2pm (unlike 6pm on weekdays). On such days the inmate has no other option, other than eating a cold dinner which is torturous especially during the winter.

In 2000, the Maharashtra Government amended Section 31 of the Indian Prison Act (Applicable to Maharashtra) so as to deny unconvicted criminal prisoners the facility to maintain, purchase or receive food from private sources including home. This amendment is unreasonable and unjust considering that such prisoners are under trials. In a challenge to this oppressive amendment, the Bombay High Court ruled that such is violation of Articles 14 and 21 of the Constitution of India and that the power to decide the conditions of incarceration for under trials lies with the trial court under section 167 Cr.P.C. [Asgar Mukadam v/s State of Mah, 2004 ALL MR (Cri) 3010]. Nevertheless this directive of the Court is obstructed and fiercely opposed by the prison administration in actual practice.

Overall the quality of food provided by the prison administration is substandard and sometimes unfit for the consumption due to corruption, pilferage, lack of professionalism in the cooking staff and improper supervision.

#### D. Communications with advocates, family and friends

Communication of prison inmates with their advocates, family and friends is a guaranteed fundamental right in the Constitution of India and the various International Human Rights Covenants and Declarations. The Rules for such Communications and Interviews in the Maharashtra Prisons are governed by the relevant clauses (2 to 27) of Chapter XXXI, Facilities to Prisoners of the Jail Manual. In Maharashtra, communications with Advocates, Family and Friends are allowed by visitations and written correspondence. Although many other States (Madhya Pradesh, West Bengal, Karnataka, Delhi, etc.) have started telephone facilities in prison for the purpose of such communications; the Maharashtra Prison Administration has not initiated any efforts in this direction as yet.

The NHRC and a Parliamentary Standing Committee on modernization of Prison administration (2008) had also recommended the creation of telephone facilities for prisoners. For prisoners, who have their family and friends residing far away from the

prisons where they are lodged, such a facility is not only economically viable but also convenient and time efficient. The need to immediately contact one's legal counsel when faced with problems in prison or during a trial is an essential provision of Article 22(1) of the Constitution of India and such telephone facilities for prisoners will enable its proper realization.

In the case of interviews, the Maharashtra Prisons allow a 30 minute interview for convicts per month and a 20 minute interview for under trials per week. Advocate interviews are granted at all times. One of the main short comings of this system of interviews, is that such interviewers are only allowed in rooms where glass or grills divide the family member from the inmate. For inmates, especially those convicted and unable to maintain lively relations with their family and children, such interviews without physical contact are inhuman and unreasonable. For prisoners sentenced to death, and denied furlough and parole for years on end, this need for physical contact is much more real.

Discussing legal matters and examining legal documents with ones advocate is also impossible in such grilled interviews. Thus, it is only reasonable to grant 'open' interviews, with due precautions as already provided in the said rules of the Jail Manual. Secondly, interviews are only granted on week days and disallowed on Sundays or Public Holidays. Such a restriction is extremely problematic for working family members and far-off relatives. Although the prison manual authorizes the Superintendent to permit such interviews as special cases, it is rarely implemented in actual practice.

Lastly, the provisions of the Jail Manual viz. rule 12, 'political matters not to be discharged at interviews- termination of interviews' and rule 13 'language of conversation at interviews' of the said chapter; allow the Jailor to terminate interviews if political matters are discussed or if the jailer cannot understand the language of conversation. Both rules are violative of a prisoners right to freedom of speech and expression.

In the case of written communication, the prison administration is empowered to censor letters written and received by a prisoner and disallowed 'objectionable, cryptic or suspicious' letters written by the prisoner or letters received by the prisoner 'for reasons of security, discipline or during periods of emergency' [Chapter XXXI, Rule 17 (10) and 17(11)]. Two earlier rules disallowing prisoners to send welfare letters to prisoners of other prisons [Rule 17(9)] handwriting of matter 'likely to become the subject of political propaganda' [Rule 20] was found to be violative of Article 14 and 19 of the Constitution by the Bombay High court [Madhukar Bhagwan Jambhale v/s State of Maharashtra 1984 (2) BCR 709: 1985 Mah. L. R. 32: 1987 M.L.J. 68] and was thereafter struck down by the Government in 1992.

#### E. Newspapers, books and library

The Prison Manual has made it compulsory for the prison authorities to supply 'a copy of the daily newspaper in English or in one of the regional languages.... free of charge.....for every 20 prisoners or less'. [Chapter XXXI, Facilities to Prisoners, rule No.29]. However the administration does not provide such a facility on the grounds of shortage of funds. Prisoners are instead compelled to privately purchase such newspapers thus exonerating the administration of its responsibility. The said rule also, only permits newspapers to be supplied according to the list approved by the State Government.

This government approved list has not been updated for over three decades and has no mention of contemporary popular dailies. Such a rule, is therefore not appropriate and also unreasonable, especially after the Bombay High Court declared that detenus should not be 'debarred from receiving and reading periodicals and books which could be freely received and read by the general public.' [M.A. Khan v/s State & Anr.,1967 Cri. L.J. 1994]

On the pretext of censoring news , the Prison authorities regularly cut news articles and reports from the daily news papers. Invariably such editing deals with Prison disturbances or disclosure of malpractices of the Prison management. Such an arbitrary and subjective practice is violative of Article 19 of the Constitution and is also a misuse of the powers of the Prison administration given, the existence of 24 hours news coverage on television and radio sets in prison, such a practice is also irrelevant and absurd.

On the issue of the Right of possession of books, The Prison Manual [Chapter XXXI. Rule no. 30] restricts the number of books to 'not more than 2 religious and 10 non-religious books'. The administration seeks to further reduce this number in actual practice. The Bombay High Court, Nagpur Bench had found such a restriction unreasonable and violative of a prisoner's rights. [George Fernandes v/s State of Mah. (1964) 66 Bom LR 185]

Though the Prison Manual stipulates that every Prison (Central, District, Class I & Special Prisons) should have a library, this facility is horribly neglected in practice. No share of the Budget is allocated for the maintenance of such a Library, purchase of new books, periodicals, etc. Prison inmates are not encouraged, in fact dissuaded from using the library on grounds of proper maintenance. In all the prisons of Maharashtra, such libraries have been established by donations of books by private and educational institutions and prisoners. Thus the quality and type of books in such prison libraries are according to the intentions of the donors and have no relation to the educational and cultural needs of the

prison inmates. This situation is clear from the figures of Budgetary expenditure of Prisons released by the NCRB from 2007. Maharashtra has zero expenditure for Educational/Vocational programmes and for Welfare activities. For a state ranking highest in the number of prisoners such a situation is unnerving.

#### F. Sports, recreation and entertainment

The condition of sports, recreation and entertainment in prisons is also apparent from the above mentioned expenditure on Welfare activities. With no expenditure, the administration totally relies on donations of benefactors and Non-Governmental Organizations. Games such as Carom and Volley Ball are sparingly provided by the Prison authorities, and initiatives for sports or tournaments are generally discouraged on the grounds of security and discipline. Similarly, expenditure on TVs, Radio or video facilities and efforts for organizing cultural programmes is minimal and totally dependent on donors.

There is also no effort by Prison authorities to exhibit films, as provided in the Prison Manual [Chapter XXXI, Facilities to Prisoners, Rule no. 38] for the benefit of prisoners.

The Recreational and Cultural needs of an individual are of primary importance especially given the mental agony a prisoner has to face during trial or sentence. Without these, the life of the Prisoner would be reduced to that of mere animal existence. The Supreme Court has repeatedly held that any such existence would be unreasonable, unfair and unjust and would therefore violate the individuals' right to life.

#### G. Production of under-trials before courts

It is essential that the under trial is produced timely and regularly before the concerned trial court. Inability to do so constitutes a serious violation of his Civil Rights and may prove detrimental to his defense and stay in prison. The under trial in prison, is under the custody of the judiciary and it is the concerned court that decides and supervises his conditions of incarceration. It is thus imperative that the under trial is regularly produced before the court so that he may be able to voice any grievance during incarceration. The prison authorities are responsible to ensure this production and the task for providing escort guards during transportation of the under trial to and from the court is entrusted to the local police.

However, in practice on the pretext of insufficient guards, many under trials are not produced before the courts. Police bandobast, visits of dignitaries to the city, far-flung courts, security concerns, inadequate transporting vehicles, etc., are some of the excuses commonly cited for such an omission. The prison authorities, many a time, have also malafidely and deliberately cancelled the production of an under trial before court.

If for instance, the under trial has been physically beaten by the Prison staff, they deliberately postpone his production before court, until his wounds heal and no external marks remain. By such a method they seek to cunningly evade any possible judicial enquiry and culpability. On many occasions, the concerned prison staff have been known to use this power of arranging escort guards to extract favors from the under trial.

The various High Courts throughout the country including the Bombay High Court have given much attention to this practice and time and again directed Police and Prison authorities to adequately staff and set up mechanisms for the transportation of prisoners to court. The Bombay High Court had ordered that the prison authorities can be imposed costs to the extent of Rs.5000/- for each non-production of the under trial. [Ramsingh Ramkishan Patel v/s State of Mah., Writ Petition no. 671/2008 order dated 2-5-2008]

#### H. Medical facilities.

Timely and adequate medical treatment of prisoners is an extremely important aspect of Prison administration. The Supreme Court had mentioned two reasons for special attention in the Rama Murti v/s State of Karnataka case. First, prisoners do not enjoy access to medical expertise that free citizens have and secondly, because of conditions of incarceration, inmates are exposed to more health hazards than ordinary citizens are.

Indian Jails have very poor medical facilities, and Maharashtra is no exception. In nearly all the prisons of Maharashtra, the medical infrastructure is not in consonance with the prison grade or number of prisoners. As per figures provided by the NCRB in 2007, the total number of Medical officers was a mere 38, as compared to the vast number of prisons in the State. Recognizing this disparity the Bombay High Court recently directed the State government to compulsorily set up prison hospitals in all prisons. Even in those currently having prison hospitals, such as Nagpur Central Prison, minimum diagnostic and investigative facilities are lacking. The Gujarat High Court in 2005 had elaborated what constituted minimum medical facilities in prisons, by laying down that 'at the least in the major central jails establishment of ICCU may be considered', 'treatment for typhoid, jaundice, renal

stones, gall bladder stones, appendicitis, ulcers, etc. should also be made available', 'the hospital should be equipped for surgical operations, operation theatre', 'routine pathology/radiology reports should be prepared in the jail itself by developing pathology laboratory, sonography and X-ray facilities, etc.' - [Gujarat High Court in suo moto v/s State of Gujarat, 2005(3) GLR 2088]

Presently, except for a few irregular and ill equipped attempts to run pathology and Dental facilities in Central Prisons like Nagpur, non of the above mentioned infrastructure is in existence or in the process of being established in the prisons of Maharashtra. Hence, proper treatment is only possible if the prisoner is sent to the Civil Hospital. The medical Officer is authorized to refer the prisoner for such treatment and many a time does so in return for monetary favors from influential prisoners, in connivance with the prison staff. Thus, only a few get the benefit of this 'luxury' and the remaining unfortunate majority have to make do with 'prescribed pain-killers' until their condition worsens, to ultimately merit such action .

Another problem plaguing the medical facilities in prisons is the supply and quality of medication. Prison hospitals have sufficient availability of paracetamols, anti-allergens, pain-killers, anti-biotics, anti-inflammatory and other commonly used drugs bought in bulk. They are often sub-standard as compared to those available in retail and the Medical Officer invariably relies on anti-biotics and a combination of the above for a majority of patients. However, if by chance special quality medication is prescribed, the concerned patient is provided with the same only after a minimum of 5-7 days, by which time his health has further deteriorated making such medicine ineffective. On the whole, such treatment in prison lacks quality, punctuality, innovation and therefore proves ineffective in actual practice.

Lastly, the Medical Officers in prison, often shirk their responsibility in other aspects of Prison Administration. As per provisions of the Prison Manual, the Medical Officer is duty bound to inspect water supply sanitation, diet of prisoners, conditions of accommodation, ventilation and cleanliness of barracks and cells, etc. and report his observations.[Chapter IV, Prison Hospital, Rule no.3]. However in practice, the medical officers behave indifferently regarding such matters which are often flagrantly below minimum Human standards and the prescribed provisions as per the Jail Manual. The Medical Officers are known to have even altered medical records of inmates physically beaten by prison staff. Even if their battered conditions deserve that they be sent to the Civil Hospital, Medical Officers in collusion with the prison authorities, have denied them such treatment, lest news of such violations become public.

## I. Discipline and the role of violence in prison administration

Violence by authorities in the Jails of Maharashtra like the rest of the Country are not isolated events, as often made out to be. They are conscious acts perpetrated daily to subdue the prisoner and establish unquestionable authority. Violence, submission to authority, and discipline are viewed by the Prison staff as essential to effective Prison management. Prison staff, especially jailors who are able to subdue the prisoners by violent and aggressive means, derogatory and abusive language or frequent floggings are hence considered effective and are given an unspoken immunity for such actions by the entire Prison set-up. The Jail Manual too, still retains provisions for whipping prisoners as a method of punishment.

“Whipping shall be inflicted with a light rattan, not less than half an inch in diameter on the buttocks, and in case of prisoners under the age of sixteen, it shall be inflicted in the way of school discipline with a lighter rattan.” [Section 53, Indian Prisons Act, 1894]

Although the Supreme Court, had categorically declared, way back in the Sunil Batra case, that such a procedure is oppressive, arbitrary and violative of Article 21, this British era practice still receives official sanction. In fact in prisons, violence is an institutionalized procedure upon which the edifice of Prison Discipline is built.

From the moment of entry into prison, the prisoner is faced with violence and aggression. During the strip search (Angh zhadti) or other procedures of admission at the prison gates, offensive and derogatory language is used. In the event of the prisoner opting to defend his dignity and protesting such conduct, the Gate Prison staff immediately resort to violence under the excuse of maintaining discipline. Thus, any such attempts to threaten the culture of submission prevalent in the prison are quelled at the gate itself. Thereafter, life in prison comprises of many such similar instances.

The Prison staff along with their henchmen of Wardens and Watchmen recruited from ‘loyal’ convicts regularly suppress common prisoners without cause. The common prisoner is thus compelled to accustomise himself to the inhuman prison conditions of overcrowding, substandard food, shortage of water, etc. by threat of the lathi. Prisoners are forced to sit on their haunches with their knees together submissively before prison officials; they are physically beaten in case they refuse to comply to unfair and unjust practices or protest the wrongdoing of a Prison staff; they are coerced into maintaining silence before visiting judges or supervisory officials and if by chance prohibited material is recovered, severe, harsh and

immediate corporal punishment is dispensed, temporarily incapacitating the prisoner. If the Jail staff identifies a particular prisoner who frequently resists this culture of submission he is somehow taught a 'lesson' by violent methods under any unrelated pretext.

For prisoners, the most feared legal pretext for such violence is that of the general Alarm. The Prison Manual stipulates that the 'alarm' be raised in case of 'news of serious outbreak or disturbance amongst prisoners' [Chapter XXVI, Prison Discipline, Rule no.23] Under such circumstances the Prison Staff are authorized to use 'minimum force' so as to contain the threat. However in practice the converse is true. On the sounding of the alarm, all hell breaks loose, the Prison staff go on a violent rampage and indiscriminately thrash any one coming in their way.

The Prison authorities in Maharashtra are also known to have deliberately sounded the alarm in many instances and used it to physically attack those who do not submit to their brand of authoritarianism. In one such example, of sounding the alarm by the Arthur Road (Mumbai) Prison authorities, the Bombay high Court held that "force was used excessively for extraneous reasons and law was also flouted even as a formality, the Jail Manual was not followed." [Saeed Sohail Sheikh v/s State of Mah. Cri. Writ Petition no. 1377/2008 Order dated 21-7-2009]

In this culture of submission and violence, attempts to patiently persuade, counsel and reform prisoners in maintaining discipline are unpopular. Such Human Rights friendly approaches are considered impractical or as impediments by prison authorities and are only paid lip service to.

### **Conclusion - Lack of political will for prison reform**

Promotion, Protection of Human Rights and Prevention of its violations are essential components of Prison administration. In Prisons where and individuals' right to Life and Liberty is deprived by the State, all the rights of that individual be it economic, social, medical, educational or cultural rights become as indispensable as his Civil Rights. Any deprivation of the same would thus constitute an unreasonable, oppressive and unfair procedure and violative of his constitutionally guaranteed Right to Life. In addition, modern perspectives of penal punishments and sentencing, view prisons as reformatory and correctional centers. With such an approach, the practice of human rights friendly methods is crucial in preparing, educating and reforming the prisoner to become a socially

conscientious citizen. This approach defers drastically from the traditional Law and Order one.

This modern approach which seeks to reform and rehabilitate criminals back into society, directly conflicts with the practice of the police who instead strive to imprison them. Hence, attempts to manage prisons by personnel from the Police or Indian Police Service (IPS) would fail in the full realization of such reformatory and correctional goals. Presently, the higher echelons of the State Prison administration like those in the rest of the country are staffed by IPS cadre who are transferred from their parental police departments on a temporary basis. They retain their Law and Order mind-set of their earlier practice, and only a few have acted otherwise.

In addition, the existence of a common Home Ministry of the Government for both Police and Prison administration further harms the reformatory and correctional approach. In such a Ministry, it is but natural that the Prison department is treated as an adjunct to the Police and other Law and Order or security concerns. What follows from such a situation is a more security centric prison rather than a reformatory and correctional one. Priority is given to modernize and tighten prison security rather than upgrade facilities for prisoners. Enactments are passed for harsher and longer sentences rather than for protecting prisoners rights. Funds are allocated for building more and more prisons, rather than improving the quality of existing ones. In short, the political will calls for increasing the number of prisoners rather than implementing Prison reform.

Due to pressure from Civil Society and various Human Rights Organizations to do away with the oppressive and archaic Prison Act, the centre finally drafted a 'Model Prison Manual (2003)', and urged the States to do the same. In accordance with this directive the government of Maharashtra, Home Department, constituted a commission to 'inquire into certain lapses and to suggest measures which are required to be taken by the Jail administration including amendments in the Prison Manual and other Statutory provisions & rules and any other matter of general importance regarding Jail Administration', [Notification dated 22-6-2006].

Headed by Justice S. P. Kurdurkar, this 'Inquiry Commission for Maharashtra State Jail Administration & Jail Manual Reform', began inquiries and sought representations and suggestions from prisoners, jail staff and Non-Government Organizations. However, the State Government did not sanction a further extension and the Commission was forced to wind up, without presenting any report. The State Government has also paid no attention to recommendations of similar commissions on Jail Reform such as the Justice A.N. Mulla

Commission (1980-83) or the recent 'Draft National Policy on Prison Reforms & Correctional Administration (2007)'. After the 26/11 attacks on Mumbai, the State Home Ministry has drawn up its priorities, and prison reform is clearly not a part of them. However, for those thousands currently incarcerated in the prisons of Maharashtra, Prison reform still remains a fondly cherished dream of betterment.

- Arun Ferreira, Nagpur Central Prison