

Apathy to Empathy: Reforming India's 'Criminal' Justice System

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It was 1894 when India introduced its Prison Act, amidst a climate of fear, repression, security concern and terror, regulating the incapacitation of swathes of native population with little, or no provision for their rehabilitation or reformation, or for their reintroduction into society on completion of sentence. Pre-dated by many of the prisons themselves, the 1894 act today oversees a penal system which has been found notorious for corruption and mal-administration.

As with all inherited colonial administrations, hand-over has been neither synonymous with, nor conducive to reform. Instead suppressive regimes of colonial administration have become the neo-patrimonial administrations of newly independent states. This has happened across both the African and Indian sub-continent, and no where is it clearer than in the inherited regulation of the Indian prison system: an outdated penal philosophy bought forward by the natural progression of time and a general apathy for reform.

The 1894 act clearly codified a colonial policy suspicious of a native population; providing for restricted access and little supervision, and for the imposition of disciplinary punishments at the discretion of prison superintendents including solitary confinement, imposition of chains and whipping and transportation in irons. It is a scandal that a 60 year apathy for reform should see an act drafted and adopted under a hostile administration to serve a questionable morality and employing a philosophy since rejected should survive and govern the contemporary correctional system. Change of direction might well be thought to demand a radical rethink.

Now a prison population 40 per cent above capacity has seemingly forced recognition that the simple round-up and removal of wider and wider sections of society is at its simplest not sustainable, and further, morally unacceptable. A national policy on prison reform and correctional administration, drafted by the Bureau of Police Research and Development [BPRD] under the direction of the Ministries of Home Affairs, is now in its final stages of preparation. The committee, under the chairmanship of the Director General of the BPRD, was convened late 2005 (and had been due to report early 2006) to put forward its own recommendations for legislative and policy reform and highlight those recommendations of previous committees with relevance to the contemporary climate.

This draft policy put forward is a shift from a prison system shrouded in secrecy to a penal philosophy of transparency and rehabilitation, and should be welcomed. Measures to remedy the overcrowding, isolation and obscurity of the prison system have long been overdue and valuable initiatives neglected; Prison visiting systems providing for both official and community oversight of the prison system need rejuvenating; Wider use of jail adalats - courts that sit in prisons to facilitate the expeditious disposal of minor cases - need to be advocated to negate escort problems that keep prisoners from court and prisons over-capacity. The removal of archaic disciplinary punishments and the application of natural justice and fair trial principles to replace official discretion need to be addressed, as do revised and more humane meal schedules. The use of video-conferencing should be re-considered, balancing its ability to expedite hearings effectively against the restricted judicial oversight. Support for psychiatric institutions to house those not fit to stand trial also needs to be emphasised.

However, without a deeper shift away from a seemingly pervasive and entrenched 'apathy' - toward prisoners specifically, and the lower class more generally - to a more humanitarian

‘empathy’, any policy risks over-looking systemic problems. Fostering an empathy amongst wider society toward all those involved in prison administration - the prisoners, the guards and the reformers - also has to be a target for any real reform programme. If the policy is to achieve the ambitious aim of reforming a system preoccupied by security and neglecting modern correctional philosophies, it should not only include the immediate measures described herein, but find itself part of a wider shift in cultural attitudes toward correctional matters.

That this apathy is not limited to a wider societal dissociation - but involves even those tasked with the reform programme and day-to-day administration of prisons - can be seen from the official failure to fully utilise funds made available under the Prison Modernisation Scheme for reform of the ailing prison system. The Prison Modernisation Scheme, launched in 2002-03 for building, renovating and expanding prisons, has seen an estimated Rs. 18 billion made available by the Centre. However, many states like Jharkhand and Punjab have utilised just about 20 per cent of the funds made available to them. Goa utilised 31 per cent, while Kerala and Bihar have used only 40 per cent. Uttaranchal has been the only state to have used the entire fund allocation. ‘We do not lack funds’, Union Home Minister Shivraj Patil has said; instead one must look elsewhere to explain the lack of progress.

The draft policy is welcomed. The prison system needs to be central to any criminal justice reform agenda. However, until a wider cultural shift in attitude toward prisoners can be triggered, India’s prisons are likely to remain just one part of a justice system that can truly be called criminal.