

Looking Into the Haze – A Study on Prison Monitoring in India

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Indian prisons hold 14% more people than they should. That's the average. But occupancy can reach 200% on a state level and 500% in some of the jails. Inmates –innocent until proven guilty - awaiting trial outnumber convicts two to one. This is one place where Muslims, scheduled castes and tribes are overrepresented. There are three times more mentally ill prisoners and 61% more women prisoners than there were 15 years ago. Prisoners can be locked into often old and dilapidated barracks for up to 14 hours for security reasons. Violence, corruption, exploitation, criminality, disease and discontent pervade. Every five and a half hours a prisoner dies in jail. The suicide rate is one and a half times higher inside than outside. Across India there are 53009 prison staff and 1401 prisons; one correctional officer for every 703 prisoners; one guard for every nine prisoners; one medical staff for every 225 prisoners and one psychologist/psychiatrist for every 23000 prisoners. (Source: Prison Statistics of India, National Crime Record Bureau and National Human Rights Commission)

Introduction

These horrible figures brought out every year by the National Crime Record Bureau are not a new development nor are they getting better. They point to the everyday misery and wretchedness of life in prison for both inmates and staff. They also underline the absence of any system of prison supervision by the administration and the ministries in charge.

CHRI's latest report titled '**Looking Into the Haze – A Study on Prison Monitoring in India**' intends to signal the necessity of obeying the statutory imperative of having an effective, functional and fully constituted Board of Visitors in place and its value in stemming the neglect of the rights and living conditions of the incarcerated.

What is Board of Visitors?

Recommended in 1836 by the First Reform Committee and later by the Cardew Committee in 1919 as being essential for the "observation of rules of the Prisons Act and prisons and highlighting the abuses" the system was incorporated into the Prisons Act, 1894. As prisons are state subjects, Section 59(25) required all states to lay down rules for "appointment and guidance of visitors of prisons", in their respective prison manuals. Today every state law, with some variations, incorporates the Prison Visiting System comprising a Board of Visitors (BOVs). Orissa Jail Manual mandates BOVs in Chapter IV.

The BOV is made up of Ex-Officio area functionaries from the Judiciary, Police, Department of Medical and Health, Agriculture, Industries, Social Welfare, Employment, Education and Probation and lay people nominated from local society also known as Non-Official visitors (NOVs). The board has the duty to meet periodically and assess the state of the prison, its inmates and management and make recommendations and reports to the administration and higher authority. Its members, collectively or individually have the authority to make periodic visits to the prison and write up their observations in the prison register as well as report it back to the collective board. It is the duty of these visitors to ensure safer, secure and humane jails by satisfying themselves that prisons are being run and prisoners treated in accordance with standards laid down in the Prison Act and Rules and, in case of dissatisfaction, report to the appropriate authorities for action that may include various governmental departments and even the judiciary.

What did CHRI do?

CHRI filed application requests under Section 6(1) of the Right to Information Act, 2005 to 36 States and Union Territories. It then drew upon the responses of all the States and Union Territories which provided information for the period from the constitution of the BOVs and NOVs till 12th November, 2014, the date when right to information requests were sent. It did not delve into the number of times the NOVs visited the jails or the content of their remarks in the registers as most states are unable to go beyond the very first

step of appointment and constitution. The information received from the states was then tabulated, summarized and examined to present a comparative study.

What did it find?

The overall picture of the prison visiting system in the country is bleak and in need of immediate attention. Across India, BOVs are not constituted, do not meet regularly or fail to inspect prisons. NOVs are irregularly or not appointed at all, do not visit prisons, or do so sporadically and have little idea of their duties. Neither officials nor NOVs need bear the consequences of neglecting their mandates. This falls on the hapless inmates. The key findings are:

1. Nearly half of the states (45%) had BOVs constituted in either all or some of their jails. But only four states had a board constituted in all their jails.
2. Six states had appointed the full number of NOVs required. The rest had either not appointed any or appointed less than the number required by law.
3. Six states didn't lay down any specific number of NOVs to be appointed and kept it absolutely discretionary.
4. Except for Meghalaya and Goa none of the states which had boards conducted meetings according to conditions mentioned in the law.
5. The BOVs of only five out of 1382 jails met according to law which means **not even one percent** of jails in India were monitored sufficiently.
6. In most states criteria for appointment of NOVs are very broad. Requirements for the position in prison manuals range from answering questions on basic literacy to unclear and insane questions about the applicant's interest in becoming a NOV.

What did it recommend?

The BOV is inexpensive to convene, has well defined functions and the system has been termed "a practicable formula bearing in mind the humanistic approach", "an effective administrative solution" and "something concrete in the nature of a permanent workable arrangement...to constantly monitor the unfailing effective implementation of the arrangements"ⁱⁱ. Yet in reality, the system of local monitoring by the board is near defunct. Despite repeated directives by the Supreme Courtⁱⁱⁱ and various High Courts^{iv}, national advisories by Ministry of Home Affairs (MHA)^v and other committees^{vi} to revive the mechanism whenever pitiable prison conditions have been exposed, very little has changed. Naturally the already old and overcrowded facilities are on an ever-deteriorating path. This is despite a significant increase in resources and an overall five-fold hike in budgets over the last 15 years^{vii}. It is imperative that a preventive, grievance redressal and improvement-centric mechanism such as BOVs is constituted forthwith in all the jails of the country. Otherwise the treatment of over 4 lac incarcerated men, women, and children will continue to be left largely in the hands of barely trained and short staffed prison administration.

After studying and taking account of the best standards and practices laid down by the central government, various other states and also other countries, CHRI has made certain recommendations out of which the following is on the criteria for appointing visitors:

1. **Background** – The candidates must be between 18-55 years of age with no direct involvement in the criminal justice system. Their professional record must not be indicative of any conflict of interest with any prisoner or prison official and in fact must be reflective of interest in the welfare of prisons or the likelihood of interest in the prisoners and their welfare both while they are in prison and after their release. They must be persons with wide knowledge and experience in either law, criminology, social service, psychiatry, healthcare or mass media with excellent listening and observation skills who can bring in useful resources and expertise inside prison while also focusing on prisoner rehabilitation post release. Bihar sets a good practice by calling for only distinguished social workers, educationists, psychologists and medical professionals as NOVs.
2. **Gender Balance** – There must be equal representation of men and women in the appointment of visitors. Women visitors must be appointed for each and every jail, in particular for women jails. Having said that, women representatives cannot be token presences or restricted to women's prisons. Therefore, a formula of having no more than 60 percent of any one gender be adopted

for NOV participation. This will also ensure a more equitable proportion of both men and women on the BOVs.

3. **Re-appointment** – For re-appointment, the visitor's performance during the first tenure must be considered. The frequency of his visits, the nature of his remarks and the nature of response to prisoners' requests and complaints must form the criteria for re-appointment along with attendance to at least one orientation session to familiarize with duties, powers, functions and relationship with the authorities. Further, six months prior to completion of the term of NOVs, each jail must send a reminder to the district magistrate of that particular district and also the home department to start the search for fresh appointments

For reading the entire report, other detailed, inter-state and intra-state findings and recommendations, please visit CHRI's website at www.humanrightsinitiative.org.

ⁱ Project Officer, Prison Reform Programme, Commonwealth Human Rights Initiative (CHRI). CHRI is an independent, non-partisan, non-governmental organization working for the practical realization of human rights in the Commonwealth countries. The Prison Reforms Programme of CHRI is more than 15 years old. The programme focuses on improving prison monitoring through the strengthening of undertrial review mechanisms and prison visiting system nationally, and ensuring early safeguards against unnecessary pre-trial detentions, specifically in Rajasthan and West Bengal. The programme also advocates for timely repatriation of foreign national prisoners and immediate release of asylum seekers. Evidence-based research, advocacy, capacity-building of actors of the criminal justice system including prison officials, welfare and probation officers, criminal defense lawyers, magistrates, legal aid functionaries and civil society actors are the regular activities of the programme.

ⁱⁱ *Rasikbhai vs. State of Gujarat*, 1999 CriLJ 1975

ⁱⁱⁱ *Sanjay Suri vs. Delhi Administration*; 1988 AIR 414

^{iv} *Ranchod vs. State of Madhya Pradesh*; 1965 SCR (2) 283

^v Ministry of Home Affairs Advisory F.N. 16014/4/2005-PR that was issued on 18.02.2011 that stated "Prison visiting system is a system to bring more transparency and accountability...The prison visiting system relating to Non-official Visitors needs to be streamlined...This mechanism will ensure accountability of not only the visitors but also the prison administration and help in bringing improvements in the prison administration"

^{vi} All-India Jail Reform Committee, 1980 -1983 (Mulla Committee)

^{vii} Rs. 80463.9 lacs in 2000 (Prison Statistics India – 2000 (Table No. 47)) and Rs. 427881.2 lacs in 2014 (Prison Statistics of India – 2014 (Table No. 12.1))