

RIPE FOR PRISON REFORM

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In an acknowledgment that the more than a century-old system of prisons in India needs repair, the Supreme Court, late last month, formed a committee on prison reforms. Headed by former Supreme Court judge, Justice Amitava Roy, it is to look into the entire gamut of reforms to the prison system. But this is not the first time that such a body is being set up, examples being the Justice A.N. Mulla committee and the Justice Krishna Iyer committee on women prisoners (both in the 1980s).

While marginal reforms have taken place, these have not been enough to ensure that prison conditions are in tune with human rights norms.

The terms of reference for the new committee are omnibus and seem ambitious. One must also not forget that its formation comes at a time when controversy surrounds the Tamil Nadu government's recommendation that the seven convicts in the assassination, in 1991, of former Prime Minister Rajiv Gandhi be released. The plea of the petitioners is that however heinous the crime, the penalty imposed — they have served 27 years — was beyond endurance.

This is the crux of the debate: incarceration in any form is uncivilised, especially when it is so long-drawn-out, and when the objective of criminal punishment should be one of reform rather than wreaking vengeance on a perpetrator of crime. The Hammurabi Code, it is argued, is no longer acceptable. In my view, any exercise to improve prison conditions — though not directly related to a plea for mercy, such as convicts in the Rajiv Gandhi case — must not ignore this axiom.

There is a divide here. Significantly, those pleading for clemency in this case are outnumbered, which is reflective of popular sentiment that a gruesome crime needs to be dealt with severely. It is also about the unresolved conflict in attitudes about incarceration — punishment or reform — which also explains the halfway jail reforms agenda seen in many countries.

So how do we render conditions within prisons less harsh and more humane? There are those who believe that if you keep improving prison conditions, there is likely to be an attendant impact on the incidence of crime. This accounts for the reluctance of many criminal justice administrators to employ or enlarge non-prison alternatives such as community service.

The offshoot of all this is growing numbers of prisoners and the woeful incapacity of governments to build more and larger prisons. The question often asked by governments is, in these days of extreme fiscal stress, why should state resources be diverted to a 'negative exercise, whose benefits are dubious'? This is why jail officials are often asked to 'somehow manage' with existing modest facilities.

The data on prison overcrowding are frightening. Except in parts of Europe, where crime is still low or at acceptable levels, overcrowding is rampant.

In the U.S., for example, which has a humongous crime problem, complicated by gun violence and a strident racist overtone in combating crime, the prison system is creaking under the stress of numbers. At any time, it is estimated, there are more than two million prisoners in state and federal prisons. In the U.K., the latest available data (July 2018) show a current prison population of approximately 92,500.

In India, the publication, *Prison Statistics India*, brought out by the National Crime Records Bureau will provide food for thought for the Justice Roy Committee. In 2015, there were nearly 4.2 lakh inmates in 1,401 facilities, with an average occupancy rate of 114% in most. About 67% of total inmates were undertrials, a commentary on the speed and efficiency of India's criminal justice system.

There is an obvious poverty of ideas in justice administration. While public officials and social workers are agreed upon the need to reduce overcrowding, there is hardly any convergence on how to go about this delicate exercise. There is also an obvious fear of backlash against any move to decriminalise what is now prohibited by statutes.

There is a popular view that in order to reduce prison populations, proven non-violent offenders could be dealt with differently. But it is frustrating that no consensus has evolved across the world on this relatively uncomplicated issue.

White collar crime has assumed monstrous proportions but there is no reason why we should continue to lock up offenders instead of merely depriving them of their illegal gains. Devising swift processes of attachment of properties and freezing of bank accounts are alternatives to a jail term. There are legal impediments here, but these can be overcome by ensuring a certain fairness in the system, of the state taking over illegally acquired wealth. The argument that not all gains made by an economic offender are open is not convincing enough to opt for incarceration over punitive material penalties. In India, progress has been made in freezing 'benami' holdings of major offenders even though it may not be a 100% effective step of cleaning up. But these are the first steps towards making economic crimes unaffordable and unattractive for the average offender.

Another complaint against prisons is the brutality and venality of prison officials, again common across the world. A solution will be a point to ponder over for the Justice Roy Committee.

Finally, improving prison conditions has no political leverage. Just as humane prisons do not win votes, the bad ones do not lose votes for any political party. As long as there are no stakes here for lawmakers, one can hardly hope for model prisons, where inmates are accommodated with due regard to their basic human needs and are handled with dignity.

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