

MODULE 2- PUNISHMENT AND ITS THEORIES

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CONCEPT OF PUNISHMENT

- Punishment, according to the dictionary, involves the infliction of pain or forfeiture, it is the infliction of a penalty, the purpose of punishment is to cause physical pain to the wrong-doer, it serves little purpose.
- In other words punishment is sanction imposed on an accused for the infringement of the established rules.
- The Object of Punishment is to protect society from mischievous and undesirable elements by deterring potential offenders, by preventing the actual offenders from committing further offences and by reforming and turning them into law abiding citizens.

DETERRENT THEORY

- Punishment is primarily deterrent when its object is to show the ineffectiveness of crime, and thereby teach a lesson to others. Deterrence acts on the motives of the offenders, whether actual or possible. Offences are committed, in most cases, as a result of a conflict between the so called interests of the wrong-doer and those of society at large. The object of punishment, according to this theory, is to show that, in the final analysis, crime is never profitable to the offender, and as the case maybe.
- The deterrent theory can be related to the sociological school of Jurisprudence. One of the main aim of the deterrence is to establish an example for the individuals in the society by creating a fear of punishment.

PREVENTIVE THEORY

- If the deterrent theory tries to put an end to the crime by causing fear of the punishment in the mind of the possible crime-doer, the preventive theory aims at preventing crime by disabling the criminal, for example, by inflicting the death penalty on the criminal, or by confining him in prison, or by suspending his driving license, as the case may be.
- The aim of punishment is to prevent the crimes. The crimes can be prevented when the criminal and his notorious activities are checked. The check is possible by disablement.
- In the ultimate analysis, the preventive mode of punishment works in three ways, viza) a) by inspiring all prospective wrong-doers with the fear of punishment; b) by disabling the wrong-doer from immediately committing any crime; and c) by transforming the offender, by a process of reformation and reskilling, so that he would not commit crime again.

REFORMATIVE THEORY

- According to the reformatory theory, a crime is committed as a result of the conflict between the character and the motive of the criminal. One may commit a crime either because the inducement of the motive is stronger or because the restraint imposed by character is weaker. This theory would consider punishment to be curative or to perform the function of a medicine. According to this theory, crime is like a disease. This theory maintains that "you cannot cure by killing". The exponents of the reformatory theory believe that a wrong-doers stay in prison should serve to re-educate him and to re-shape his personality in a new mould.
- The idea of the Reformatory Theory is hypothesis. It depends on the humanistic rule that regardless of whether a wrongdoer perpetrates a wrongdoing, he doesn't stop to be a person. In this way, an exertion ought to be made to change him/her during the time of his/her detainment.

RETRIBUTIVE THEORY

- It is based on a very small doctrine, namely the doctrine of *Lex talionis*, which if translated, means ‘*an eye for an eye*’. *It depends on following principles:*
- that those who commit certain kinds of wrongful acts, paradigmatically serious crimes, morally deserve to suffer a proportionate punishment;
- that it is intrinsically morally good—good without reference to any other goods that might arise—if some legitimate punisher gives them the punishment they deserve; and
- that it is morally impermissible intentionally to punish the innocent or to inflict disproportionately large punishments on wrongdoers.’

FORMS OF PUNISHMENT

1. The five different kinds of punishments awarded by the Indian Penal Code, 1860 have been enumerated under Section 53, and those are:

- Death
- Life imprisonment
- Simple or rigorous imprisonment
- Fine
- Forfeiture of property
- **2. Deportation -**

Another way of punishment is the deportation of corrigible or dangerous offenders. Deportation of criminals is also called banishment. Corrigible and hardened criminals were generally clamored to far off places with a view to eliminating them from the community. In England, war criminals were usually transported to distant Afro-African British colonies.

In India, this method also known as transportation, popularly known as Kalapani. The practice was abolished in 1956. It still persists in Mini-form popularly called as externment. The object of externment offender is to dissociate him from his surroundings so as to reduce his capacity to commit crime. This form of punishment has been incorporated in the penal law of India.

3. Corporal punishment -

Corporal punishment was very common until late 18th century. Corporal punishment includes modulation, flogging (or whipping) and torture etc.

(a) Flogging -Dictionary meaning of word flogging means, "to whip or to beat with strap/stick as punishment. In middle ages, Whipping was the commonest form of punishment. The instruments and methods of flogging differ from country to country. In Russia instrument used for blogging was constructed of a number of dried and hardened thongs was construed of rawhide, interspersed with wires having hooks in their ends, which could enter and tear the flesh of the Criminal. It has now been discontinued being barbarous and cruel in form. The main object of this kind of punishment is the deterrence. In India, whipping was recognized as a mode of punishment under the Whipping Act, 1864 which was repeated and replaced by a similar act in 1909 and the same was abolished in the year 1955.

(b) Mutilation -Mutilation is another kind of corporal punishment. It is prevalent during eminent Hindu Period. In case of theft, one or both the hands the offender were chopped off and in case of sex offenses, his private part was cut off. The justification advanced in support of mutilation was that it served as an effective measure of deterrence and prevention. This mode of punishment as well has been completely discarded being barbaric in nature This system was in practice in England, Denmark and many other European countries as well.

(c) Branding - In this type of punishment, criminals were branded with the appropriate mark on the forehead so that they would be identified and subjected to public Ridicule. For example, if a person found guilty of theft, the word 'theft' or 'T' it is branded on his forehead and the public would call him theft. In England, branding was practiced till 1829. finally, it was abolished by an Act of Parliament. In India branding was prevalent during the Mughal rule in its crudest form and was abolished later.

(d) Chaining- Chaining the offenders together was also commonly used as a mode of punishment. Their liberty and mobility was thus completely restricted. The hands and legs of criminals were tied with iron rods and Chained together. This method is now being sparingly used in the present prison system.

(e) Pillory - Pillory was yet another form of cruel and barbaric corporal punishment. It was in practice till 19th century. Hardened criminals and dangerous offenders were nailed in walls and shot or stoned to death. There is no doubt that this type of punishment was more cruel and brutal in form and therefore it has no place in the modern penal system. The system of pillory existed slightly in the different form during the Mughal rule in India. It is still used as a mode of punishment for sex offenders in Islamic countries which take offense against women very seriously

PENAL POLICY IN INDIA

- The Indian law givers of the olden times were well versed in the science of penology and attached great importance to penal sanctions. **Brahaspati Shastra** contains directions that an ideal penal policy always seeks the support of public opinion or Lokniti. Again, Kautilya in his Arthashastra modelled his penal policy on utilitarian principles taking into consideration various social factors, traditions and customs of the people. Expressing his views on punishment Kautilya commented that punishment if too severe alarms a man, if too mild frustrates him, but if properly determined, makes man conform to Dharma or righteous conduct. The function of law (Vyavhar) according to him was to bring the wrongdoer on the right track by a change in his attitude.
- One peculiar feature of the ancient penal system of India was that it acknowledged the supermacy of Brahmins in matters of punishment.
- As to the modes of punishment in ancient India, four main forms were known to have existed. They were:
 - (i) Admonition or warning (Vakdanda),
 - (ii) Remonstrance (Prayaschitta),
 - (iii) Fine (Arthadanda), and
 - (iv) Imprisonment, death or mutilation (Vadhadanda, Mritudanda or Aung Vichheda).

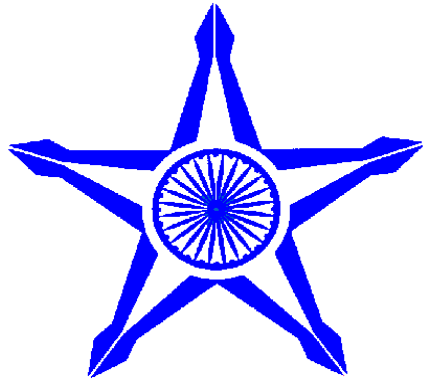
- During the medieval period the Muslim rulers introduced their own penal laws in India. The system being retributive in nature and irrational and discriminatory in its application, failed to meet the ends of justice.
- The irrationalities of Muslim criminal law provided an opportunity for British law administrators to substitute their own system of laws with necessary modifications so as to suit the needs of India.
- The advance of penology in Anglo-American world during 18th and 19th centuries had its own impact on Indian penal system. The sentence of transportation, mutilation, solitary confinement, whipping or punishing the offenders in public place are completely abolished and new reformatory methods such as parole, probation, open air prisons, borstals, reformatories, etc. have been adopted for the rehabilitation of offenders.
- Modern penologists generally agree that reformation of offenders should be the basic purpose of every penal system but at the same time the importance of deterrence should not be undermined.

CONCLUSION

- Dr. Jacob George v state of Kerala: In this case, the Supreme Court held that the aim of punishment should be deterrent, reformatory, preventive, retributive & compensatory. One theory preferred over the other is not a sound policy of punishment. Each theory of punishment should be used independently or incorporated on the basis of merit of the case. It is also stated that “every saint has a past & every sinner has a fortune”. Criminals are very much a part of the society so it is a responsibility of the society also to reform & correct them and make them sober citizens of the society. Because the prevention of crime is the major goal of the society and law, both of which cannot be ignored.
- The most heinous crimes in India are of sexual offences. The laws that govern these cases are strict in its own sense, but on interpretation shows many loopholes. Although there are offences for which death penalty and imprisonment for life are the punishments, there are other offences for which a term of imprisonment or fine or both, are the punishments. In case of the latter, there are chances of offenders repeating the offence. Therefore, the law has to be stringent.

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POLICE REFORMS CAMPAIGN



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THIS PRESENTATION PROCEEDS ON THE PREMISE ...

- That the necessity of “**Police Force**” is an admission by the civil Society that “**crime**” cannot be eliminated and therefore must be minimized
- That there would always exist persons who will disregard the “Rule of Law” and take “Law” into their own hands
- That this is true of perpetrators of crime and also the victims if justice is delayed or denied
- Therefore it is vital that criminals are identified, found guilty and punished swiftly according to the law of the land
- That fulfillment of this objective depends entirely on the degree of efficiency with which Crime Investigation Machinery and judicial system functions
- That the Police Force ought to be feared and respected if India wants to provide a dignified life to its citizens and fulfill its dream about becoming superpower in the world

SOME FACTS...

Indian economy growing @ 9% p.a., **limited by three factors:**

- Lack of infrastructure
- Low labour productivity
- **Failure of rule of law**
 - Civil disputes no longer go to courts
 - Extra-legal means being adopted for justice
 - Criminalization of politics
 - Rough and ready justice along with poverty and poor services have undermined the legitimacy of the state

SOME MORE FACTS...

- Investment on judiciary
 - India: 0.2 % of GDP (Source: First National Judicial Pay Commission)
 - Singapore: 1.2% of GDP
 - USA: 1.4% of GDP
 - UK: 4.3% of GDP
- Number of judges
 - India: 12 per million
 - OECD countries: 120 per million
- Petty corruption in Police (crime and Traffic)- **Rs. 3899 crores**
- Common citizens pay **Rs. 21068 crores** to get public services
(*that too in only 11 public departments*) (Source: India Corruption Study 2005 by Transparency International India)

FAILURE OF JUSTICE DELIVERY SYSTEM IN INDIA

- Over 3,00,00,000 (30 million) cases pending in Indian courts
- 60-70% witnesses retract their statements during trial

(Source: National Police Academy Study)

- Long wait for justice – **justice delayed is justice denied**
 - Recent events have cast a shadow on ability of the judiciary to deliver justice effectively
 - **Alistair Pereira drunken driving case**- Mumbai
 - **Best Bakery case**- Gujarat
 - **Jessica Lal murder case**- New Delhi
 - Shooting took place in a prime neighborhood in Delhi
 - Large number of witnesses
 - Forensic evidence was potentially strong
 - Circumstantial evidence was strong
- > **Still the accused were acquitted initially**

Sire, above the line of fire !



Order came from higher up to release you, Your Honour, I beg your pardon, I didn't know you were a VIP!

(Courtesy: RK Laxman)

HOW RULE OF LAW PREVAILS ELSEWHERE

- **Tony Blair- the former British PM** had to sit through a mandatory counseling session in 2000 when his 16-year old son was taken in by the police for getting drunk and becoming incapacitated. The local police officer counseled the Blair couple who had to sit through the entire session as ordinary parents!
- **Bill Clinton** was impeached and was almost removed as the **President of USA** 'merely' for lying under oath and on a highly personal issue
- **Jenna Bush** was arrested, fined and sentenced to community service in Texas after she was caught drinking below the legally permissible age limit. She is the daughter of George W. Bush Jr., the **President of United States**
- **Paris Hilton** has been sentenced to 45 days in prison for driving without a permit in Los Angeles. **She is the multi millionaire heiress to the Hilton Hotel empire.**

STATE OF POLICE AND POLICING TODAY...

Life of a policeman

- His salary - **impractically low**
- His working hours - **inhuman**
- His housing and family welfare like health care etc - **subhuman**
- Education facilities for his off springs - **highly inadequate**
- Stress busting and morale building training to improve his mental and intellectual health - **hardly any**
- END RESULT
 - Unbearable High Stress leading to increasing incidents of suicides
 - Low Efficiency leading to substandard policing

STATE OF POLICE AND POLICING TODAY...

- Dwindling faith of the general public in the police force
- Lack of professional approach to investigations which results in low rate of convictions
- Political interference hampers neutrality of crime investigations
- Increasing corruption in police force
- Lack of a citizen friendly image
- Lack of morale among policemen
- Vested interest driven appointments
- Unwarranted outside interference in functioning of police force

STATE OF POLICE AND POLICING TODAY...(cont'd)

- Distrust between citizens and Police

- Most citizens avoid police due to fear of harassment
- Only those are detained who have no money or political power

Types of difficulties faced by citizens		
Sr. No.	Difficulties faced	Total in %
1	Indifferent attitude	64
2	Corruption	61
3	Procedural (e.g.: Use of English language)	43
4	Non-availability of forms and guidelines	29
5	Interference of middlemen	11

Perception of corruption		
Sr. No.	Perception of corruption	Total in %
1	Agree	87
2	Neither agree nor disagree	7
3	Disagree	5

Source: Corruption India study 2005

STATE OF POLICE AND POLICING TODAY...(cont'd)

- Distrust between citizens and Police

- Those who need help turn to illegal approaches such as bribing, using influence or approaching middlemen

Alternate avenues used		
Sr. No.	Alternate procedures used	Total in %
1	Paying additional amount	80
2	Putting extra efforts	27
3	Using influence	16
4	Using political influence	11
5	Bureaucrats/officials' influence	9
6	Approaching middlemen	5

Source: Corruption India study 2005

Services for which bribes are paid		
Sr. No.	Services	Total in %
1	Registering FIR	47
2	For avoiding being challaned for traffic offences	16
3	For avoiding arrest/serving of notices	11
4	Other activities (bail, other challan, etc)	8
5	Avoiding arrest	6
6	Verification of passport	5
7	Ensuring the case is followed up actively	5
8	Verification for job	4
9	Filing of charge sheet in court	3

SO WHAT AILS OUR POLICE FORCE ????

- A. Internal systemic problems**
- B. External influences**

THE AILMENTS

- Outdated laws
 - Indian Police Act - 1861
 - Evidence Act - 1872
 - Criminal Procedure Code - 1973
 - Indian Penal Code - 1860
- Inappropriate
 - Selection processes
 - Training methods
 - No scope for specialization
 - Empowerment
- Interference by external forces
 - Demoralization
 - Promotion of incompetent personnel
 - Punishment posting

PROBLEMS IN THE CURRENT INDIAN POLICE SYSTEM

-Reasons behind the problems

- Police inefficiency
 - Hiring of police personnel

Country (year)	Citizens per sworn police officer
Australia (2004)	1:235
Canada (2007)	1:492
UK (England & Wales- March 2004)	1:268
UK (Metropolitan Force London- March 2004)	1:420
USA (2003)	1:392
South Africa (May 2007)	1:365

Source: South Africa Police Service home page

India

1:750

Sanctioned And Actual Strength Of Civil Police Including District Armed Police

Police Ranks / Region	Maharashtra		ALL INDIA	
	Sanctioned	Actual	Sanctioned	Actual
DG/ Addl.DG /IG / DIG	70	66	1140	1080
SSP/SP/Addl.SP/ASP/ Dy.SP	810	589	9632	8514
Inspector, SI & A.S.I.	23250	21046	170338	151799
Officers Below A.S.I.	111940	100835	967363	885182
TOTAL	136070	122536	1148473	1046575
Shortage		13534		101898
% Officers below ASI	82%	82%	84%	85%

Source: National Crime Records Bureau- MHA

PROBLEMS IN THE CURRENT INDIAN POLICE SYSTEM

-Reasons behind the problems

- Police inefficiency
 - Training of police personnel
 - Only three Central Detective Training schools in India
 - Shortage of trained officers and equipment results in poor quality investigations
 - Technical equipment
 - 23 Central Forensic Science laboratories in India
 - 203 in USA
 - Level of equipment not good enough- Malimath Committee Report

STATE OF POLICE AND POLICING TODAY...(cont'd)

- Burden of disparate duties on police personnel

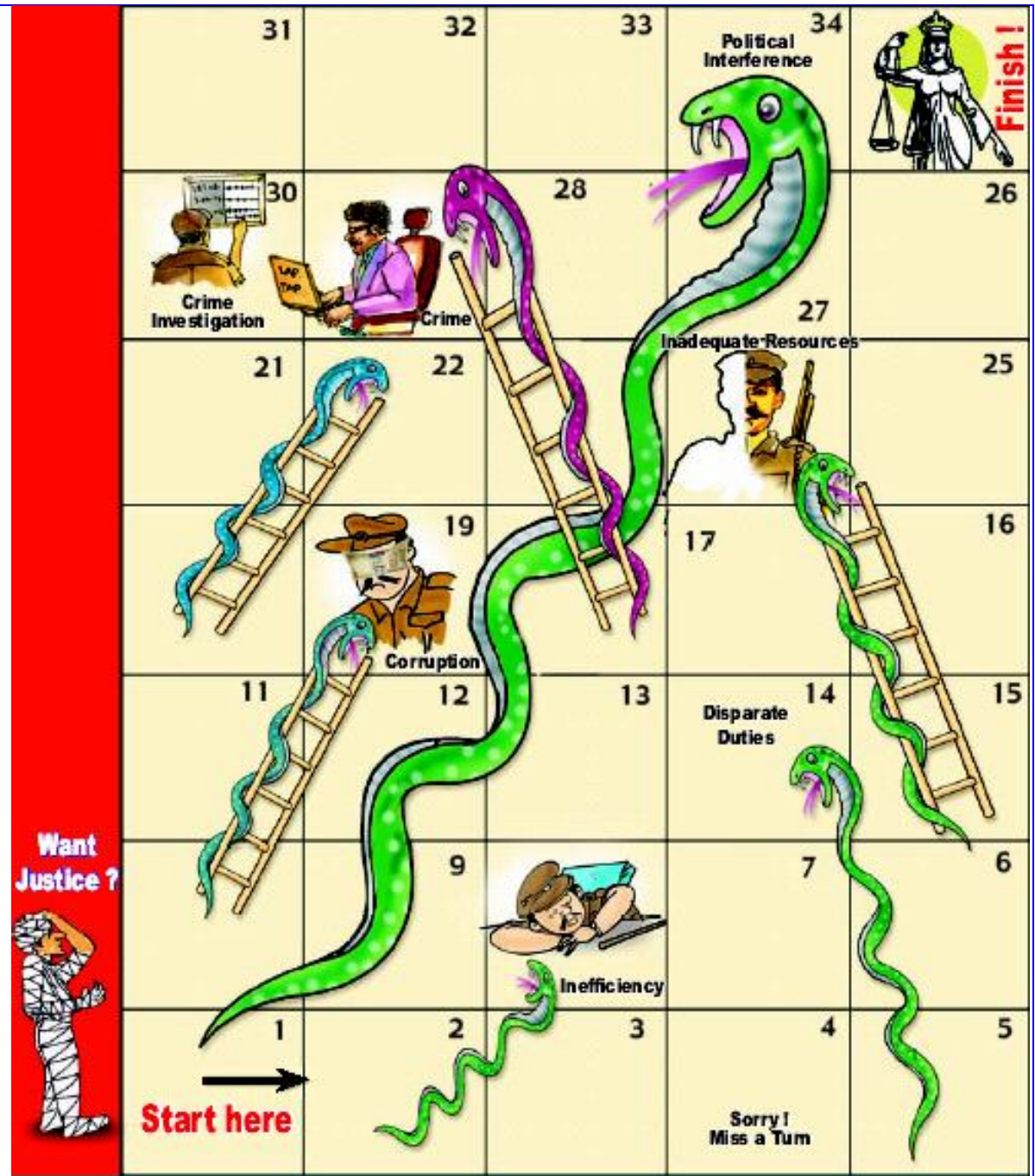
- Patrolling neighborhoods ('on beat') for security
- Petty crimes
- Investigating grave criminal offences and assisting in Prosecution
- Presenting the accused; serving court summons and bringing witnesses to the court
- Crowd management and riot control
- Protecting important material assets (like state monuments and vital installations)
- Ensuring physical safety of important public persons
- Traffic control and management
- In some cases, tackling organized violence, extremism and insurgency

PROBLEMS IN THE CURRENT INDIAN POLICE SYSTEM

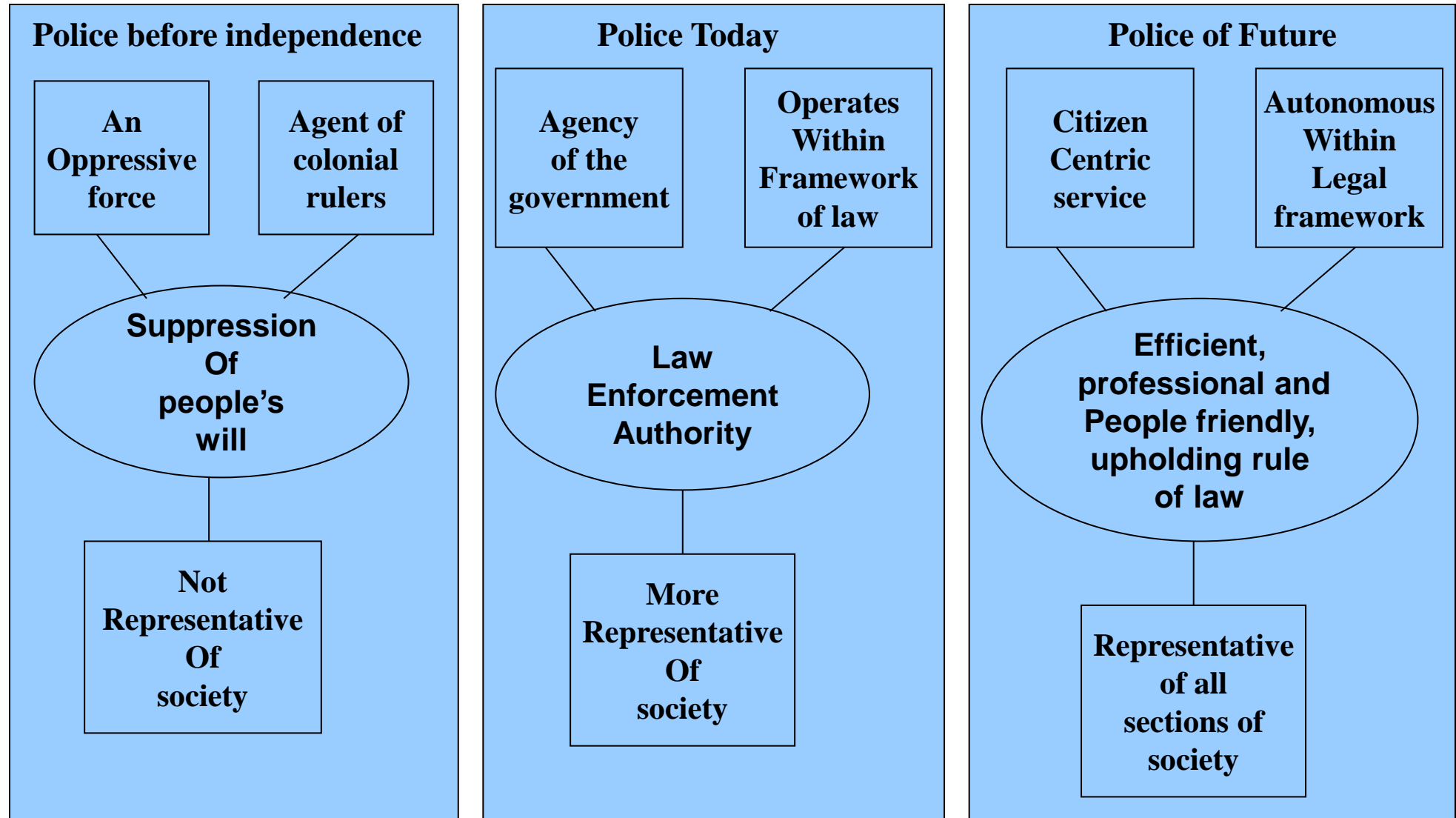
-Structural design defects in the police force

- Unwarranted external interference and politically driven appointments, transfers and promotions
- Disparate functions performed by an overburdened police force
- Lack of genuine empowerment
- Inadequate collaboration between the police and the prosecutor

STATE OF THE POLICE FORCE IN THE COUNTRY TODAY



EVOLUTION OF POLICE- SHIFTING ROLES AND PERSPECTIVES



A REFORM PROPOSAL

THE NEW INDIAN POLICE FORCE

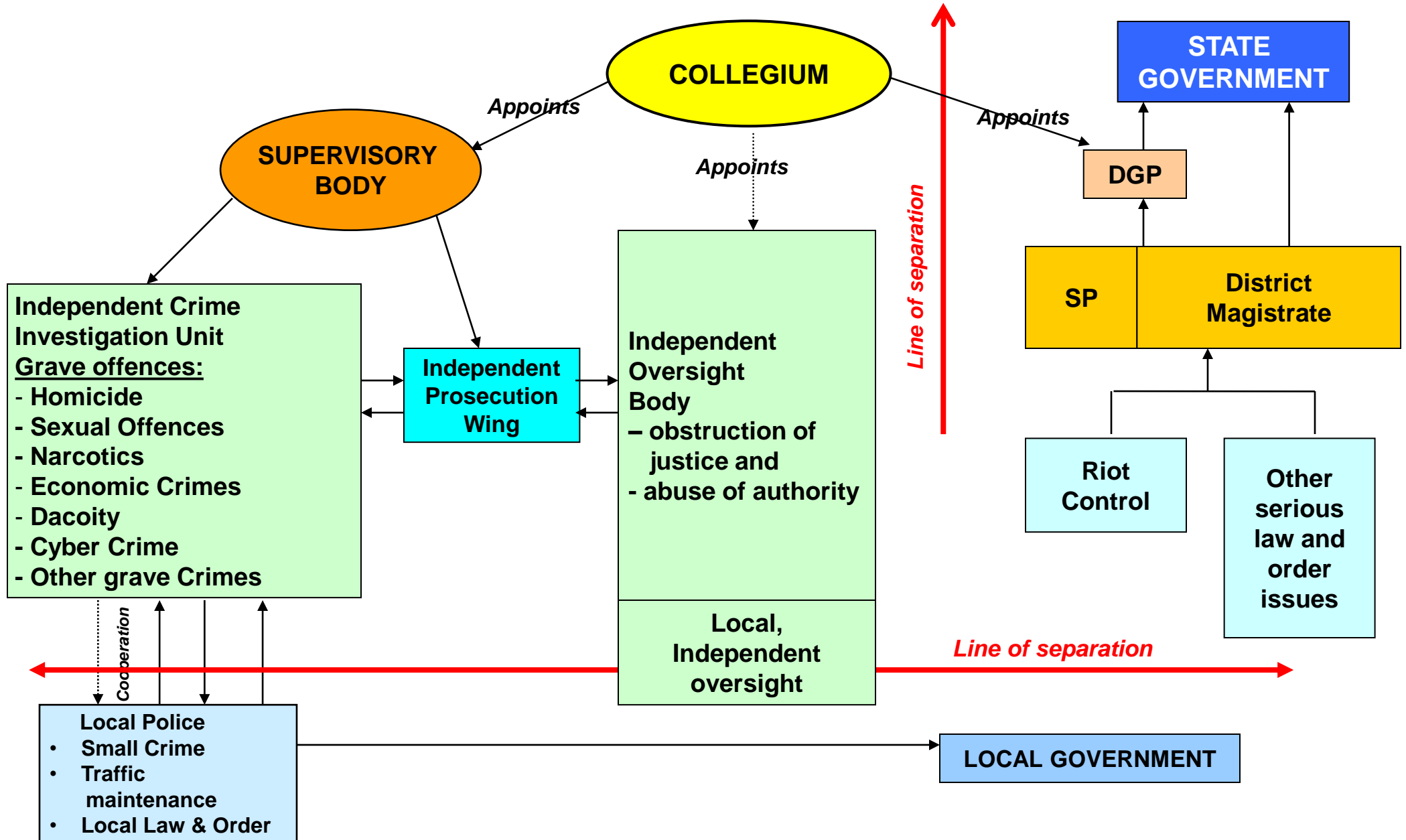
FIVE-FOLD PATH TO TRANSFORM OUR JUSTICE DELIVERY SYSTEM

- **Police Reforms**
 - Police functioning needs to be completely modernized, adequate resources, mobility and technology should be guaranteed
 - Crime investigation must be separated from other police functions, and made independent and accountable
- A system of low-cost, citizen-friendly local courts needs to be created to try small cases- civil and criminal
- Procedural laws need to be revised to suit modern conditions
- A career in judiciary must be made viable for bright young lawyers
- A National Judicial Commission must be created to oversee appointments and removals in higher judiciary

REFORMS PROPOSED – A SUMMARY

- Separation of
 - Crime Investigation
 - Law and Order
 - Local police
- Crime Investigations of serious offences being quasi judicial
 - Placed under “Supervisory Body” appointed by “Collegium”
 - Independent Prosecution Wing
 - All promotions, transfers etc- decided by Supervisory Body
- Counter checks- by Independent Oversight Body
 - To restrain misuse or abuse of authority or power

PROPOSED STRUCTURE OF THE NEW POLICE FORCE



COLLEGIUM

- Collegium consists of
 - State Chief Minister
 - Home Minister
 - Leader of Opposition in State Legislature
 - Chief Justice of High Court
 - About 6 eminent personalities from diverse fields of society
- Created to ensure independence of police force from the Executive
- State DGP to be appointed for guaranteed tenure without unwarranted external interference
- Appointments to key positions in Supervisory Body and Independent Oversight Body will be made by Collegium

SUPERVISORY BODY

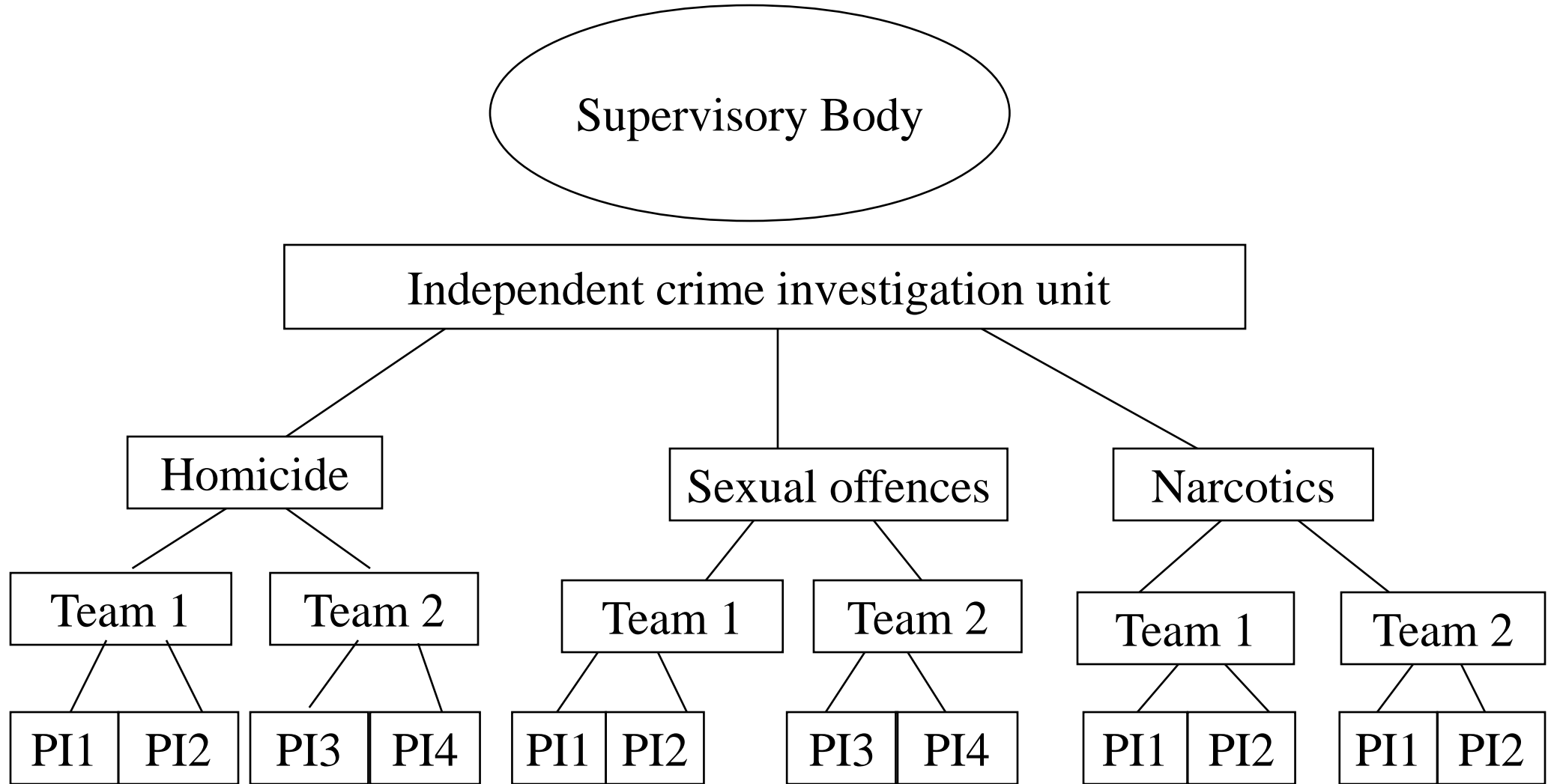
- Independent of the Executive
- Head of this body will be appointed by the Collegium
- Will comprise of jurists, professional investigators and legal experts who are reputed, experience and credible within their domains of expertise
- Will decide all the appointments, transfers, terminations and promotions
- Will prevent arbitrary transfers and ensure sustainability within the department.
- Will ensure professionalism and careers on merit and performance

INDEPENDENT CRIME INVESTIGATION WING

- Crime investigation duties are quasi judicial in nature and need to be insulated from external influences
- This unit will
 - Be professionally driven in all aspects of investigation
 - Work in close collaboration with an independent prosecution unit and the local police
 - Decrease workload on police investigators and ensure that expert knowledge gained in the field remains in the unit
 - Will handle only grave offences and not other tasks such as petty crimes, traffic control, VIP protection, etc

INDEPENDENT CRIME INVESTIGATION WING

-Proposed Structure



PI= Police Investigating Officer

INDEPENDENT PROSECUTION WING

- Appointments, transfers and promotions will be handled by the Supervisory Body
- Independent from the District Magistrates
- This unit will ensure
 - Good legal guidance to build a sustainable case in the court
 - Professional and efficient crime investigations
 - Every aspect of investigation will be covered from a legal point of view

LAW AND ORDER

- Riot control and other serious law-and-order issues like terrorism and insurgency etc will continue to be addressed by the State Police forces as is done today
- Dual control of District superintendent and District Magistrate will be maintained as exists currently

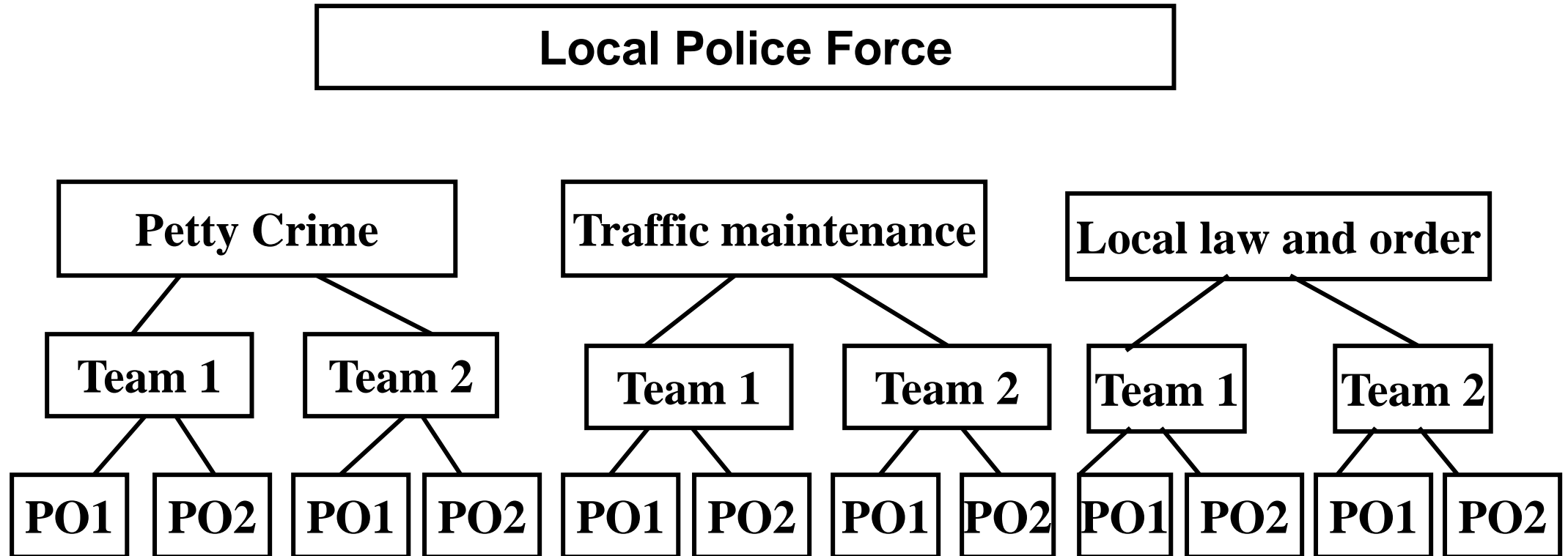


LOCAL POLICE FORCE

- Will help handle small and local issues at the local level
- Will have functional jurisdiction over petty crimes, local policing and traffic maintenance
- Will have a local independent oversight body
- Will allow for an increase in police–population ratio and address current manpower shortage
- Will decrease burden of disparate duties and promote efficiency

LOCAL POLICE FORCE

-Proposed Structure



PO= Police Officer

INDEPENDENT OVERSIGHT BODY

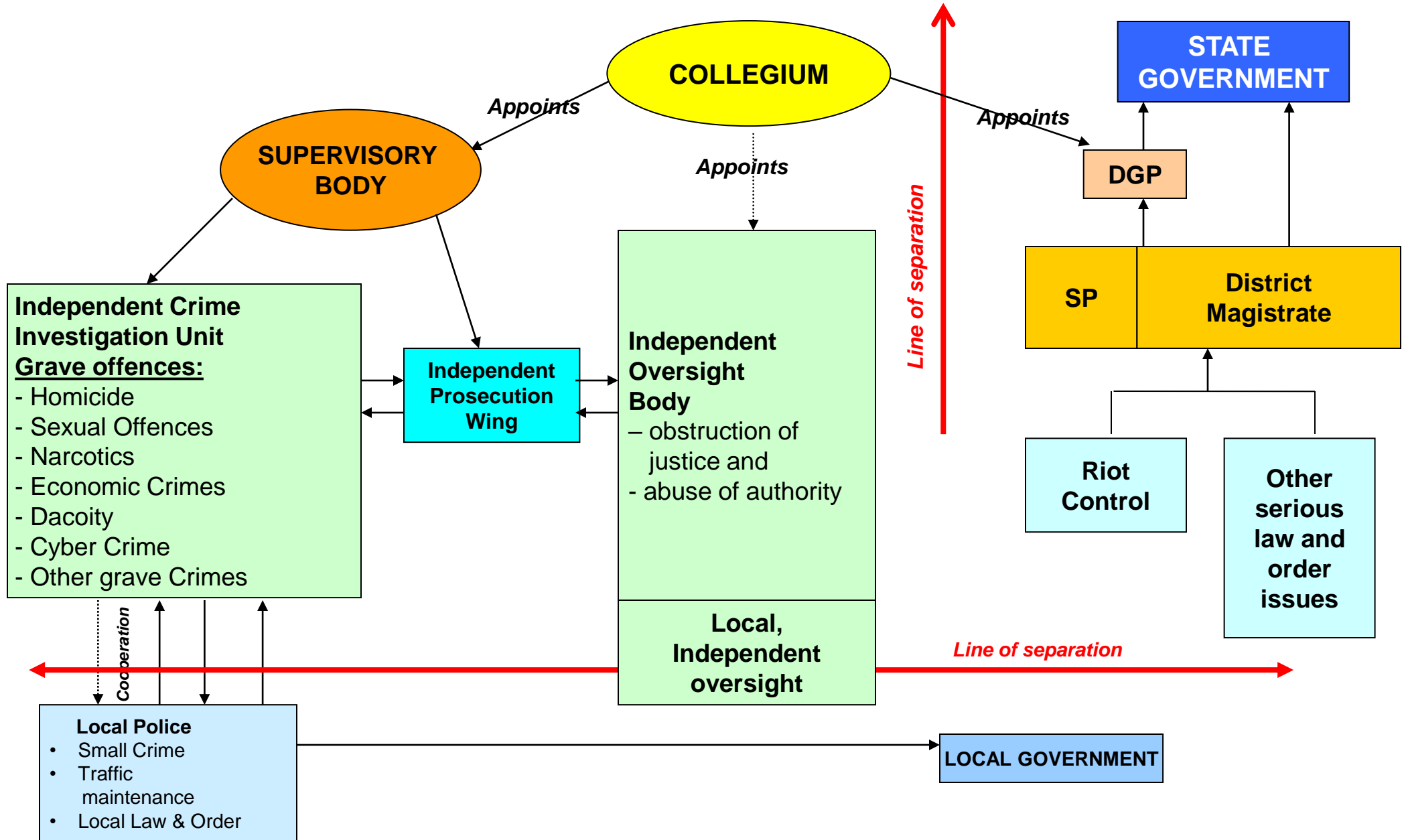
-Policing the police!

- Will consist of experts, reputed jurists, eminent individuals with an established track record
- Will **not consist of** active police officers or government servants
- Will ensure and enhance public accountability
- Will investigate all allegations of
 - Abuse of authority
 - Obstruction of justice by the police
- Will speedily and effectively investigate complaints received
- Will ultimately enhance public trust in police force

EMPOWERMENT AND TWO LEVEL ENTRY

- Currently entry level determines progress in career
- Individuals stagnate at the level they enter, more so at lower levels of the police force
- Current system has contributed to low morale of police
- Proposed system has two level entry
 - Every police officer will be empowered with decision making powers and be fully accountable and responsible for his / her work
 - Provides incentives for personnel to carry out their duties effectively
 - Creates better chances of promotions
 - Entry barrier into the system shall be low
 - Growth shall be based on competence and performance

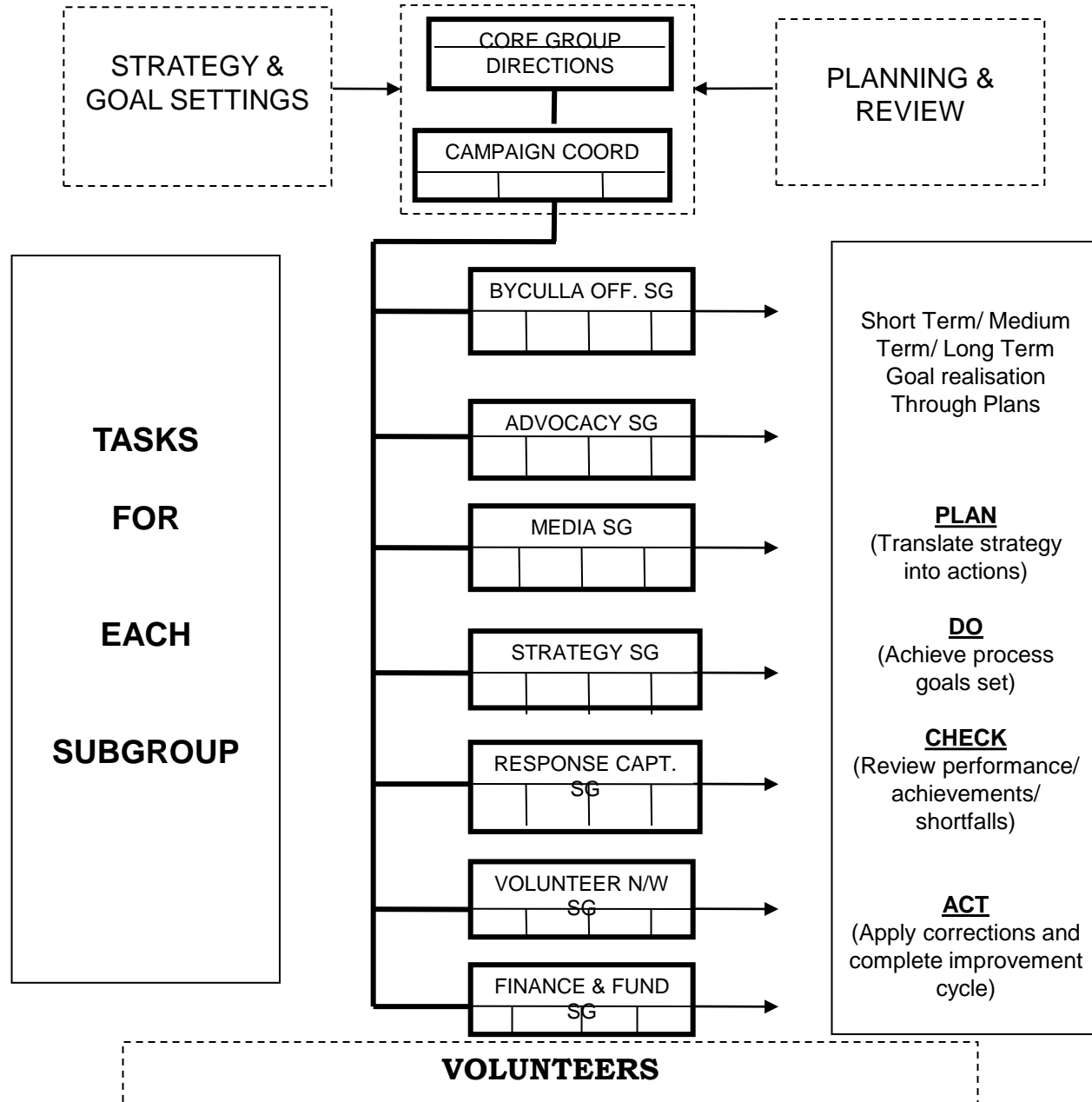
PROPOSED STRUCTURE OF THE NEW POLICE FORCE



THE ROAD AHEAD...

- **Advocacy**
 - Political parties
 - State and local governments
 - Civil Society institutions
 - Community organizations
 - Citizens
 - Media
- **Preparation for launch of the Police Reforms campaign**
 - Clearly defined roles and responsibilities for campaign activities
 - Detailed agreements on media support
 - Preparation of supporting collateral – documentaries, pamphlets etc
 - Public consultations/ Orientation programmes for volunteers and supporters
 - Response-capture mechanism
 - Clear definition of milestones
- **Launch of the Police Reforms campaign**
 - Series of well-structured events to obtain critical mass of visibility
- **Youth awareness program**
 - Intercollegiate Debate on Police Reforms
- **Workshops / seminars**
- **Public support**
 - Citizen awareness program
- **Media debates and activities**

THE CAMPAIGN ORGANIZATION CHART



STRATEGY &
GOAL SETTINGS

CORE GROUP
DIRECTIONS

PLANNING &
REVIEW

CAMPAIGN COORD

TASKS

FOR

EACH

SUBGROUP

BYCULLA OFF. SG

ADVOCACY SG

MEDIA SG

STRATEGY SG

RESPONSE CAPT.
SG

VOLUNTEER N/W
SG

FINANCE & FUND
SG

Short Term/ Medium
Term/ Long Term
Goal realisation
Through Plans

PLAN

(Translate strategy
into actions)

DO

(Achieve process
goals set)

CHECK

(Review performance/
achievements/
shortfalls)

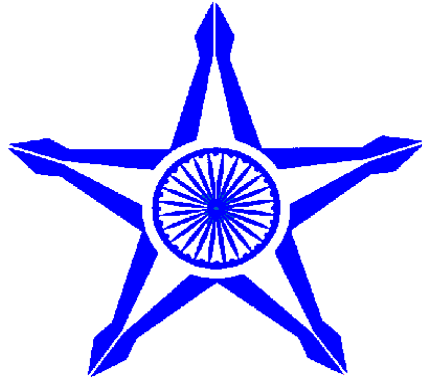
ACT

(Apply corrections and
complete improvement
cycle)

VOLUNTEERS

WHAT YOU CAN DO...

- Participate in the campaign as a volunteer
- Take up a role as a trainer, presenter, manager of activities
- Partner your organization in the campaign
- Write / Carry articles in local newsletters, newspapers
- Participate in meetings etc
- Contribute financially
- Get involved in the Intercollegiate debate on Police Reforms



LOK SATTA MOVEMENT

People Power

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THANK YOU



Courtesy: R.K. Laxman

POLICE REFORMS

POLICE REFORMS

- ◉ police reforms programmed aims to realize increased demand for and achievement of police accountability and reform throughout the Commonwealth.



POLICE REFORMS

- In order to achieve this objective, the police are empowered to use limited coercive power thereby creating conditions for realization of human rights. The constitution itself and the international treaties and covenants ratified by India cast a duty on the state to protect and promote human rights. Article 2(3)(a) of the International Covenant on Civil and Political Rights mandates every state party to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

SUPREME COURT DIRECTIONS

- ◉ Insulating police from political pressures
- ◉ Internal autonomy to police in personnel matters
- ◉ Ensuring accountability
- ◉ Objective selection of DGP
- ◉ Security of tenure to field officers
- ◉ Separating investigative from law and order functions

STATE SECURITY COMMISSION

- Any model recommended by the following could be chosen:
 - National Human Rights Commission
 - Ribeiro Committee
 - Sorabjee Committee

JUDICIAL APPROACHES

- ◉ **Issues Related to Functioning of Police**
- ◉ **Political Criminalisation Nexus: Second Administrative Reforms Commission (2007)** has noted that the excessive power in the hands of police has been abused in the past by the political executive to unduly influence police personnel, and have them serve personal or political interests.
 - Further, there has been an increasing phenomenon of **criminalization of politics**.
 - This nexus interferes with professional decision-making by the police (e.g., regarding how to respond to law and order situations or how to conduct investigations), resulting in a biased performance of duties.
- ◉ **An Overburdened Police Force:** State police forces had 24% vacancies (about 5.5 lakh vacancies) in January 2016. Hence, while the sanctioned police strength was 181 police per lakh persons in 2016, the actual strength was 137 police.
 - This is way too low when compared with the United Nations' recommended standard of 222 police per lakh persons.
 - Further, an average policeman ends up having an enormous workload and long working hours, which negatively affects his efficiency and performance.
- ◉ **Need to set Police accountability:** In India, various kinds of complaints are made against the police including complaints of unwarranted arrests, unlawful searches, torture and custodial rapes.
 - To check against such abuse of power, various safeguards should be adopted, such as accountability of the police to the political executive, internal accountability to senior police officers, and independent police oversight authorities.

- ◉ **Lack of Resources:** CAG audits have found shortages in weaponry with state police forces. For example, Rajasthan and West Bengal had shortages of 75% and 71% respectively in required weaponry with the state police.
 - Also, the Bureau of Police Research and Development has also noted a 30.5% deficiency in stock of required vehicles with the state forces.
 - Further, funds dedicated to the modernisation of infrastructure are typically not utilised fully. For example, in 2015-16, only 14% of such funds were used by the states.
- ◉ Recent custodial death of a father and son by police in Tamil Nadu and the death of a gangster (with alleged political connections) in an encounter by Uttar Pradesh police has put a question mark on objectivity and credentials of the police in delivering justice.
- ◉ Factors responsible for atrocities done by police and criminals evading the criminal justice system range from their political nexus to inefficiency of police.
- ◉ This can be also reflected in the **Vohra Committee report**, that highlighted the nexus between the criminals, politicians and government functionaries. It stated that the network of the mafia is virtually running a parallel government, pushing the state apparatus to irrelevance, and suggested that an institution be set up to effectively deal with the menace.
- ◉ Thus, there is a need to decriminalise politics and bring about a number of reformations in the criminal justice system including the police reforms.

WAYS FORWARD

- ◉ **Curbing Criminalisation of Politics:** The criminal nexus with politics will have to be broken and reforms must start with the political system. Thus, there is a need for laws which debars persons with serious criminal cases from entering the assemblies and the Parliament.
- ◉ **Revamping Criminal Justice System:** There is a need to incorporate the Menon Committee and Malimath Committee recommendations for devising a national policy paper on the criminal justice system. Some of the key recommendations are as follows:
 - Creation of a fund to compensate victims who turn hostile from the pressure of culprits.
 - Setting up of separate authority at the national level to deal with crimes threatening the country security.
 - A complete revamp of the entire criminal procedure system.
- ◉ **Independent Complaints Authority:** The Supreme Court has observed that there is a need to have an independent complaints authority to inquire into complaints of police misconduct.
- ◉ **Implementing the Supreme Court's Directive:** The Supreme Court's directions in **Prakash Singh case 2006** on police reforms must be implemented. The court laid out seven directives where considerable work in police reforms is still needed.

NHRC GUIDELINES ON POLICE-PUBLIC RELATIONS

- ◉ Registration of offences and information about progress in investigation:
- ◉ Transparency in the investigation process must be maintained. The Commission has stressed that complainants must have access to information about their cases. They have said that:
- ◉ A First Information Report [FIR] should be registered promptly on receiving a complaint about a cognizable offence.
- ◉ A copy of the FIR should be given to the complainant and an entry about this should be made in the First Case Diary.
- ◉ If the complaint does not make out a cognizable offence, the police should explain to the complainant, the reasons why the complaint cannot be registered.
- ◉ If investigation is not completed within three months of the FIR being registered, the complainant should be informed in writing giving specific reasons for the delay.

- Proof of having informed the complainant [postal acknowledgement or written acknowledgement] about reasons for the delay in investigation should be kept on the Case Diary file.
- If investigation is not completed within six months of registering the FIR, the complainant should be informed again in writing about the reasons for noncompletion of investigation, and the acknowledgement should be kept on the Case Diary file.
- If the investigation is not completed within one year, a more detailed intimation [memo] should be prepared by the investigating officer giving reasons for the delay to the complainant. The intimation should be endorsed by a gazetted officer who directly supervises the work of the investigating officer. The gazetted officer should personally verify the reasons for delay given by the investigating officer. A record of the intimation and its acknowledgement by the complainant should be kept on the Case Diary file.
- The complainant should be informed once the investigation is completed and a charge-sheet is filed before the court. A copy of the charge-sheet should be given to the complainant by the police. In case the complainant is not available for some reason, her/his family should be informed.

ENCOUNTER DEATHS NATIONAL HUMAN RIGHTS COMMISSION [NHRC] GUIDELINES ON ENCOUNTER DEATHS MARCH 29, 1997 AND REVISED GUIDELINES

- ◉ 1. As soon as information about death being caused in a police encounter is received, the officer in-charge of a police station must record it in the appropriate register.
- ◉ 2. It is desirable that the investigation should be handed over to an independent investigation agency such as the Criminal Investigation Department [CID], if members of the encounter party belong to the same police station.
- ◉ 3. Whenever a specific complaint is made against the police for committing a criminal act that amounts to culpable homicide, an FIR should be registered under appropriate sections of the Indian Penal Code and investigation should invariably be handed over to the CID.
- ◉ 4. A magisterial inquiry must invariably be held in all cases where death has occurred in the course of police action. The next of kin of the dead person must invariably be associated with the inquiry.
- ◉ 5. Prompt prosecution and disciplinary action must be initiated against the officers found guilty in the magisterial inquiry/ police investigation.

- ◉ 6. The question of compensation being given to the dependents of the dead person will depend on the facts and circumstances of each case.
- ◉ 7. No out of turn promotion or instant gallantry rewards will be given to the concerned officers soon after the occurrence. It must be ensured .[at all costs]. that they are given only after the gallantry of the officer concerned is proven beyond doubt.
- ◉ 8. A six monthly statement of all cases of deaths in police action in the state shall be sent by the Director General of Police to the NHRC by January 15 and July 15 every year. The statement may be sent in the following format along-with postmortem reports and inquest reports :
 - (i) Date and place of occurrence
 - (ii) Police station and district
 - (iii) Circumstances leading to death:
 - (iv) Brief facts of the incident
 - (v) Criminal case number
 - (vi) Investigating agency
 - (vii) Finding of the magisterial inquiry/ inquiry by senior officers:
 - (a) disclosing in particular names and designations of police officials, if found responsible for the deaths; and
 - (b) whether use of force was justified and action taken was lawful.

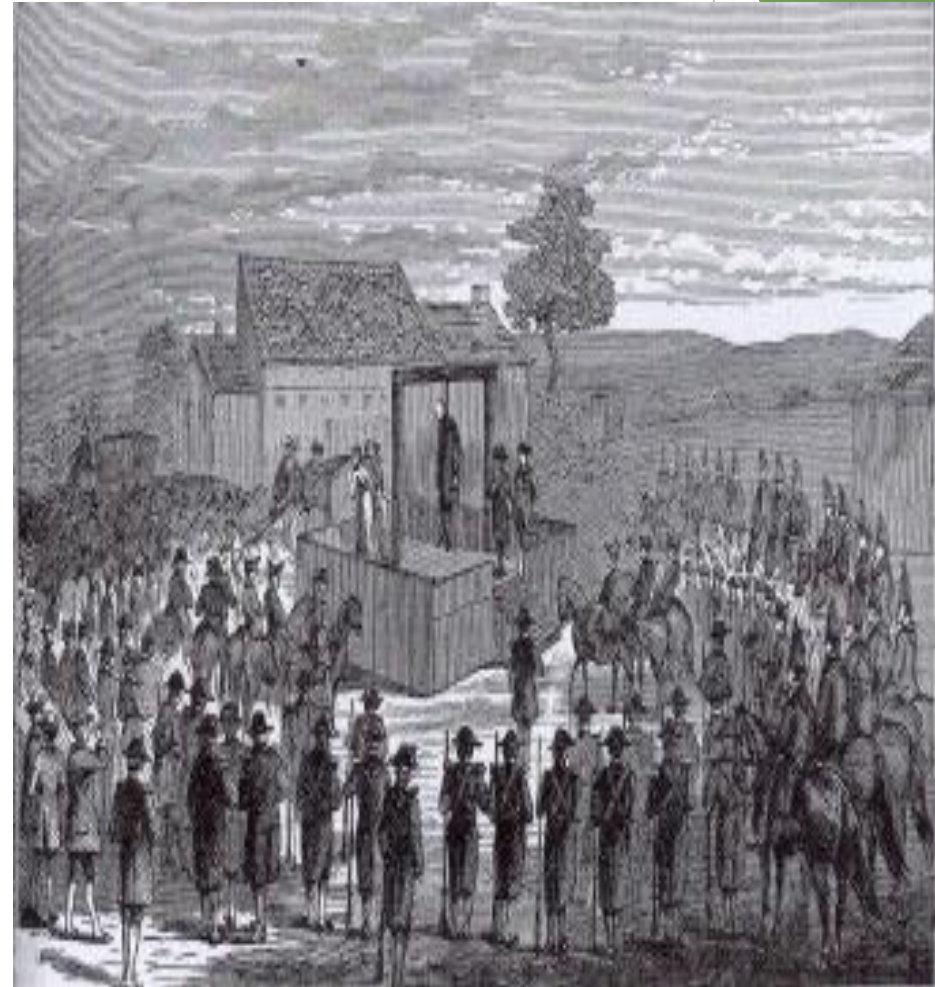
THANK YOU

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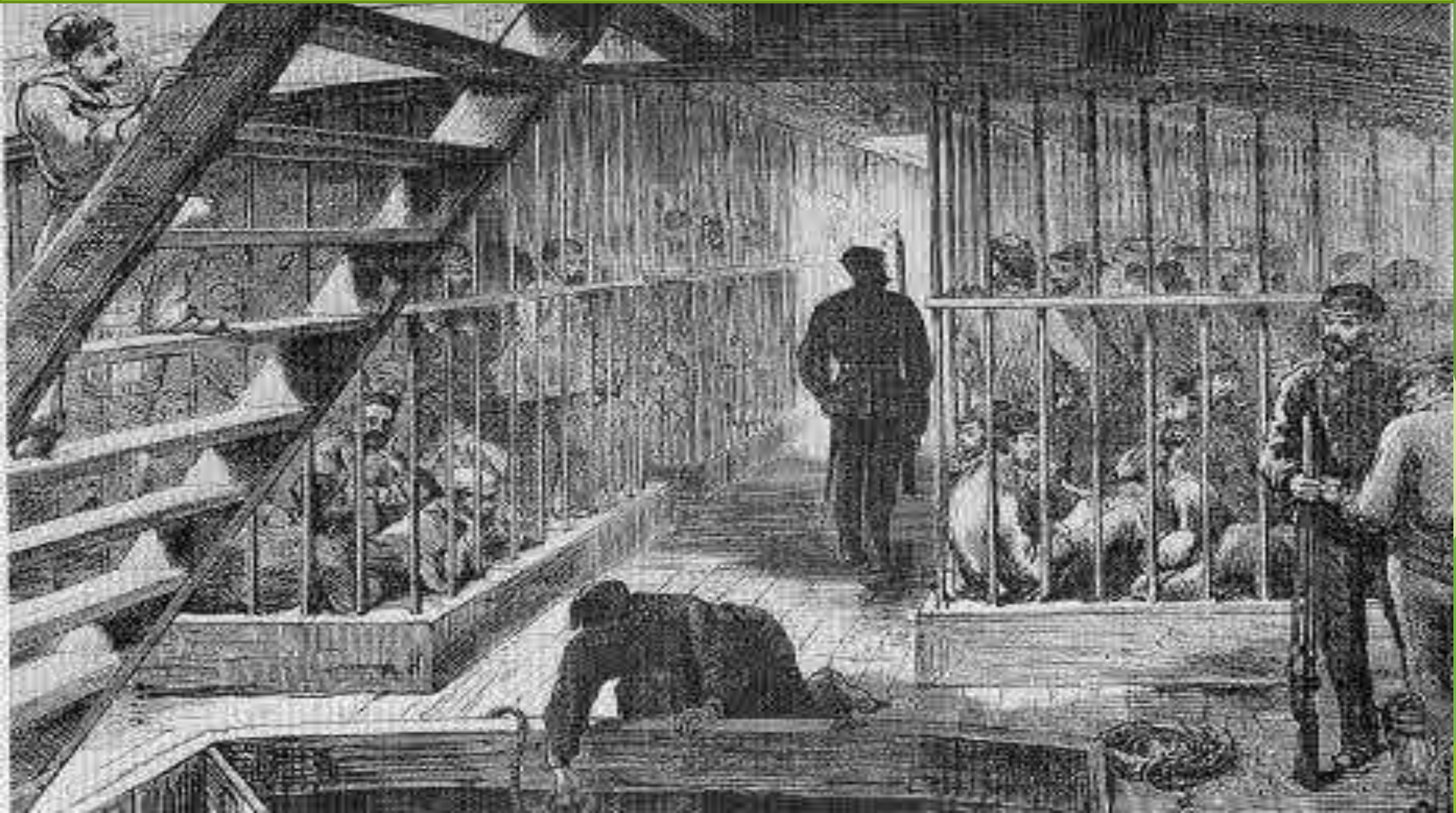
HISTORY OF PRISONS & PRISON REFORM

CRIMINAL PUNISHMENT : 17th Century

- ▶ **Public Punishment:** Sentence for many offences was public hanging, or else whipping, branding, scaffold, bilboes, etc. designed to shame the person and deter others.
- ▶ **Prison System was not very evolved:**
 - **Not seen as punishment:** Prison was very rarely used as a punishment in its own right. It tended to be a place where people were held before their trial or while awaiting punishment.
 - **Houses of correction managed by Justices of Peace:** Set up under the Poor Law to instil habits of industry through prison labour. They were later integrated into prison system.
 - **Transportation:** A much-used method for disposing of convicted people was to ship them to the British colonies



PRISON SHIPS



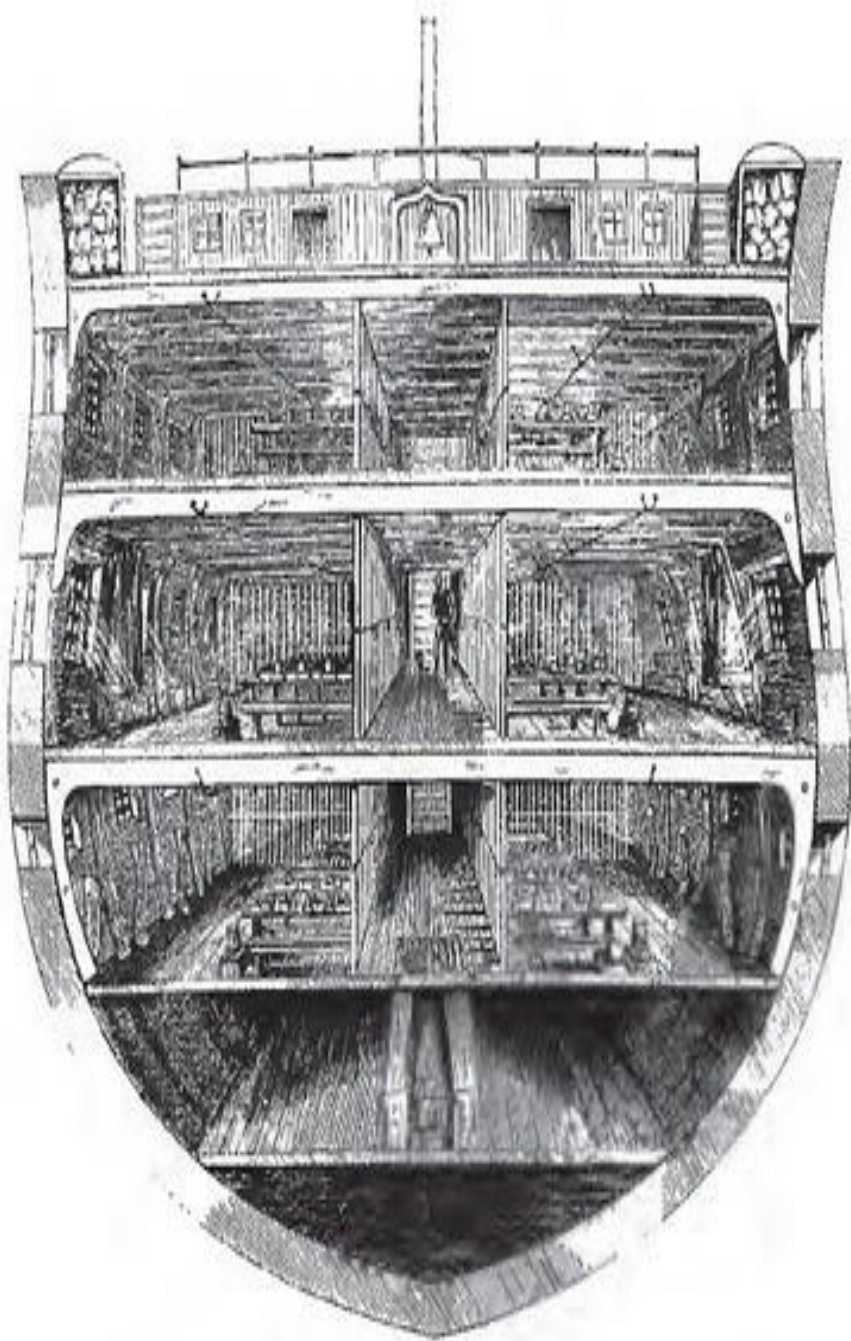
- ▶ **Who was in the prisons:** Petty offenders, vagrants and the disorderly local poor.
- ▶ **No segregation:** Men and women, boys and girls, debtors and murderers were all held together
- ▶ **No concept of care:** Badly maintained and often controlled by negligent prison warders. Many people died of diseases like gaol fever, which was a form of typhus.



Seeds of Reform: 18th century

- ▶ **Transportation curtailed (late 18th century):** Other sanctions had to be found.
- ▶ **Prison Hulks (1776-1857):** For those who could do hard labour. Prison hulks were ships which were anchored in the Thames, and at Portsmouth and Plymouth. Those sent to them were employed in hard labour during the day and then loaded, in chains, onto the ship at night.
- ▶ **Prisons:** The house of correction for those unfit for hard labour.



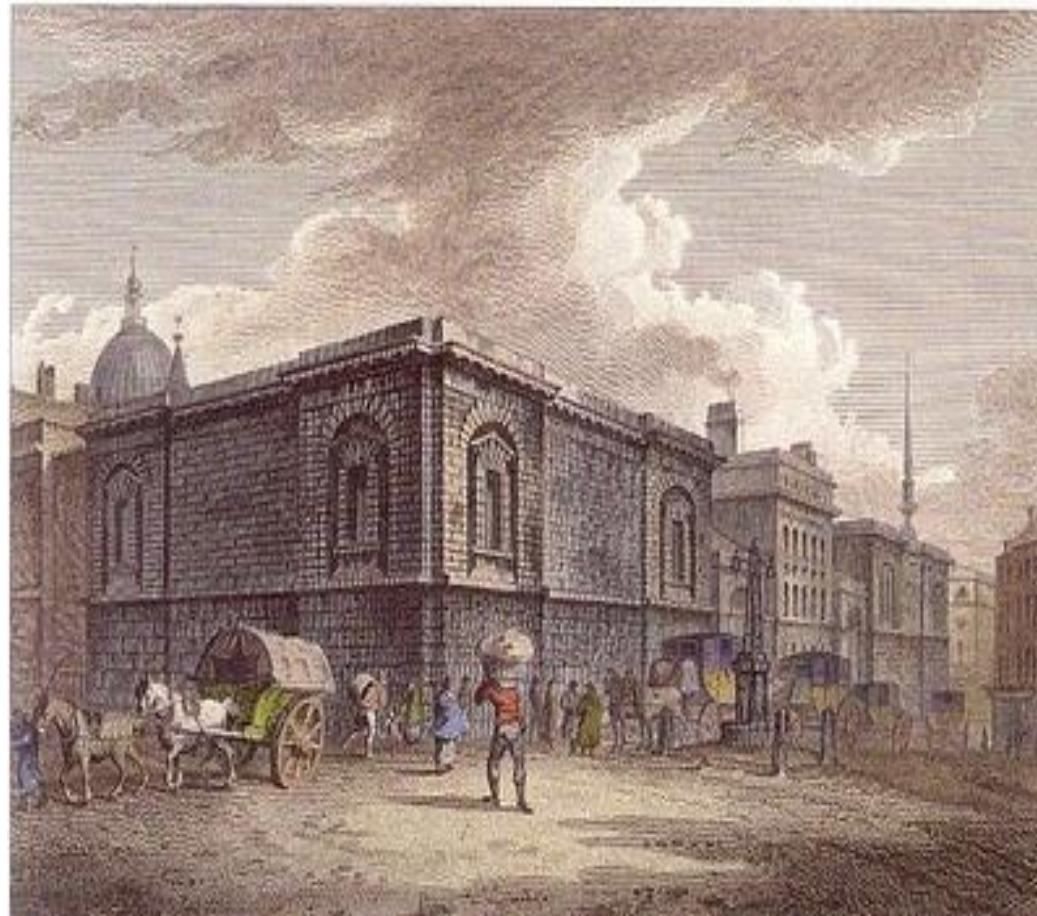


SECTIONAL VIEW OF THE INTERIOR OF THE "DEPENDENCE" HULK.

Prison Reform: The appalling conditions on the prison hulks, especially the lack of control and poor physical conditions, eventually led to the end of this practice. The conditions on hulks did much to persuade public opinion that incarceration, with hard labour, was a viable penalty for crime.

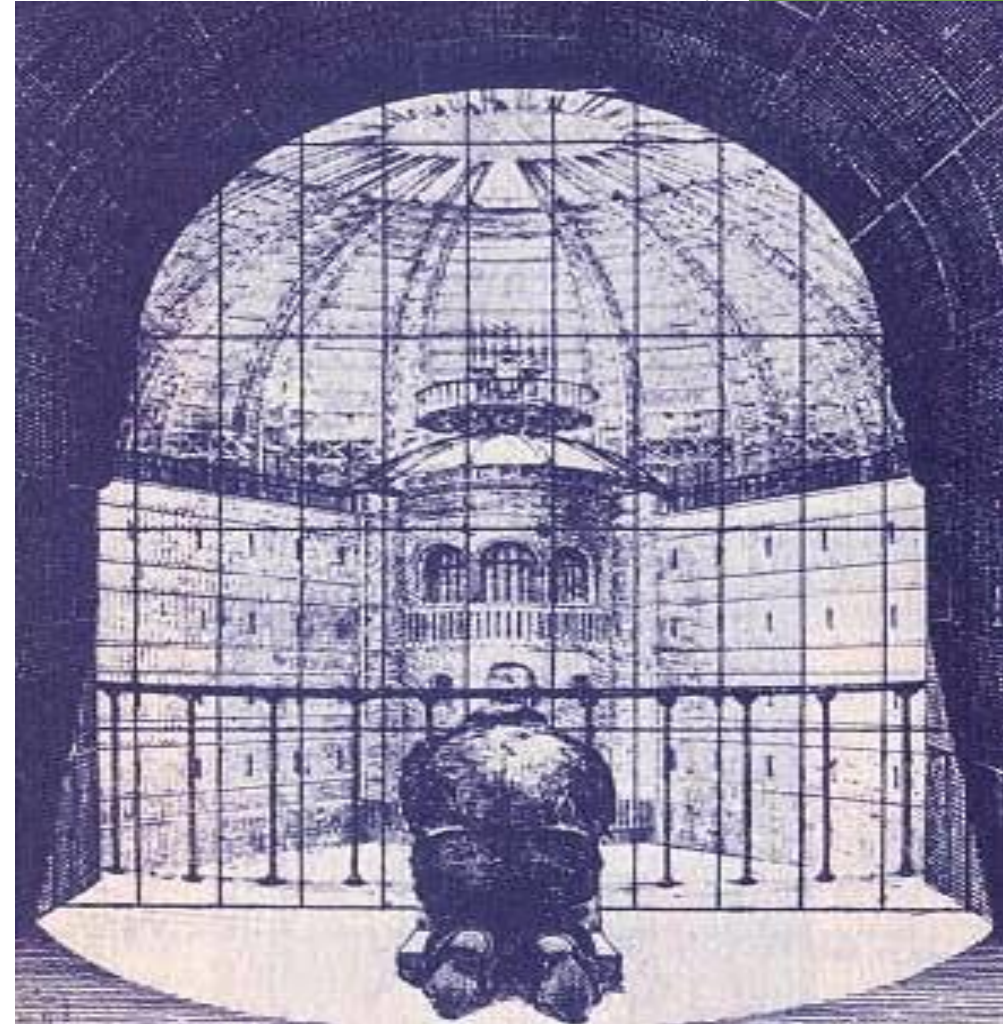
Late 18th century

- ▶ **18th century Rise of Debtors Prisons:** Debtors were put in irons and vault rooms by jailers even before judges could give their sentence; jailers could frighten away lawyers who came to defend their clients
- ▶ **Mid 18th century:** Imprisonment, with hard labour, was beginning to be seen as a suitable sanction for petty offenders



Late 18th century: Regimes of Prison Reforms

- ▶ **Howard League's Call for Wide Ranging Reforms (1777):** (John Howard-namesake of the Howard League) condemned the prison system as disorganised, barbaric and filthy.
 - the installation of paid staff
 - outside inspection
 - a proper diet and other necessities for prisoners
- ▶ **Jeremy Bentham's Prison Design (1791):** Bentham designed the 'panopticon'. It became the model for prison building for the next half century. Each individual is seen but cannot communicate with the warders or other prisoners. The prisoner can always see the tower but never knows from where he is being observed.
 - Surveillance/Hard Labour/Health-Sanitation/Segregation
- ▶ **Penitentiary Act (1799):** This was a British Act of Parliament which introduced state prisons for the first time. Drafted by the prison reformer John Howard and the jurist William Blackstone, it recommended imprisonment as an alternative sentence to death or transportation. The Act specified that jails should be built for one inmate per cell and operate on a silent system with continuous labour.



19th Century: Watershed Reforms in State Punishment

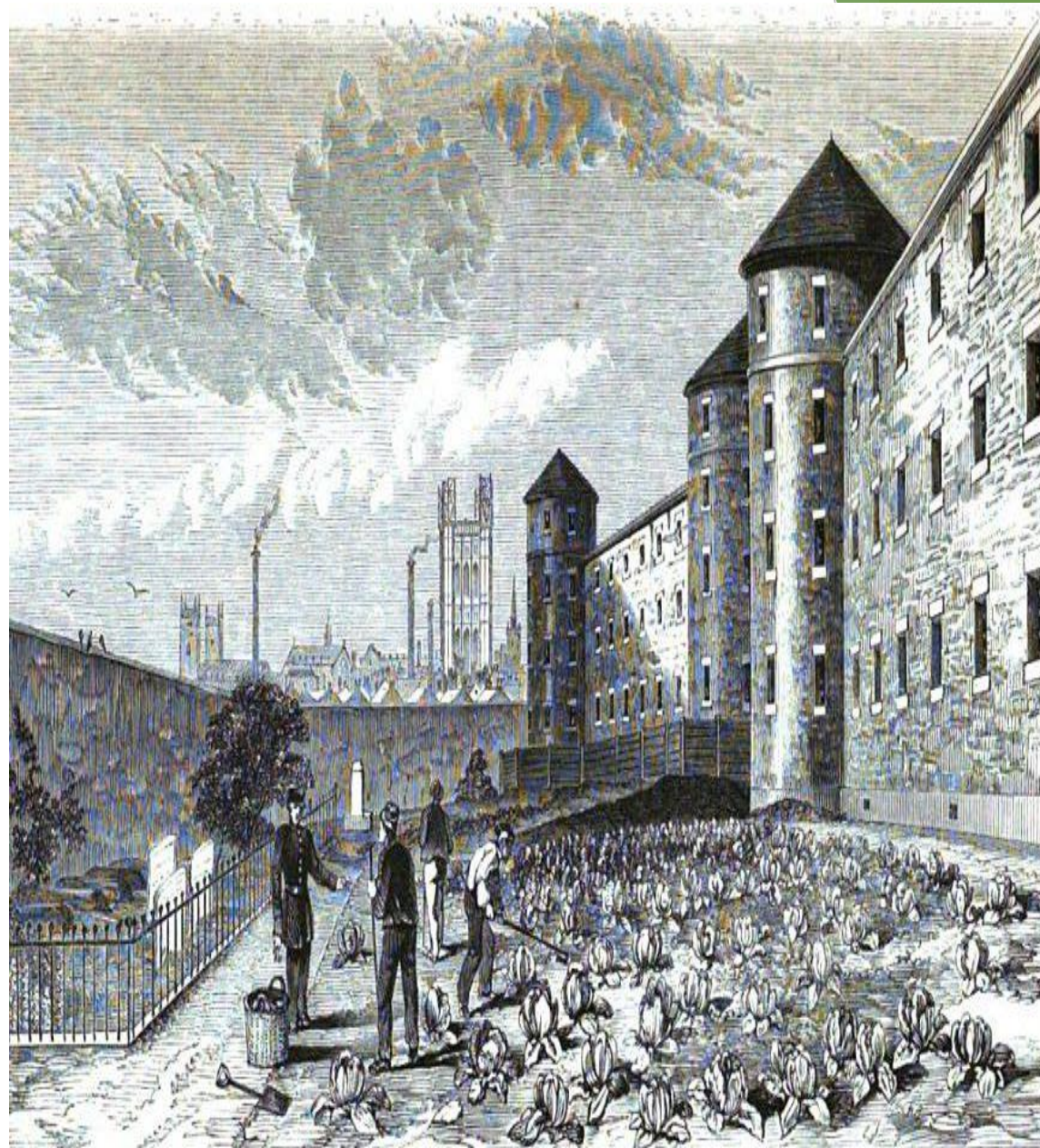
- ▶ **Early 19th century:** Prisons came to be seen as a place of reform for sinners. Public shaming was losing its popularity. Imprisonment replaced capital punishment except for offences of murder. Quakers and Evangelicals were becoming influential in prison reform and push for better prison conditions
- ▶ **Elizabeth Fry:** English prison and social reformer in the early 19th century who was a major driving force behind new legislation to make the treatment of prisoners more humane, and she was supported in her efforts by the reigning monarch.
- ▶ **Dorothea Dix:** Investigated prisons in the 1840s and reported to government on ill-treatment of poor and prisoners



► **The Birth of the State Prison:** The 19th century saw the birth of the state prison. The first national penitentiary was completed at Millbank in London, in 1816. It held 860 prisoners, kept in separate cells, although association with other prisoners was allowed during the day. Work in prison was mainly centred around simple tasks such as picking 'coir' (tarred rope) and weaving.

► **Prison Commission:** In 1877 prisons were brought under the control of the Prison Commission. For the first time even local prisons were controlled centrally. At this time prison was seen primarily as a means to deter offending and reoffending. This was a movement away from the reforming ideals of the past.

► **Prison Act 1898:** The Act reasserted reformation as the main role of prison regimes.



20th Century: Towards Reformation

- ▶ **Introduction of Borstal System for youth:** This was introduced in the Prevention of Crime Act 1908. Borstal training involved a regime based on hard physical work, technical and educational instruction and a strong moral atmosphere. A young person in borstal would work through a series of grades, based on privileges, until release.
- ▶ **The First Open Prison:** In 1933, the first open prison was built at New Hall Camp near Wakefield. The theory behind the open prison is summed up in the words of one penal reformer, Sir Alex Paterson: "You cannot train a man for freedom under conditions of captivity".
- ▶ **Abolition of Penal Servitude:** The Criminal Justice Act 1948 abolished penal servitude, hard labour and flogging. It also presented a comprehensive system for the punishment and treatment of offenders. Prison was still at the centre of the system, but the institutions took many different forms including remand centres, detention centres and borstal institutions.
- ▶ **Prison Service as an Agency of government (1993):** This new status allows for greater autonomy in operational matters, while the government retains overall policy direction.
- ▶ **Introduction of Private Prisons:** The 1990s have also seen the introduction of prisons which are designed, financed, built and run by private companies. Supporters of privatisation argue that it will lead to cheaper, more innovative prisons, while organisations like the Howard League argue that private prisons are flawed both in principle and in practice.

First Open Prison: New Hall Camp



21st Century

- ▶ **More Prisons:** The supremacy of imprisonment as a way of dealing with offending behaviour shows no signs of abating. Privatisation increases
- ▶ **UN Standard Minimum Rules for the Treatment of Prisoners (1977):** Stressed on 'minimum' conditions acceptable and to be achieved despite all the diversities in the world.

- Treatment as persons; Non discrimination; Prisons to maintain records and registers; maintain segregation btw men and women, between civil and criminal prisoners, men and women, undertrial and convicted, adult and young and prisoners
- Laid down standards for accomodation, bedding, hygiene, food, exercise, medical services, discipline and punishment, restraints, information to and complaints by prisoners, contact with outside world, books, religion, property, death, removal of prisoners, criteria and training of prison personnel, and inspection of prisons

- ▶ **The International Covenant on Civil and Political Rights (ICCPR):** Remains the core international treaty on the protection of the rights of prisoners. India ratified the Covenant in 1979 and is bound to incorporate its provisions into domestic law and state practice.
- ▶ **The International Covenant on Economic, Social and Cultural Rights (ICESR)** states that prisoners have a right to the highest attainable standard of physical and mental health.



“No prisoner shall be punished unless he or she has been informed of the offences alleged against him/her and given a proper opportunity of presenting his/her defense”. Corporal punishment, by placing in a dark cell and all cruel, inhuman or degrading punishments, shall be completely prohibited as a mode of punishment and disciplinary action in the jails.

PRISON REFORMS IN INDIA

- ▶ The modern prison in India originated with Lord Macaulay in 1835.
- ▶ **Prison Discipline Committee (1835):** Recommended in its 1838 report the increase in rigorousness of treatment while rejecting all humanitarian needs and reforms for the prisoners.
- ▶ **Second Commission of Inquiry into Jail Management and Discipline (1864):** Made similar recommendations as the Prison Discipline Committee
- ▶ **Prison Law & Draft Bill:** First mention 1877
- ▶ **Fourth Jail Commission (1888):** Recommended a consolidated prison bill. Provisions regarding the jail offences and punishment were specially examined by a conference of experts on Jail Management.
- ▶ **Prisons Act 1894:** In 1894, the draft bill became law with the assent of the Governor General of India. This Act has hardly undergone any substantial change and continues to govern prison administration in India.
- ▶ **Cardew Committee (1894):** The Committee asked for a body of free and unbiased observers, whose visits would serve as a guarantee to the Government and to the public, that the rules of the Prisons Act and Prison Manuals are duly observed

- ▶ **Indian Jail Committee (1919-20)** : For the first time in the history of prisons, 'reformation and rehabilitation' of offenders were identified as the objectives of the prison administrator
- ▶ **Government of India Act (1935)**: Jails became State Subject. Disparate implementation of a national level prison policy.
- ▶ **Report of UN Expert (Dr W.C. Reckless) on Correctional work (1951)**: His report titled 'Jail Administration in India' made a plea for transforming jails into reformation centers. He also recommended the revision of outdated jail manuals.
- ▶ **All India Jail Manual Committee(1957-1960) for Model Prison Manual**: Recommended amendments in the Prison Act 1894 and Prison Manuals through a Model to provide a legal base for correctional work. Eg., probation, after-care, juvenile and remand homes, certified and reformatory school, borstals and protective homes, suppression of immoral traffic etc.

- ▶ **Working Group on Prisons (1972):** It brought out in its report the need for a national policy on prisons and made an important recommendation with regard to the classification and treatment of offenders and laid down principles.
- ▶ **The Mulla Committee on Jail Reform (1980-1983):** Made a comprehensive review of the laws, rules and regulations keeping in view the overall objective of protecting society and rehabilitating offenders.
- ▶ It emphasized non-custodial measures for prisoners, and periodic review of undertrial cases.

- ▶ **The Krishna Iyer Committee (1987):** Undertook a study on the situation of women prisoners in India. It has recommended induction of more women in the police force in view of their special role in tackling women and child offenders.
- ▶ **BPR&D Committee (1996):** Basing on *Ramamurthy vs State of Karnataka* judgment to make prison administration uniform, the jail manual was re-drafted by the committee and accepted by the Central government and circulated to State governments in late December 2003. But States are lagging behind on this.
- ▶ **Draft Model Prisons Management Bill (The Prison Administration and Treatment of Prisoners Bill- 1998):** This was circulated in 1999 to replace the Prison Act 1894 by the Government of India to the respective states but this bill is yet to be finalized.
- ▶ **Committee for the Formulation of a Model Prison Manual (2000):** The Ministry of Home Affairs, Government of India, appointed a Committee for a pragmatic prison manual in order to improve the Indian prison management and administration.

Problems of Prison

- ▶ 1. OVERCROWDED JAILS/PRISONS
- ▶ 2. UNSATISFACTORY LIVING CONDITIONS
- ▶ 3. STAFF SHORTAGE AND POOR TRAINING OF STAFF
- ▶ 4. POOR SPENDING ON HEALTH CARE AND WELFARE
- ▶ 5. LACK OF LEGAL AID
- ▶ 6. ABUSE OF WOMEN PRISONERS
- ▶ 7. PROBLEMS OF UNDER-TRIALS

In December 2015, United Nations adopted the Standard Minimum Rules for treatment of Prisoners (Nelson Mandela Rules) which enlisted the rights of the prisoners such as Right to life including the right to contact the outside world, right to proper sleep and clothing, right to security, right to proper healthcare etc.

The concept of Open Prisons

The paradigm of Reformative Punishment does not support the traditional inhuman jails with bars but is more liberal and supports the concept of open prisons, which is a trust-based prison with minimum security.

The concept of Open prisons was first developed in U.K in the 1930s and was based on the idea of 'carrots' rather than 'sticks'.

This open prison helps the prisoner to gradually connect with the world before the release.

In India currently, there are 69 Open Jails:

- Rajasthan (29), and
- Maharashtra (13) having the highest number.

As per the data of 2015:

- Open prisons have 3786 prisoners out of which 2227 prisoners are in the Maharashtra and Rajasthan prisons.
- Almost 60% of the total prisoners in the open prisons are concentrated in two states.
- Many states have an open prison but do not accommodate any prisoners.

- The reasons for this overcrowding and at the same time under-utilization could be because the Jails are a part of the state list and hence a collaborative approach cannot be adopted by the states.
- Open Jails are prisons without boundaries and cells

In open jails the prisoners are given the liberty:

- To live with their families
- Allowed to find employment
- Prisoners can move out of the prison for their work and are supposed to come back to the prison campus after their working hours.

The open jails in India involve the prisoners in activities like:

- Farming,
- Animal husbandry etc.
- Convicts can be sent to Open jails for two purposes
- For the purpose to slowly cut down his/her level of socialization, instead of directly confining the convict in a closed prison, as this can negatively affect the mental health of the prisoner.

Secondly, in order to help the prisoner to slowly re-socialize with the world. While serving in the closed prison, the prisoner is bound to lose touch with the outside world and hence wouldn't be able to rehabilitate himself after the release.

However, in India, only the second scenario is accepted. Rajasthan, Maharashtra and Himachal Pradesh have the maximum number of active open prisons in India. Some of the most popular Open Prisons are located in:

- Yerwada

- Akola
- Kolhapur
- Paithan
- Sangamner
- Bikaner etc

Prisoners are transferred from closed to traditional prison. Only selected prisoners are transferred from closed or traditional prison to an open prison. These prisoners in Maharashtra generally do agricultural work to earn their living and prisoners in Rajasthan also work at factories and industries.

The money earned by these prisoners is spent by them for their families and no amount except a small administration charge is to be paid to the Jail.

Every morning at 6 a.m. a roll call takes place after which the prisoners are allowed to move out and another roll call is scheduled at 7 p.m., till then the prisoners are expected to return to the prison.

These prisons exist for almost 8 decades now, however, no complaints of any prisoner escaping have come forward.

The condition open prisons in India

The conditions of prisons in India has been severely criticised. There have many cases of

- Custodial violence
- Custodial deaths
- Suicides, and

Overcrowding etc. in Indian jails.

As per the NCRB's 2015 data:

1. 77 deaths were caused due to custodial suicide, and
2. 11 deaths due to custodial murders which shows the poor administration and structure of Indian Prison system.
3. The Supreme Court has time and again given directions on Prison Reforms, In many cases, the Supreme Court has actively endorsed the Open Jail system.
4. The basis on which the selection of these prisoners is done

Open Prison rules in Maharashtra

The selection is governed by Maharashtra Open Prison Rules, 1971. As per the act a Selection Committee consisting of:

- Inspector General
- Deputy Inspector general
- Superintendent of the Prison, and
- Superintendent of the Open Prison is formed
- Selection is done on the basis of:
- Good behavior
- Mental and physical fitness
- The period of imprisonment etc.

However, there is a long list of the ineligibility criteria, of which some are completely arbitrary for e.g.

- Women prisoners
- Convicts of narcotics
- Prisoners with any history of mental illness
- Professional murderers
- Convicts of crimes like:
- Collection of arms
- Sedition
- Crimes against the army etc.

This provision eliminates the possibility of rehabilitation of a large number of convicts, who are actually in need of it and offers rehabilitation to those who are not in dire need of it.

However, the committee can consider certain special cases even if they're ineligible.

Open Prison Rules in Rajasthan

As per the Rajasthan Prisoners open-air camp rules, 1972 the Open Jails aim at encouraging and rewarding good behavior and give prisoners an opportunity to social adjustment and economic independence.

In Rajasthan the Jail Superintendent sends the list of potential prisoners to the Open Air Camp Advisory Committee and the decision is taken by the committee.

The eligibility criteria are similar to that of Maharashtra however, the convict is expected to spend 1/3rd of the sentence in a closed prison.

Even in Rajasthan, arbitrary provisions for ineligibility exist such as:

- Convicts not having an abode in Rajasthan or
- Have a place of Residence outside Rajasthan
- Prisoners below the age of 25 or above the age of 60
- Civil prisoners
- Unmarried prisoners
- Prisoners with any history of mental illness
- Professional murderers
- Convicts of crimes like a collection of arms, sedition, crimes against the army etc.

Although women are given access to open jails the provisions of Rajasthan are stricter than those of Maharashtra. Such provisions don't provide equality to the convicts and thus are violative of the rights of the prisoners.

The committee does not have the power to consider special cases, like Maharashtra.

Rajasthan also provides for a unique rehabilitation system, where every open prison has a panchayat consisting of 5 to 7 members, who are selected by the prisoners, amongst the prisoners.

This Panchayat looks after the daily management of the prison. This helps in improving communication and leadership in the prisoners.

Open Prison Rules in Himachal Pradesh

Himachal has 7 open prisons. The working is governed in a similar way as Rajasthan, however, the rape convicts, and convicts of other heinous crimes are also ineligible.

Criticisms of the Open Jails in India

Unnecessary and arbitrary provisions for ineligibility, which filter out many deserving convicts.

- Under-utilisation of the Open Prisons. These prisons have a capacity to accommodate 25776 prisoners however, only 3786 prisoners are currently in these prisons (as of 2015). This shows that despite the heavy overcrowding in the closed prisons, open prisons are vacant.
- The prisoners in most states are selected by a committee, who have no accountability over them, as they are not expected to provide reasons for their selections. This leads to partiality and corruption.

- No measures are taken for the convicts beginning their sentence. At least, semi-open prisons should be made open for the fresh convicts.
- No provision of Open Jails to under trial prisoners.
- Inadequate Open Prisons in every state. Some states are concentrated with Open Prisons while some have just one and no Union Territory in India has an Open Prison. Due to the state list subject, this inequality exists among different states.
- Open Prisons are the only rehabilitative prisons in India. Which also favor only a small number of convicts. There is a need for more rehabilitative provisions for other convicts, in order to reduce the amounts of custodial deaths.
- The rules and laws governing the selection and administration are extremely old and thus unfit for the present situations.

Reforms needed in the status quo

- The number of Open Prisons and better utilization of the currently existing ones through amendments to the rules and relaxation of the strict eligibility criteria.
- Efforts should be taken to move the subject of prisons to the union list. As this will bring in uniform reforms and every prisoner will get similar rights.
- In order to bring accountability in the selection procedure, the state committee should be compelled to provide reasons to the Chief Minister of the concerned state for the selection made. These documents should also be made available within the ambit of RTI so that common people can also get access to it.
- Semi-open Jail in order to provide rehabilitation to mentally disturbed prisoners, semi-open jails should be promoted. They do not provide complete liberty, but there are no prison cells and prisoners are provided with employment opportunities within the Jail campus. One of the finest semi-open jail in India is the Tihar Semi-Open Jail in Delhi.

- Supreme Court or the concerned High courts should also be given the jurisdiction to allow certain prisoners to directly go to the Open Prison.
- Every prisoner whether in open or closed prison should be made aware of his/her rights and should be informed about the process of selection to open prisons. This will not only give the required information to the prisoners but will also reinforce good behavior among these prisoners.

Conclusion

The concept of open prison has existed in India since almost 7/8 decades, however, many states still do not have enough open prisons. With the current scenario of overcrowding of Jails, it is extremely important to build and utilize the open prisons. Open prisons are excellent in providing rehabilitative justice, as it helps the convicts to re-socialize with the world before they've completed their sentence. Although the existing open prisons are well- managed and have a good record in the past there is still room for improvement in terms of laws and rules. Active measures should be taken to amend these rules, to provide access to justice to all the prisoners. This system if properly utilized will also help in reducing the custodial deaths.

NHRC GUIDELINES REGARDING ARREST

(National Human Rights Commission)

Need for Guidelines

Arrest involves restriction of liberty of a person arrested and therefore, infringes the basic human rights of liberty. Nevertheless the Constitution of India as well as International human rights law recognise the power of the State to arrest any person as a part of its primary role of maintaining law and order. The Constitution requires a just, fair and reasonable procedure established by law under which alone such deprivation of liberty is permissible. Although Article 22(1) of the Constitution provides that every person placed under arrest shall be informed as soon as may be the ground of arrest and shall not be denied the right to consult and be defended by a lawyer of his choice and S.50 of the Code of Criminal Procedure, 1973 (Cr. PC) requires a police officer arresting any person to " forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest". in actual practice these requirements are observed more in the breach. Likewise, the requirement of production of the arrested person before the court promptly which is mandated both under the Constitution [Article 22(2)] and the Cr. PC (Section 57) is also not adhered to strictly.

A large number of complaints pertaining to Human Rights violations are in the area of abuse of police powers, particularly those of arrest and detention. It has, therefore, become necessary, with a view to narrowing the gap between law and practice, to prescribe guidelines regarding arrest even while at the same time not unduly curtailing the power of the police to effectively maintain and enforce law and order and proper investigation.

PRE-ARREST

Ø The power to arrest without a warrant should be exercised only after a reasonable satisfaction is reached, after some investigation, as to the genuineness and bonafides of a complaint and a reasonable belief as to both the person's complicity as well as the need to effect arrest. [Joginder Kumar's case- (1994) 4 SCC 260].

Ø Arrest cannot be justified merely on the existence of power, as a matter of law, to arrest without a warrant in a cognizable case.

Ø After Joginder Kumar's pronouncement of the Supreme Court the question is whether the power of arrest has been exercised reasonably or not is clearly a justiciable one.

Ø Arrest in cognizable cases may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc. and it is necessary to arrest the suspect to prevent him from escaping or evading the process of law.

(ii) The suspect is given to violent behaviour and is likely to commit further offences.

(iii) The suspect requires to be prevented from destroying evidence or interfering with witnesses or warning other suspects who have not yet been arrested.

(iv) The suspect is a habitual offender who, unless arrested, is likely to commit similar or further offences. [3rd Report of National Police Commission]

Ø Except in heinous offences, as mentioned above, an arrest must be avoided if a police officer issues notice to the person to attend the police station and not leave the station without permission. (see Joginder Kumar's case (1994) SCC 260).

Ø The power to arrest must be avoided where the offences are bailable unless there is a strong apprehension of the suspect absconding .

Ø Police officers carrying out an arrest or interrogation should bear clear identification and name tags with designations. The particulars of police personnel carrying out the arrest or interrogation should be recorded contemporaneously, in a register kept at the police station.

ARREST

Ø As a rule use of force should be avoided while effecting arrest. However, in case of forcible resistance to arrest, minimum force to overcome such resistance may be used. However, care must be taken to ensure that injuries to the person being arrested, visible or otherwise, is avoided.

Ø The dignity of the person being arrested should be protected. Public display or parading of the person arrested should not be permitted at any cost.

Ø Searches of the person arrested must be done with due respect to the dignity of the person, without force or aggression and with care for the person's right to privacy. Searches of women should only be made by other women with strict regard to decency. (S.51(2) Cr.PC.) 55

Ø The use of handcuffs or leg chains should be avoided and if at all, it should be resorted to strictly in accordance with the law repeatedly explained and mandated in judgement of the Supreme Court in Prem Shanker Shukla v. Delhi Administration [(1980) 3 SCC 526] and Citizen for Democracy v. State of Assam [(1995) 3 SCC 743].

Ø As far as is practicable women police officers should be associated where the person or persons being arrested are women. The arrest of women between sunset and sunrise should be avoided.

Ø Where children or juveniles are sought to be arrested, no force or beatings should be administered under any circumstances. Police Officers, may

for this purpose, associate respectable citizens so that the children or juveniles are not terrorised and minimal coercion is used.

Ø Where the arrest is without a warrant, the person arrested has to be immediately informed of the grounds of arrest in a language which he or she understands. Again, for this purpose, the police, if necessary may take the help of respectable citizens. These grounds must have already been recorded in writing in police records. The person arrested should be shown the written reasons as well and also given a copy on demand. (S.50(1) Cr.PC.)

Ø The arrested person can, on a request made by him or her, demand that a friend, relative or other person known to him be informed of the fact of his arrest and the place of his detention. The police should record in a register the name of the person so informed. [Joginder Kumar's case (supra)].

Ø If a person is arrested for a bailable offence, the police officer should inform him of his entitlement to be released on bail so that he may arrange for sureties. (S.50(2) Cr.PC.)

Ø Apart from informing the person arrested of the above rights, the police should also inform him of his right to consult and be defended by a lawyer of his choice. He should also be informed that he is entitled to free legal aid at state expense [D.K. Basu's case (1997) 1 SCC].

Ø When the person arrested is brought to the police station, he should, if he makes a request in this regard, be given prompt medical assistance. He must be informed of this right. Where the police officer finds that the arrested person is in a condition where he is unable to make such request but is in need of medical help, he should promptly arrange for the same. This must also be recorded contemporaneously in a register. The female requesting for medical help should be examined only by a female registered medical practitioner. (S.53 Cr.PC.)

Ø Information regarding the arrest and the place of detention should be communicated by the police officer effecting the arrest without any delay to

the police Control Room and District / State Headquarters. There must be a monitoring mechanism working round the clock.

Ø As soon as the person is arrested, police officer effecting the arrest shall make a mention of the existence or non-existence of any injury(s) on the person of the arrestee in the register of arrest. If any injuries are found on the person of the arrestee, full description and other particulars as to the manner in which the injuries were caused should be mentioned in the register, which entry shall also be signed by the police officer and the arrestee. At the time of release of the arrestee, a certificate to the above effect under the signature of the police officer shall be issued to the arrestee.

Ø If the arrestee has been remanded to police custody under the orders of the court, the arrestee should be subjected to medical examination by a trained Medical Officer every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory . At the time of his release from the police custody, the arrestee shall be got medically examined and a certificate shall be issued to him stating therein the factual position of the existence or nonexistence of any injuries on his person.

POST ARREST

Ø The person under arrest must be produced before the appropriate court within 24 hours of the arrest (Ss 56 and 57 Cr.PC).

Ø The person arrested should be permitted to meet his lawyer at any time during the interrogation.

Ø The interrogation should be conducted in a clearly identifiable place, which has been notified for this purpose by the Government. The place must be accessible and the relatives or friend of the person arrested must be informed of the place of interrogation taking place.

Ø The methods of interrogation must be consistent with the recognised rights to life, dignity and liberty and right against torture and degrading treatment.

ENFORCEMENT OF GUIDELINES

1. The guidelines must be translated in as many languages as possible and distributed to every police station. It must also be incorporated in a handbook which should be given to every policeman.

2. Guidelines must receive maximum publicity in the print or other electronic media. It should also be prominently displayed on notice board, in more than one language, in every police station.

3. The police must set up a complaint redressal mechanism, which will promptly investigate complaints of violation of guidelines and take corrective action.

4. The notice board which displays guidelines must also indicate the location of the complaints redressal mechanism and how that body can be approached.

5. NGOs and public institutions including courts, hospitals, universities etc., must be involved in the dissemination of these guidelines to ensure the widest possible reach.

6. The functioning of the complaint redressal mechanism must be transparent and its reports accessible.

7. Prompt action must be taken against errant police officers for violation of the guidelines. This should not be limited to departmental enquiries but also set in motion the criminal justice mechanism.

8. Sensitization and training of police officers is essential for effective implementation of the guidelines.

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