Chapter-IV

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The public institutions are governed by the prescribed rules. The reformatory institutions are expected to get extra care in managing its human and non human resources. A Jail Manual is a set of rules and regulations governing prisons and prisoners. Nearly every State has a jail manual of its own. Every jail is governed by it and every prisoner is bound by it. Not surprisingly, Jail Manuals are shockingly antiquated and bear the testimony of British Legacy. The Prison Act of 1894 still governs the prisons in India. Their concepts have changed since. The theory of punishment has been replaced by one of reformation. Prison Administrators since recently mouth a new vocabulary: treatment programmes, correctional services, rehabilitation and so on. The jail manuals, meanwhile still provide for whipping as a form of punishment. But for a few amendments and corrections here and there, the manuals have remained unchanged. The new vocabulary of prison administrators and the archaic concepts of a 90-year-old Act create a cornucopia of prison mal-administration. Prisons in India are not governed uniformly, every State applying a different set of rules and regulations. In 1959 the Government of India for the purpose of updating and revising the State manuals prepared a Model Prison Manual. It was also meant to lend uniformity to rules and regulations as also to the procedure and punishment. Twenty years later, Inter-State conference admitted that the Model Prison
Manual had yet to be implemented in most of the States. Even today the situation remains unchanged. Except in the States of Karnataka, Andhra Pradesh and Maharashtra, the Jail Manuals have remained archival documents. The States are still “processing”, “considering” or “examining” the proposals.

Chadha writes that the Union Territories do not have a jail manual of their own. They follow the outdated and unrevised prison manuals of their adjoining State. (19783) The contemporary administration of prisons in Orissa is following the Orissa Jail Manual that was compiled in 1942. Before the province of Orissa was constituted, the districts of Ganjam and Koraput were with Madras province and the other districts were with Bihar. During early 20th Century Orissa was controlled by three district administration viz; the Madras Presidency, the Bengal Presidency and the Nagpur Presidency. This continued till 1.4.1936. The Jail Manuals of thos provinces were in application in the respective areas. After the creation of Orissa Province in 1936, the Government of Orissa prepared a separate Jail Manual, incorporating therein the relevant provisions of the aforesaid two jail manuals. (Mahapatra : 1981)

The Orissa Jail Manual has 42 chapters. Most of it is a British legacy. He sections of classification of prisoners, transfer of prisoners and powers of the superintendent, deserve special mention, among others since changes have been made. The classification of prisoners – the way it is provided for in the Manual is highly irrational. They are classified into ‘A’, ‘B’ and ‘C’ class. The ‘A’ and ‘B’ types differ for frequency of being behind bar. ‘A’ comprises of non-habitual prisoners,
who by special status, education and habit of life have been accustomed to a superior mode of living. Class 'B' comprises of habitual prisoners who by social status, education or habit of life have been accustomed to a superior mode of living. Class 'C' consists of prisoners who are not classified either in Class 'A' or 'B' (Govt. Press Cuttack : 1964).

Prisoners are classified on the basis of their 'economic status' or 'habit of life' as it were and not on the basis of the nature of the crime. There is no rational explanation of this type of classification. This classification has been often attacked on grounds of being unscientific, illogical and irrational. It has also been seen as a departure from the norms of a modern prison system. There seems a confusion of priorities in the existing system of classification. It is widely recognized that society is menaced more by the educated, well to do, calculating criminal who, more often that not, cold bloodedly plans a crime, hires professionals what is locally known as 'Supari' and has it committed. Be it the murder of a wife or a bank van robbery, it is this species, which cannot be spared since conviction is not enough; a grueling jail life ought to accompany the sentence. On the contrary, these convicts are, classified into 'B' class or 'A' class – the 'delux' class in the prison system with no labour and work. Ironically, they are entitled to helpers, (from 'C' class) better food and other facilities, which are denied to the 'C' class prisoners (Chadha : 1983).

There has been an unholy alliance between the criminals and the politicians. Often the rules are being tempered through extra administration means.
The money power associated with political support refrain the criminals from any hardship except keeping them secluded from family and friends for close interaction. This is seen in almost all jails. According to the provision of Orissa Jail Manual, the High Court, District Sessions Judges, District Magistrates, Judicial Sub-divisional Magistrates and Executive Magistrates of the first class, in cases tried by them originally, or in any other cases, shall make the classification. When educated and well to do prisoners are classified into non-habitual and habitual, there is no reason why the same privilege should not be extended to the uneducated and poor prisoners. Justice demands that the uneducated and the poor prisoners should also be classified into non-habitual and habitual prisoners. It is in the fitness of things that, administration is discriminating regarding the educated well-to-do non-habitual and habitual prisoners. The administration should not be shy of extending the same discriminating attitude to the uneducated and poor non-habitual and habitual prisoners.

Thus, the court concerned makes the classification of convicted prisoners. In practice a clerk of the court, who hurries through it, fills up the classification slip. The judge, often as a matter of routine, passes it. The Presiding Officers of Courts do not devote personal attention to the preparation of classification slips and seldom attach due importance to it. Truly speaking classification of convicts is not a court’s function (Bhusan : 1970). In United Kingdom men who may fairly be called experts do classification. Exhaustive enquiries are made of the convicts family history, his past
and his mental condition, and the individual case is considered in every aspect before final classification. It is carried out there with a view not only to "minimize the danger of contamination" but also "to facilitating the training." (Fox : 1934). The State of New York has set up within the prisons a Service Unit which acts as the clearing-cum-classification agency and co-ordinator of institutional facilities in relation to inmate problems. Barnes, and Tecters : 1944) Thus, when in Great Britain and in America the classification of prisoners is being done by the committee of experts, in our State it is done in the most unscientific and casual manner by the courts.

Transfer of prisoners from one jail to another and from one State to another State is a cumbersome task for any prisoner. It deprives him of any link he has with the associates outside world. If he is transferred to a distant prison, the possibility of his weekly visit by friends and relatives are discontinued. Most prisoners' friends and relatives are too poor to afford the weekly visit facility, even when they are living in the same Town. Once he is transferred out, the relatives barely manage to afford a visit once a year or two years. The grounds of such transfer, as provided in our Jail Manual are, over-crowding, convicts suffering from leprosy, or convicts whose transfer for any other reason is desirable. The reasons are insecurity of jail, dangerous character of the prisoner, long-term conviction, convicts possessing local influence, spread of plague or other dangerous epidemic disease, or his possessing friends or relatives amongst the establishment. There is no scope to take into account the prisoner's desire or preference for transfer.
Thus, the transfer of prisoner from one jails to another whether inside or outside the State kills the possibilities of his keeping contact with his family, friends and relatives. The Manual has not taken this aspect into consideration. Unfortunately, the Model Prison Manual has also failed to categorically define the area. The provision on “humanitarian grounds in the interest of their rehabilitation” in the Model Prison Manual is, not carried out faithfully (Chadha : 1983). Interestingly concerned authorities have least awareness on this.

In any effort ensuring that law and justice continue to be valid even within prison confines, an efficient prison system necessitates the education of every prisoner in the rules and regulation by which he is governed. For that it is imperative that every prisoner should have easy access to the Jail Manual. In fact, in one of the Supreme Court judgments (Sunil Batra Vs. Delhi Administration, 1980J this aspect has been amply dealt with. In para 39, the honorable Supreme Court has given directions regarding preparation of a handbook in regional languages. It draws the attention of the State to the need to get ready a prisoners’ Hand Book in the Oriya language and make it available to the inmates. Hat the law has sharper teeth to bite must be made aware to all, however it is meaningful only when it is accepted as a proclamation of the concerned public. To know the law is the first step to be equipping oneself free from fear of un law. In para 43 of the same judgment, the Supreme Court has given directions for putting up a large Notice Board displaying the rights and responsibilities of prisoners. This would enable the prisoner to be aware of his rights
and duties while serving a sentence. Further it helps the prisoner to remain no more an ignorant victim in the hands of the jail officials, who might misuse his power. The specific reference to prison manuals is made by the Supreme Court in para 45 of the aforesaid judgment. “We think it right to hold that copies of the Prison Manual shall be kept within ready reach of the prisoners. Darkness never does any one good and light never any harm.” (Chadha : 1983).

In view of the above judgment of the Honourable Supreme Court it is desirable that the relevant provisions of Orissa Jail Manual should be translated into Oriya and may be made available to the prisoners free of cost. It is also imperative that a notice board bearing the rights and obligations of the prisoners be displayed in the prison. It is unfortunate that jail manuals in our State are not readily available for purchase. The government should be vigilant over this issue. For majority poor prisoners it hardly matters since they are socially, politically, economically and educationally backward.

The discretionary powers of the Superintendent of a jail, according to the Jail Manual, are vast. Consequently it widens the scope for harassment, favoritism and even corruption. This is especially true in the case of jail offences and remissions. Under rule 657 there are 43 kinds of prison offences provided for in Orissa Jail Manual which are to be determined and punishable by the Jail Superintendent. Besides, there are only four offences provided under rule 658 of the Manual which are referable to the magistrate for enquiry in accordance with the Code of Criminal Procedure. (Orissa Jail Manual : 1964) Offences like (2) quarreling with any other prisoner’, (4)
showing disrespect to any jail officer or visitor', (15) 'omitting or refusing to march in file when moving about the prison', (14) 'loitering about the yards or lingering in the wards when these are open', (1,7), 'refusing to eat the food prescribed by the prison diet scale (ibid) are 'some of the prison offences which cannot be proved.

Punishment for such jail offences as provided under rule 661 of the Manual are also subject to the discretion of the Superintendent. However, outside political interaction restrict the discretion of the Jail Officials. According to the provision of the Manual, a Superintendent has the power to punish jail offences by change of labour (rule 664), Penal Diet (675), forfeiture of remission earned (665), temporary or permanent reversion from a higher to lower grade (667) (ibid). These powers are definitely too vast and they leave wide scope for abuse in the hands of the Superintendent. Discretionary powers of the Superintendent are too large, therefore, each offence should be referred to an appellate court, the Superintendent’s duty limited to only recording the offence for reference to the magistrate. Inside prisons the Superintendents play a vital role and often remain authoritative.

The Working Group on Prison Administration set up during the year 1972 also observed that the Prison Manuals of different States should be suitably amended to keep pace with the changing pattern of Prison Administration. The modification in manual needs to match with the recent thinking on criminology and near strategies of social reformation. Accordingly the State Advisory Board on Prison Administration recommended constitution of a small but compact committee to take up
comprehensive amendment of Orissa Jail Manual, 1942 keeping in view the requirements of contemporary changing scenario. This committee was constituted under the chairmanship of justice Harihar Mohapatra in the year 1979. It revised the Jail Manual and submitted its recommendations in the form of a report to the government of Orissa in 1981. The government is yet to implement the provisions of the revised Jail Manual. (Mohanty and Hazari : 1984). The frequent transfer of bureaucrats, political leadership, weak political will and pressure of the social evils did not manual updated and time befitting.