

THE AIMS OF THE PRISON SERVICE

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Amongst the major challenges facing the prison service today, the confusion about its aims and objectives is one of the most crippling. There are now clear indications that unless one gets out of this confusion and formulates a clear-cut and an adequate statement of aims, one will not be able to produce a good practicable regime for those who live and work in prisons. This paper, therefore, aims to outline some historical developments and theoretical debates concerning the aims of the prison service in India and the United Kingdom. The importance of unambiguous and clear-cut aims has been emphasised, and an attempt has been made to make the proposed statement of aims fulfil the requirements of reality, brevity and practicality. This essay lies in many ways within the framework of the modern consensus that imprisonment as a matter of public policy is itself a negative experience and that every attempt should be made to make that experience as positive as possible.

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Of all the major challenges facing the prison service today, the confusion about its aims and objectives is one of the most crippling. Unlike the 19th century aims (punitive and inhuman as they may be) which enabled all staff right from the Prison Superintendent down to the Prison Warder to know what their job was and how they were mandated to carry it out, contemporary prison officials are expected to perform a variety of apparently contradictory roles — deterrence on the one hand and the reformation on the other. It has been argued that these conflicting demands are irreconcilable and render prison officers ineffective in serving either of them. It is evidently difficult to believe that in the act of punishing and detaining a law-breaker, one is likely to bring him or her into a more harmonious and/or sympathetic attitude towards society (Ahmad, 1989).

The confusion really *starts* in the last few years of 19th century, particularly from the publication of the report of the Gladstone Committee of 1895 which stated that imprisonment 'should have as its primary and concurrent objects, deterrence and reformation' and that the task of the prison service should be to release offenders as 'better men and women, both physically and morally, than when they came in' (Gladstone, 1895, paras 25 and 47). Many look at this report as the source of the many problems which have affected the prison system and its staff ever since (e.g. Thomas, 1972).

The confusion *deepens* in what is known as the rehabilitative era of the post-war period — a confusion which was explored and explained particularly in the late 1970s in academic writings (Jacobs, 1977; Bottoms and Preston, 1980; Allen, 1981). Confronted by an ever increasing prison population, crime escalating not only in sheer size but also in complexity with no sign of recidivism declining significantly, the empirical evidence that "nothing works"¹ (Martinson, 1974; Upton, Martinson and Wilks, 1975; Brody, 1976), and above all a lack of ideological direction, prison staff faced an uninviting and depressing environment.

The opinions expressed in this paper are those of the author and do not necessarily represent those of the prison department, Madhya Pradesh to which the author belongs.

The confusion *worsens* with the emergence of the just deserts and justice models of criminal justice in recent years. Unlike the "treatment" model, which concentrated on the alleged needs of the offender, the justice model concentrated instead on his "deeds" (Von Hirsch, 1986). In the context of some alleged malpractices in prisons, the proponents of the justice model also argued that courts should set aside their old "hands-off" approach and should assume a more active role in addressing the activities of the prisoners in order to look after their normal civil rights. As a result of such a realisation and of increasing interventions by the courts, prisons over a period of time tended to bureaucratise and standardise their procedure, and reduce the scope of their discretionary power in ways inconsistent with the ideology of an individualised prison regime (Jacobs, 1977).

In recent years, however, there have been a number of interesting attempts to cut through the confusion. There are clear indications that unless one gets out of this confusion and formulates a clear cut and an adequate statement of aims, one will not be able to develop the 'best practicable kind of daily regimes in prisons' though one must exercise a caution 'not to leave the debate simply at the theoretical level' (Bottoms, 1989:3). Given the scepticism about the reforming and rehabilitative value of prisons and the broader agreement that there can be no return to an explicitly punitive model of prison other than what is involved in the loss of liberty itself by virtue of the fact of imprisonment 'as punishment and not for punishment' — to use Sir Alexander Paterson's famous phrase — the formulation of the aims of the prison service becomes all the more important.

In the following pages, I will present a broad picture of the debate about the aims of the prison service that has taken place during the last few decades in the United Kingdom. I will then describe the aims debate in India — although unfortunately not much has taken place. As the discussion will show, while the aims debate in the UK has parted company with the trammels of reformative and rehabilitative traditions, the aims debate in India by a large still revolves round the old Gladstonian objectives and thus remains fettered and confined. This will be followed by the recent aims debate in the 1990s again in the UK. Finally, I will describe my own proposed statement of aims and end with some concluding remarks. This essay lies in many ways within the framework of the modern consensus that imprisonment as a matter of public policy is in itself a negative experience and that every attempt should be made to make that experience as positive as possible or to reduce what David Downes (1987) calls the depth of imprisonment.

The Aims Debate in the 1980s in the UK

Instead of tracing other historical developments since 1895, I shall take as my starting point the English Prison Rule One (Prison Act, 1964) — largely influenced by the Gladstone Report of 1895 and the subsequent work of Alexander Paterson — which states: 'the purpose of the training and treatment of *convicted prisoners* shall be to encourage and assist them to lead a *good and useful life*' (emphasis mine).

Rule One has been a source of much criticism and perhaps the harshest critics of the Rule One in the late 1970s were Roy King and Rod Morgan (1980). They said:

Any serious statement of penal objectives has to be made in operational terms, by stating the procedures necessary to bring these objectives about. Any such statement necessarily carries with it implications about the appropriate ways of mobilising and distributing scarce resources. The treatment and training formulation of Rule One failed on all those counts (p. 28).

King and Morgan formulated what they called humane containment as the aim for the prison service. Although this phrase had first appeared in the Government White Paper entitled "People in Prison" (Home Office, 1969), King and Morgan wanted to treat this concept much more seriously than the Prison Department had by then done. For them, the concept of "humane containment" had basically a rights-based connotation to it and could be equated with what had come to be known as the justice, or due process model for dealing with offenders generally (King and Morgan 1980: 31). In other words, prisoners have a right to humane rather than inhumane imprisonment, and the prison service "should ensure that genuinely humane conditions are achieved for all prisoners throughout the system" (King and Morgan, 1980: 24).

King and Morgan's views on humane containment were presented in evidence to the May Committee (1979) which was set up to enquire into the UK Prison Services. The Committee rejected the King and Morgan's "humane containment" formulation and observed:

...There is a great danger that it [humane containment] may throw out the good with the unattainable... "human[e] containment" suffers from the fatal defect that it is a means without an end. Our opinion is that it can only result in making prisons into human warehouses — for inmates and staff. It is not, therefore, a fit rule for hopeful life or responsible management (May Committee, 1979).

Nonetheless, the Committee acknowledged that the question of aims was an important one and that 'confusion about objectives has been a significant cause of the present malaise' (para 4.3). They, therefore, suggested that Rule One should be rewritten 'for contemporary purposes' (para 4.26). They also acknowledged that 'the rhetoric of "treatment and training" has had its day and should be replaced by what they called positive custody. Positive custody was defined as follows: 'to create an environment which can assist them [prisoners] to respond and contribute to society as positively as possible' (para 4.26a).

Both these phrases — "humane containment" and "positive custody" — were attacked by Ian Dunbar, an experienced prison administrator, who, six years later, submitted his report entitled "A Sense of Direction" to the Prison Department. These concepts though worthy, in Dunbar's view, were defined in the Reports in terms as vague and unrealisable as the Prison Rule One it sought to replace. As he put it:

Although it [humane containment] focuses on prison life more directly and exclusively than does the treatment model, its formulation has remained at an equally abstract level. But in practice it has led to even greater disillusionment. At least the treatment model gave the service something to believe in and some hope. Humane containment has led to the cynicism of human warehousing... The concept of "positive custody" is no more helpful in running a prison

system than was the concept of "treatment" since neither can be defined in practical terms (Dunbar, 1985: p. 7).

Dunbar (1985), in the light of experiences both in Britain and in other countries, presented his views on the aims of the prison service by enunciating what he called the 'three principles of individualism, relationship and activity' (p. 35). He was convinced that 'good prison regimes flow from prisoners being treated as individuals; from relationships between staff and prisoners being good; and from prisoners being active rather than idle in the cells' (pp. 20-24). Dunbar noted that, with the decline of the reformatory ideal, a sense of futility had become pervasive in prisons and has led to what some observers had called a moral vacuum; and that to ensure that the prison service should not lose its "sense of direction", there was a need to formulate a clear mission statement. He added, ' "No message" is in fact a very clear message' (p. 28).

Ian Dunbar's (1985) recommendation for a mission statement was accepted by the English Prisons Board. In November 1988, the Prisons Board announced a formal statement of mission, which is now displayed prominently at all English Prison Service establishments. It states: 'Her Majesty's Prison Service serves the public by keeping in custody those committed by the courts. Our duty is to look after them with humanity and to help them lead law-abiding and useful lives in custody and after release'.

Though this statement has the advantage of being succinct and has a useful structure for examining the role of the Prison Service, it does not fully explain that role (Woolf, 1991). Essentially, it can be described as what Bottoms (1989) calls a humane containment plus formula — a bit more than humane containment. The use of some rather vague words like law-abiding and useful lives is uncomfortably reminiscent of Rule One, which has been a source of much criticism because of its impracticality. In any case, the statement does not heed Dunbar's advice of 'simple messages and an elaboration of practical details'.

Although Dunbar himself did not attempt any specific formulation of the aims of the prison service (Jepson, 1988: 21), he at least contributed to the debate by emphasising the need for relationship and activity — two of his three principles for effective and orderly community life of prisons or prison regimes (Bottoms, 1989). There is evidence that in spite of improvements in staff-prisoner ratios and the prison budget, the prison regimes on most measures including facilities like work, association etc. have deteriorated over the years, the bulk of the additional resources going to activities concerned with security and control — for example, increased numbers of men to cover the same levels of inmate activities and associations etc. — rather than to improving regimes (King and McDermott, 1989; Stern, 1989). Unlike humane containment which has been criticised as being insufficient as a goal or ontologically insufficient (Bottoms, 1989), relationship and activity have injected some kind of hopes and aspirations which no organisation worth its name and dealing with human beings can ignore.

The concept of future hope was particularly stressed by Bottoms (1989) in the late 1980s in his formulation of the aims for prison service. He tried to reconcile this concept with the requirements of parsimony and practicality that had not been met

by the useful citizen formula. He suggested that apart from secure custody and order which are basic public duties of the prison service, prison staff should also have duties to individual inmates in terms of respect, care and hope; and that they should encourage them to avoid crime in the future by developing regimes which are relationship based, fair, positive, and normalised.

The Aims Debate in India

There is a broad agreement among experts on Indian prison matters that the starting point, for a consideration of the underlying philosophy of the modern prison system, in India, is the Report of the Indian Jails Committee of 1919-20. Inspired by Gladstonian objectives, the 1919-20 report suggested that 'the aim of the prison administration should further be to effect such a reformation in the character of the criminal as will fit him again to take his place in society and to become a useful citizen' (para 15), and was concerned to find ways of sending prisoners out of prison better than when they went in. The history of the Indian prison system, since 1919-20, has essentially been the history of attempts to give meaning and substance to the possibility of providing reformatory influences in prisons.

Interestingly, even at the time of the Committee's optimism that prisoners could be reformed, there were sceptics. And perhaps one of the greatest sceptics was Lt.-Colonel J. Mulvany² of the Indian Medical Services who was an experienced prison administrator (one time Superintendent of the Presidency Jail, Calcutta). In his evidence to the Committee, he said:

It is strange...that they lay so much stress on the long exploded theory that prisons can reform criminals. If there is one thing more certain than another it is that prisons manufacture criminals... It is the publicity and the disgrace, and above all, the chance of detection which deter, not the prison treatment... It is thus quite clear that it is not imprisonment which deters but the *bugbear* of imprisonment (Mulvany, 1921; emphasis in original).

Nonetheless, he emphasised that prison departments should ensure that prisoners should leave prisons no less fit and healthy, both physically and morally, than when they entered — a principle which he considered fundamental, but which, as he complains, was not thought even worthy of discussion by the Committee. The principle, as he put it, is this:

It is the duty of the State to ensure that the infliction of imprisonment or punishment shall not, from avoidable causes, involve damage to the mind, health, morals, or intellect of the person imprisoned or punished, or in other words: every person imprisoned or punished has an inalienable right to be returned to Society no worse than he was before imprisonment or punishment... [U]nless and until it is accepted as the basis of future penal methods, progress is impossible. What we have to do is not so much to reform the prisoner but to prevent him from being ruined by our treatment (ibid, 1921).

The Indian Jails Committee's approach to imprisonment, however, gradually permeated official thinking and passed into the rhetoric of the prison authorities. The view that crime was some sort of disease that "treatment" could cure was certainly

widely held and with a great deal of enthusiasm after India became Independent. In fact, the same Gladstonian thrust with different verbal formulations appears in the Report of All-India Jail Manual Committee (1957-59) which suggested: 'The principal job of the correctional personnel is social re-education of the offenders' (p. 61). Much of the same thinking and approach dominated the Report of the Working Group on Prisons (1972-73) which was set up to suggest reforms in Indian Prisons. The gist of most of these reports is that prison officials could reform and rehabilitate prisoners if they were given more funding to upgrade facilities, personnel and programmes in prisons.

A decade later (in 1983) Justice A.N. Mulla Committee produced the first major official report on Indian prisons since the All-India Jail Committee Report in 1919-20. It made several important recommendations which if implemented will go a long way in Indian prison reforms. Unlike the 1919-20 Report which expressed satisfaction with the material aspects of the then prison administration, the Mulla report was highly critical of the living conditions in Indian prisons (chapter 3: 'Realities in Indian Prisons'). The Mulla report emphasised, among other things, the prisoner's right to be well treated, kept in hygienic conditions, given the opportunities for work and training in prison, and having fair and just disciplinary systems giving him or her rights of defence, combined with effective and fair grievance procedures. In short, the report lays stress on justice, the administration of which in Indian prisons, in its opinion, leaves much to be desired. The Mulla Committee concluded: 'After an overall view of the existing conditions in prisons, we are constrained to record that prison organisation in India does not conform to the required standards of a correctional department' (para 3.45).

However, as far as the reformation and rehabilitation of prisoners are concerned, the Mulla report merely repeats what has been said in earlier reports. Academic writings too have grappled with this problem, with rehabilitation on top of their agenda, and have generally drawn attention to the failure either of the public policy to enable prisoners 'to reform and rehabilitate themselves as honest and law-abiding citizens' (Diaz, 1984) or on the part of prison officials to strike 'a reasonable balance between custody and correction' (Srivastava, 1977; 1978). It is interesting to note that during this long journey, the objectives behind institutional corrections have hardly changed in a way that 'would differentiate present phase from the preceding one' (Khan and Chilad, 1982).

The Aims Debate in the 1990s in the UK

The need for a thorough reassessment of the aims and direction of the prison service which started in the late 1970s still continues in the 1990s. The first step in this direction was taken by the Scottish Prison Department⁴. They published a document entitled "Opportunity and Responsibility" in May 1990. The document starts with the premise that 'the government's penal policy is that prison sentence should be imposed upon those, and only those, for whom an alternative disposal is not appropriate' (Scottish Prison Service, 1990, foreword). Although the document accepts that the old objectives of treatment and training are outmoded and that imprisonment in itself is a negative experience, it, nonetheless, recognises that every attempt should be made to make that experience positive. The wisdom of this document lies in its recognition of the mutual

responsibilities of the prisoner and the staff in order for prison service to bring about fundamental changes in inmates' behaviour.

According to the Scottish Paper, unless prisoners are treated as responsible people and unless they are given all opportunities to exercise more responsible choice over their daily life in prisons, it is difficult to believe that the offender will exercise responsible choice after the release. In short, the document has 'introduced a new set of verbs which are enabling rather than prescriptive' (Coyle, 1992: 6).

The report by Lord Justice Woolf (1991) into the disorders, which rocked the English prison system in April 1990, is perhaps the most important and comprehensive document concerning prisons to be written in this century in the UK. It is notable not simply for its specific reform proposals, substantial as these are, but also for the general conceptual framework within which they are placed. The Woolf Report presents a broad vision of what prisons ought to be like for those who live and work in prisons. The Report suggests that prison services should fulfil three commitments: security, control and justice. The Report goes on to say that 'sufficient attention must be paid' to each of those three requirements and that the three requirements 'must be kept in balance' (para 9.21). Lord Justice Woolf, nonetheless, attaches great importance to the idea of justice which has run throughout this report — an idea in his view of great importance to the achievement of order in prisons — in order to achieve 'required standards of conditions and regimes within the prisons' (para 1.186) and which he claims can be 'secured through the exercise of responsibility and respect' (para 14.437). The report also suggests that the prison service should have a separate statement of aims for remand prisoners.

Elsewhere Woolf goes on to argue against the historically received conception of prisoners' goods and services as privileges, awarded or removed by discretion. He refers instead to the threshold quality of life of all prisoners and to the legitimate expectations that prisoners have of their treatment (para 14.32). Woolf makes a number of important proposals for the extension of rights of appeal, redress and access to information (para 14.289). He notes repeatedly prisoners' sense of the arbitrariness of the existing arrangements, and their lack of credibility in their eyes. Throughout the report, Woolf emphasises his belief that such issues are fundamental to the stability of the system.

The Government responded to the Woolf proposals in its White Paper on Prisons (1991). This paper identified three key areas of the prison service work: Custody, Care and Justice. In many respects, the White Paper favourably reflects on the Woolf proposals. However, in view of this author, they are not without limitations. First there is an interesting omission about the care and welfare of the inmates. The fact that this is not one of the three commitments of prison service in the Woolf report is a serious limitation. More than justice is required in prisons if they are not to become what the May Committee called "human warehouses". Secondly, the use of words like 'security' and 'control' are problematic on the ground that they are of interest only to staff and can be imposed at their will. Finally, the point made by Lord Justice Woolf that there should be a separate statement of aims for remand prisoners may be as sound in theory as it is unhelpful in practice. The point made by the Government White Paper (1991) that 'it would not make for a Service working

together for a common purpose if the Prison Service were to replace this with separate statements of purposes relating more narrowly to its individual tasks and policies' (para 7.4) is well taken. However, retaining its mission statement (1988) with fine words like useful lives (see above) is rather too ambitious.

These debates have tended to raise some very important and basic issues relating to the aims of the prison service. First, there is a need to understand the harsh reality of custody as a matter of wider public policy. This policy is not negotiable nor can it be altered to anyone's advantage except by law. This fact has to be recognised by all, including prisoners and prison staff.

Secondly, there is a need for aims to be capable of effective translation into practice and of being easily understood by prisoners and prison staff on the landings.

Thirdly, critics (e.g. Bottoms, 1989) have also drawn attention to the need for brevity and parsimony in formulating the aims of the prison service. Phrases like reformation and useful citizen seem too ambitious and too verbose. Whether a prisoner becomes rehabilitated or a law-abiding citizen on discharge depends to a large extent on external factors like family support, employment and accommodation. Under existing arrangements, there is little prison staff can do about these external features. There is a need to realise this bitter truth.

Last, but by no means the least, given the significant number of undertrial prisoners, not just in India and the UK but elsewhere, any statement of aims for prison service should also *reflect* the needs of remand (or undertrial) prisoners. I shall incorporate these principles in what follows:

Proposed Statement of Aims

Preamble

Imprisonment, either as a punishment or as a preventive remand, is a sanction imposed by courts for reasons of public policy. Imprisonment itself is the sanction, and no further avoidable hardship should be imposed on a person except by way of formal disciplinary action or accountable formal administrative action (Bottoms 1989: 17).

This preamble, first suggested by Control Review Committee (Home Office, 1984) and modified by Bottoms (1989) by adding to the original formulation, "accountable formal administrative action" forms the essential background within which I shall be attempting to formulate the aims of the prison service. It is desirable for many reasons. Amongst others, it recognises, as Bottoms explains, that 'the experience of imprisonment follows inexorably from the prior decision of the court' and that 'it is not the business of the prison service to impose further avoidable hardship' on prisoners. The addition of "accountable formal administrative action" by him is the recognition of the fact that at times prison authorities have to take certain administrative actions (e.g. transfer of some prisoners from a local prison to a more secure one) on the grounds of security and order although that action may cause hardship to the prisoner concerned. One certainly cannot rule out this possibility particularly in the

context of rising terrorist and other political crimes. But it is equally important to stress on moral grounds that such actions by the prison authorities should be challengeable by the prisoner in the courts to detect any arbitrariness in such decisions.

Proposed Prison Service Mission Statement

The mission of the prison service should be to keep in *secure custody* those committed to prison by the courts, to maintain *order* in prison, to look after the *welfare* of inmates, and to ensure *justice* in the day-to-day activities of the prison.

The proposed mission statement is hardly ideal, but it will serve our purpose. Containing only four concepts, it is simple and can be applied to both convicted and remand (undertrial) prisoners. It can also be effectively translated into practice. The mission statement contains the following core values:

Secure Custody and Order

"Secure custody" expresses better than "security", the essential notion of preventing escapes. The order which is necessary in prison implies much more than control. While order involves a set of relationships which ensure a safe environment for those who live (prisoners) and work (staff) in prisons, control tends to imply falsely that social order in prison is a matter of interest only to staff (Bottoms, 1989). In other words, the question of order extends beyond the overt exercise of "control" to incorporate matters of interactional style, staff's views on their own roles and identities and the realities of day-to-day dealings between staff and inmates. In fact, this emphasis on good staff-inmate relationships is not new: it merely requires reiteration and the structures to achieve it (Cooke, 1991). Observations by the Control Review Committee are quite pertinent in this connection:

At the end of the day, nothing else that we can say will be as important as the general proposition that relations between staff and prisoners are at the heart of the whole prison system and that control and security flow from getting that relationship right (Home Office, 1984: 6).

Welfare

Instead of word care which has been used by many (Bottoms, 1989; Home Office, 1991), I have used the word welfare in its broadest sense. Unlike care which has the same old paternalistic and treatment notion, and which in turn ignores both the normality of crime in society and the personal normality of a very large proportion of offenders merely responding to the 'facts and conditions of society' (Martinson, 1974), welfare denotes that prisoners should be treated as knowledgeable agents — to use Giddens' term (1984) — and that they should have control over their destiny.

Prisoners by virtue of their incarceration suffer from the pains of imprisonment (Sykes, 1958) and are to some extent dependent upon prison staff to alleviate these pains (Mathiesen, 1965). Richardson (1985) argues that the loss of liberty and other civil rights suffered by prisoners puts a duty on the state to look after their welfare and to compensate those losses by what she calls special rights. Although one might

have as much reservations about the term special rights as one has about the old Poor law principle of less-eligibility, welfare in the form of some acceptable daily routines and predictability in prison life (today's prison life will be more or less the same as yesterday's) can help in the reduction of those pains (Bottoms et al, 1990). Prisoner's discourse, as anyone working in prison knows pretty well, centres around these day-to-day routines (some of which are apparently quite trivial and mundane). They are important not only as a matter of humaneness or of inmates' rights, but also in the reproduction of social order in the prison. Prison staff must address themselves to these routines.

There should be something more than just daily routine, however legitimate it might be, in prison. It is a hope. It is a hope that a prisoner, if put into proper circumstances, will be able to better his condition. Contrary to the treatment and reformatory model which implied coerced cure, it recognises that a prisoner's destiny should be placed measurably in his own hands so that he can bring about change in himself, with prison staff just facilitating those changes. The need for prison staff is to make this hope an ever-present force in the minds of prisoners by well-devised and skilfully applied systems of welfare programmes.

Florence Nightingale once said that the first requisite of a hospital was that it made the patients no worse. It seems, therefore, that a minimum criterion of prison effectiveness should be that an inmate should emerge no worse than when he or she entered. Mulvany too made a similar point in his evidence to the Indian Jails Committee (Government of India, 1919-20) when he suggested that "reducing the damaging effects of incarceration" should be the fundamental criterion by which the efficacy of any prison system should be judged. Thus, minimising the harmful effects of the prisoner's removal from normal life — which many studies have shown (Cohen and Taylor, 1973; discussions in Bottoms and Light, 1987) — can be another issue under the general concept of welfare of inmates, which the staff should try to address. And Mulvany certainly deserves some recognition for highlighting this point.

Justice

The view of the Norwegian sociologist Thomas Mathiesen (1974) that the prison institution is indefensible and untenable as a normal component of a system of justice may be an exaggeration but, nonetheless, the question of justice is an important one and can have wider implications for prison management in general and control problems in particular. If prisoners think that their welfare is not being looked after and that they are not being treated with justice, they are going to feel debased, they are going to bear grievances and they are certainly going to be difficult prisoners to control, with an unintended consequence for overall relations between prisoners and staff.

However, justice and welfare as concepts are not opposites or mirror-images of one another, with justice not committed to welfare and welfare becoming unjust. In fact, the requirement of looking after the welfare of inmates certainly includes a obligation to treat them with justice and vice versa. Yet, the two terms are not strictly synonymous. For instance, a prison, which provides inmates with decent living conditions and good regime, would be regarded by many people as one looking after

the welfare of prisoners. It would continue to be regarded so even if some prisoners had a deep sense of grievance because they had been transferred from one prison to another without any reason being given and without any satisfactory means of redress. That would be a failure principally of justice' (Woolf, 1991, para 10.20).

Justice should not only be done by the staff but should also be perceived by inmates. 'It will not be seen to be done if there is no proper procedure, if there are no established rules, if the prisoner is not made aware of those rules and if there is not, at least at the final stage of the process, recourse to an independent element' (Woolf, 1991, para 14.297). It therefore becomes essential on the part of prison staff to consult prisoners and to give explanations for decisions which materially and adversely affect them. Such decisions, *inter alia*, should be expeditious, legitimate, fairly arrived at, objective, consistent (over persons and time), and conform to general standards of fairness and morality.

One difficulty is that the problem of control and compliance in the prison context has generally been constructed, at least by official and media discourses, as one of the individual pathologies of a minority of trouble makers. The official response (commonly unpublished) has been concentrated in large measure on "beefing up" security requirements like improvements in the hardware and techniques of riot control, identifying some ringleaders, rewarding some loyal prisoners and of course punishing some disloyal inmates in prison. Such *instrumental solutions* that have been employed to these problems are understandable, but it is possible that they have actually contributed to the 'cyclical patterns of disorders, responses, harder regimes and more disorder' (Scruton et al., 1991).

In other words, a reactive policy based on *instrumental concerns* is not necessarily the best option. On the contrary, it is likely that if authorities recognise and respond to prisoners' *normative concerns* like fairness, morality and legitimacy, they can exercise their authority more effectively, and their decisions will be accepted and obeyed voluntarily (Tyler 1990). Lord Justice Woolf (1991) very rightly emphasises the importance of normative concerns when he says: 'While not preventing all disruptions, they [Woolf's proposals pertaining to issues of justice and legitimacy in prison] would marginalise those who claim they must resort to deeply damaging and costly disturbances on the grounds that there is no other way to have their voices heard' (para 14.438).

Although no one can gloss over the fact that some individual prisoners are habitually more troublesome than others, if one has had the experience of prison administration, the understanding of the social and situational contexts in which these troublesome individuals live are also important in the generation of the phenomenon known as "control problems" (Hay, Sparks and Bottoms, 1990). As long as some prisoners continue to be "difficult", they are likely to be punished, "banged up" in the cells, brought under the Superintendent's adjudication, and so on. And yet authorities are likely to retain legitimacy amongst prisoners. The important point that should be borne in mind here, as Tyler (1990) points out, is that people do not lose faith in the legitimacy of authorities because of one bad experience with them, nor can they have faith in their legitimacy by one good experience. Legitimacy is not an

all-or-nothing, once-and-for-all matter (Beetham, 1991). 'What ultimately matters is the sum of one's experiences' (Tyler, 1990).

There is also clear empirical evidence that informal disciplinary measures are often resorted to by prison staff in dealing with disciplinary problems (Ditchfield et al., 1987). Prisoners often resent these measures and therefore, the prison service must ensure that informal disciplinary systems are not allowed to develop. As far as possible, even formally, no charges should be brought under the "catch-all" offence of "offending against good order and discipline" (Home Office, 1991, para 21). The application of these rules relating to such "catch-all" offences in their present form is itself a source of disgruntlement among prisoners (Woolf, 1991). Their "open-texture" (Twining and Miers, 1983:213) lays them open to charges of inconsistency, whimsicality and arbitrariness for prisoners. Unfortunately they are still very much part of our prison manuals and need to be changed, and legitimate procedural safeguards need to be built into these rules. Given the nature of prisons, these safeguards are important in the sense that they 'can act as a cushion of support even when authorities are delivering unfavourable outcomes' (Tyler, 1990).

Conclusion

This essay has sought to outline some historical developments and theoretical debates concerning the aims of the prison service in India and the UK. The importance of unambiguous and clear-cut aims has been emphasised, and an attempt has been made to make the proposed statement of aims fulfil the requirements of reality, brevity and practicality.

The proposed statement of aims, howsoever clear-cut and unambiguous it might be, will not be fruitful without proper infrastructural and financial back-up. Unfortunately, prisons are low on the agenda of political priority, and the politicians at the helm of affairs do not see much political mileage in prison reform. Even where politicians have acted, they have largely viewed the state of the prisons as a public scandal and the inquiries sometimes seem to have been ordered primarily to satisfy public opinion rather than bring about dispassionate and sincere reforms. Perhaps it is one of the paradoxes of modern bureaucracy that prison reforms (including statement of aims) cannot be effected on their merits and demerits and independently of political will, and the confusion and ambivalence surrounding prison service is a case in point. The sooner one comes out of this confusion, the better it is not just for prison service but for the criminal justice system as a whole.

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NOTES

- 1 The research carried out in the 1980s has, however, challenged this school of thought (McLaren, 1992).
- 2 The rather unknown side of John Mulvany's life is that in addition to his service to the Indian Medical and Prison Services, he also wrote extensively on prison matters: so much so that his articles started appearing in various leading Indian dailies under the title "J.M."

- 3 Justice is not the same as justice model, the proponents of which argue about the introduction of the judicial process into all aspects of prison life. Justice is said to be achieved in prison if inmates, as well as staff, feel that the system is itself fair and just. It is the part of day-to-day life in prison, not imposed by courts.
- 4 Although the ultimate responsibility for prisons in Scotland, as for those in England and Wales, lies with the Government of the United Kingdom, it is important to emphasise here that the Scottish Prison System, like other sectors of the Scottish criminal justice process, is autonomous and self-contained: it is subject to the judgement of Scottish Courts and not to English Courts. However, it has an obligation to regard rulings made by the European Commission and Courts on Human Rights, to which all prisoners in the UK, and not just Scottish ones, have access.
- 5 The existing informal disciplinary systems open up the prison disciplinary system to public scrutiny and judicial review and their having remained so drive the disciplinary system underground and replace formal adjudications with administrative segregation, transfers, and adverse parole reviews and so on—it is a vicious circle.

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