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By

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LATELY INSPECTOR-GENERAL OF PRISONS, BURMA

With a Foreword

by

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FOREWORD

This book must commend itself to the serious judgement of every one of us, not merely because it declares the revolt of the High Priest against the cult which he has had perforce to practise, but chiefly because the new doctrine preached and the new cult set up are undoubtedly of the highest practical value. This treatise is a challenge both to official and non-official complacency.

As Colonel Tarapore observes more than once, we give a fair measure of ourselves by our attitude towards the weak and erring, the dumb and derelict, the helpless and hopeless amongst our fellow men.

Too many of us still regard disease and death as visitations, scourges and retribution for past misdeeds, and our attitude to crime and criminals is not much different—we are either completely indifferent or complacently self-righteous. Yet the problem of crime is a vital part of the whole problem of social reconstruction, and the proper treatment of the criminal must accordingly be considered as an integral part of the great question.

We are apt to miss the actual significance of what both in common parlance and in our Penal Code, is termed 'crime'. If we remind ourselves that more often than not what we call crime consists in the breach of certain social conventions, and that such contraventions or breaches are but the symptom and effect of social maladjustment, we shall cease to regard crime as a thing by itself, foreign and extraneous to human society. We shall then learn to regard the person whom we stamp as a criminal, not as an intrinsically malignant force, as a self-willed and self-made enemy of society—to be dealt with harshly, savagely, by means of physical and moral humiliation, to be broken or destroyed—but rather as a victim of circumstances over which in most cases he has had no control. Social disapprobation for breach of social conventions can be visited on the offender in such a way that, while it brings sufficiently home to him the nature and consequences of his lapse, it may still do so without destroying in him the possibility of becoming a normally self-respecting and useful citizen. That is the central thesis of this book.

In this country only a few of the intelligentsia—mostly from among those who have tasted jail life in the course of political activity—have

recently begun to discuss the problems concerning the treatment of offenders, and to plead that the criminal should not be regarded as an outcaste but really as a victim of circumstances. Such statements are generally received by the majority of us as sentimental or 'idealist' effervescence.

But it will be impossible for the most hide-bound bureaucrat to dismiss Colonel Tarapore as a sentimentalist. Here is a man who knows what he is talking about, and who has for a decade attempted and seriously put into practice, with notable results, what he has now thought fit publicly to preach.

In the following pages are some of the conclusions at which he has arrived after years of experience, observation and reflection as a practical and successful jail administrator.

There is no such person as a 'born' criminal, but there is such a person as a confirmed criminal: the paradox being explained by the fact that the confirmed criminal is not born, but is mostly made by society, and upon society devolves his appropriate treatment. If instead of calling such a man a 'criminal type' we called him the 'prison type', we should be getting much nearer the truth, and beginning to understand the real obligations of society. 'However

enlightened a prison system may be, no prisoner emerges quite the same as he went in He is like a cripple beginning to walk, whom the slightest push bowls over.' And in all conscience, the treatment of criminals (including political ones) in Indian jails is far from enlightened, based as it is largely on the theory of subduing and controlling the spirit of the convict by constant physical and moral humiliation.

The spirit in which the author visualizes the problem of punishment or correction is that of the doctor treating his patients, not looking upon the criminal as beyond the pale of humanity, but considering him as a being who can—and must as far as humanly possible—be reclaimed and won back to normal ways. And in the process of reclamation force and rigour are useful, if at all, to a strictly limited extent. As Colonel Tarapore earnestly pleads: 'If men are to be returned to society as useful members, there should be alternatives to imprisonment and a generous and intelligent employment of such substitutes. If it is possible to correct and reform an offender without submitting him to the influence of a prison, it is the duty of the State to do so.'

In civilized countries the practical application of the principle of minimum imprisonment or a

substitute for it has resulted in juvenile and young offenders getting the far-reaching benefits of the Borstal system in one form or another, and adult criminals those of Preventive Detention, the Probation system, the Parole system and revisions of sentence.

The urgent necessity of devising ways and means in this country which would make it impossible for juvenile, young and first offenders to come in contact with habituals and hardened criminals inside a prison or house of correction, is clearly borne in upon us by a study of this book. It may be taken as an axiomatic truth that habitual criminals are made not outside but inside prisons. More often than not a youth comes into conflict with the law through some uncontrolled or misdirected impulse, or some momentary lapse which he is capable of regretting very soon after. Does he however get a chance of regretting, repenting and reforming when he is exposed unprotected to the daily influence and example of men inured to crime, men who harbour a grievance against society, men whose sole diversion in life, consciously or unconsciously nurtured, is to forge new instruments and to train more soldiers for the war against the society which they inwardly accuse of having dealt with them harshly ?

From the problem of the manufacture of criminals the author turns his attention to the equally grave problem of the reformation of the criminal. Ten men may commit ten similar thefts, but the motives or the circumstances in each case may be quite different. Why should all the ten expiate the crime in the same way? Why should not each of them be given a chance to turn over a new leaf, and those of them who prove themselves fit be allowed once again to become useful members of society? An honest man with a family to support, unemployed through no fault of his own and driven by hunger to steal a hundred rupees, and a petty gambler resorting to the theft of a like amount, have only technically committed the same offence. But the State treats them exactly alike in dealing with them as offenders. Two men suffering different ailments are dosed with the same medicine. Or again, what meaning is there in making men work out, mechanically, sentences prescribed by the Indian Penal Code, or given by the judge or magistrate? By what yardstick or measure-glass or thermometer is the State able to assure us that a given crime is expiated in seven years, and not in five or two or one? And yet, if the State cannot give such an assurance the bottom is knocked

out of the present theory and practice of punishment. What justification can there be for maintaining a system which, apart from imposing a heavy burden on the taxpayer, is based on theories which have in principle no validity, and in practice no value whatever ?

Such considerations have led the author to discuss, with full regard to their adaptability, methods already used in many civilized countries by which criminals are carefully sifted and classified into various categories, and appropriately dealt with for the purpose of reformation. But since grinding poverty, vastly more than moral depravity, is at the root of most of the 'crimes' in this country, it would be both callous and unpractical to delay any longer giving a trial to such measures as the revision of sentences, the probation system, and preventive detention, discussed in this book. It is gratifying to note that Colonel Tarapore, speaking from firsthand experience, assures us that every one of these systems can be effectively and beneficially worked in this country.

The author has lucidly pointed out that the problems of penal reform are only a part—even though a vital part—of the larger struggle towards reforms and regeneration upon which India is so strenuously engaged. That indeed

is a self-evident proposition. At the same time as we talk of reforming the criminal and restoring him to society, we must frankly recognize that after a point such talk becomes meaningless. What is the point of reforming a criminal and restoring him to a society which inevitably produced him? As long as brother denies to brother justice and equal opportunity, so long must the hand of each be against the other. The stronger will make the law and the weaker will break it. The former will be the jailor and the latter the criminal. Without establishing a more equitable social and economic order, can we honestly expect the criminal to be reconciled to his jailor?

BHULABHAI J. DESAI

PREFACE

THE main plea for this book lies in the state of public opinion in India towards crime and the criminal. It is the result of over ten years' administration of the prisons of Burma, an administration which I hope has been characterized by some permanent improvements in the penal system of that Province. That these improvements were necessary, and that these improvements have often been carried through with the greatest difficulty would, I am sure, be justification enough for adding yet another volume to the library on crime. But when I am fully conscious that the work done during my term of office as Inspector-General of Prisons is but a small part of what ought to be done, the justification for the following chapters becomes imperative.

The study of crime in India has in the past been approached mainly from the administrative point of view. Generally speaking, the sociological aspects of crime and the criminal have received only secondary consideration. There have been, it is true, a few honourable exceptions. The admirable work of the

Salvation Army in tackling the difficult problem of the criminal tribes in several Provinces, and the enlightened experiments in modern penology in Madras have been guide-posts, which unfortunately have not been fully studied, appreciated, or imitated. Governments have been inclined to look upon their Prison Departments as purely punitive addenda to their administration of law and order. In times of financial stringency the prisons have been the first to suffer, and experiment, even involving the smallest sums of money, has been discouraged. At the same time, public opinion in India has been almost totally indifferent to the problems centering round the treatment of the criminal. Indian public men and politicians have concentrated their energies on wider and more important problems of political evolution, and have only had their attention called to the prison system generally obtaining, when they themselves have transgressed the law, and found themselves confined as political prisoners. But even though during the last few years there have been many complaints about prison buildings and prison diet, the questions so raised have in no way touched upon the main problems which face the prison administrator; for most of such complaints have dealt with

the upper grades of prisoners, and not with the common criminal. As a natural consequence, crime has been nobody's concern in India except, of course, that of the administrator and the jail staff.

One of my main objects, therefore, is to show that the treatment of the criminal in India lags far behind the systems adopted and operating successfully in the west. It has been said that one of the acid tests of a country's civilization is its attitude towards crime and the criminal. A purely punitive or so-called deterrent system of punishment has now been proved to be socially wrong and financially wasteful. A prison system is a corollary of a judicial system, and a judicial system, to be worthy of respect, to secure obedience to laws, and to maintain security for life and property must be humane, progressive, and enlightened. It is unfortunately all too true that at the present moment India possesses a system of prison treatment which is in the main based upon old ideas. In origin it accompanied the Indian Penal Code, which, excellent though it was at the time when it was drawn up, cannot be said to have advanced side by side with the general progress of sociological thought. The Code was framed at a time when a universal

standard of law and order was essential for the foundations of any stable sort of government at all. It was stern, but it was capable of country-wide application. The evil-doer knew where he stood: there was the law, and there were the penalties for breaking it. The early British administrators in India had not the time, even if they had had the knowledge, to make provision for different types of criminals, for the psychology of crime and for the ethics of punishment. The laws came down from an efficient, concentrated Government authority; they were to be obeyed and some kind of order was to be evolved from chaos.

At the time, then, when the present prison system of India was inaugurated, there was every excuse for deficiencies and shortcomings. The Victorian administrator knew little and often cared less for modern social science, and the lead which he gave to India has been one which has not been lightly abandoned. Even today there are Governments in India, and Government officials, who have inherited an attitude towards crime and the criminal which would not be tolerated in any western State.

It is thus essential on the eve of far-reaching constitutional changes in India that some sort

of lead on this subject should be given. There is a danger that, in the first enthusiasms of responsible government, Indian statesmen and politicians may be content, in some respects, to follow along the old lines in order that admittedly more important problems, and problems dearer to their hearts, may be brought into the limelight, discussed and solved. It is easy to imagine a Provincial Assembly concentrating on agriculture, irrigation, economics and education, and it is easier still to imagine the still small voice of the prison reformer being lost in this roar of interests. But someone, sooner or later, must tackle the questions I am going to raise, and must solve them along the lines suggested in these pages. Not that I would, for one moment, claim any particular personal merit either for my experiments in Burma, or for my tentative reforms. I have merely attempted in times of grave financial stringency to preach in and out of season the new spirit of prison administration from my knowledge of the salutary results attained by those responsible for crime and criminals in England, America, and other western countries.

What I have to say—or rather my exposition of the main principles of improvement and reform—has also been justified in my eyes by

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the remarkable loyalty, support and response which have been given to their enunciation by my staff in Burma. I have found the new spirit of prison treatment, despite many initial handicaps, to be one which not only appeals to the criminal with beneficial results, but also produces among prison staffs a more enlightened and humane atmosphere. These principles, as I have pointed out, are common knowledge in all the more advanced countries of the world. If I appear to lay emphasis on certain elementary facts, my excuse is that I am writing not primarily for the expert but with the main object of awakening public opinion. There are a host of excellent works dealing with the main principles of the subject, one of the best being the Report of the Royal Commission on Indian Prisons published in 1921; but unfortunately I know none which deals specifically with their application to Indian problems as one should visualize them. In this connexion I would claim that while it is true that Burma is not India, the underlying basic facts of the problem in Burma are in the main so much the same as those in India that the experience which I have drawn upon can, I feel sure, be taken as a guide for the subcontinent.

People in authority today should realize the

urgency and importance of the problem. Such realization can only be made fruitful if theory is combined with experience of what is practical and possible. If much of what I have to say seems elementary or destructive, it must be remembered that where ignorance is so widespread, it is essential not only to get rid of old-fashioned erroneous ideas, but also to inculcate the new doctrines in simple, straightforward, convincing syllogisms.

That these warnings and explanations are necessary is obvious from one fact, and one fact alone, about our prison system in India. Our prison departments are the only ones in which an officer is allowed to enter on his duties without any previous training or preparation. It has been assumed that a warder, a jailor, or even a Superintendent acquires in some mystical fashion a complete knowledge of his very complex and difficult duties on the very first day that he assumes his responsibilities. This is bad enough, but it is, perhaps, even more alarming to remember that these officers have in practically every case complete confidence in their ability to deal with one of the most complicated and technical problems that faces humanity. As long as public opinion in India is content to have the criminal handled by this

body of well-meaning and honest ignorance, so long will crime in India and the punitive system be matters involving a vast waste of public money and expenditure of useless effort, and, what is much more important, a never-ending drain of unreclaimed and derelict offenders. Apart from these material considerations, there is, as I have mentioned before, the purely ethical and sociological obligation to treat crime as the doctor treats disease—the production of health by preventing disease, or the saving of the criminal by preventing crime. I must add, of course, that all the views and opinions expressed are entirely personal and made on my own responsibility.

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APPENDIX

CAPITAL PUNISHMENT

As I have often been asked my opinion of the efficacy of capital punishment, I am appending here a few points on the subject for the consideration of those interested. The question whether any offence should be punished with capital punishment has often been debated. It is not my object to enter into an academic discussion on the subject, but I am venturing to record a few salient points, in connexion with this penalty, as summarized in the excellent work *Capital Punishment in the Twentieth Century*, by E. R. Calvert.

The plea always offered for awarding capital punishment is that society must be protected. This idea of the protection of society was carried so far in the past that even for trivial offences capital punishment was awarded. Gradually human nature revolted against such cruel punishment, and the extreme penalty has been abolished in connexion with all offences excepting murder. For example, in England, there was a list of over two hundred

offences for which capital punishment was prescribed not more than a century ago.

Capital punishment is awarded because it is thought to act as a deterrent to potential murderers. Most murders are crimes of passion, and are committed under circumstances in which consequences are hardly ever considered. Even in the few premeditated murders that do take place, the murderer is confident of escaping detection, and so he does not consider the consequences. In neither case can it, therefore, be said that capital punishment is a deterrent.

Capital punishment has been abolished in a large number of some of the most civilized and law-abiding countries. In no such case has there been a consequent and permanent increase of homicides. On the contrary, there has been a decided decrease in the number of murders. This further goes to prove that the death penalty is not a necessary deterrent.

Capital punishment brings intense suffering to prison officials and has a demoralizing influence over the prison population.

Capital punishment is irrevocable, and as there have been cases of innocent men so sentenced, this punishment may be both cruel and unjust.

Capital punishment encourages jurors and

assessors to bring in a verdict of 'not guilty', and thus there is a chance of dangerous homicides being allowed to go scot-free.

Capital punishment violates our belief in the sanctity of human life, and stands more or less condemned thereby. Our business is to redeem the offender.

The alternative is a long term of imprisonment. This is not an ideal substitute, but is the next step in penal reform.

One of the most unpleasant duties of a prison officer is that of carrying out the capital punishment. I have not come across any officer, from the highest to the lowest, who does not have an intense dislike for the performance of this duty. The day on which a prisoner is going to be executed is a day of mourning in a jail, in which the members of the staff and the rest of the prison population take part. Even the magistrates, who have to witness the hanging, dislike this duty. Everyone wants to get over the unpleasant business as quickly as possible, and say nothing more about it.

As Calvert has written, 'Capital punishment has *not* been a deterrent'. We have tried this punishment for years and years past, and the number of murders has not been reduced. As I have said before, crime is prevented more

by the certainty of punishment than by its severity, and it would be wiser to take whatever measures lie in our power to bring about more convictions in murder cases than hitherto. If such a result can be brought about by abolishing capital punishment, the experiment is fully worth trying. It may be that if it is known that on conviction the accused will not be executed, more witnesses will be ready to come forward to denounce the accused. Juries also will be more encouraged to give decisions in accordance with their conscience.