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NILIMA

A JOURNAL OF LAW AND POLICY

SPECIAL VOLUME ON

Correctional Homes with focus on Assam.

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A Foreword from the Editor

Studio Nilima: Collaborative Network for Research and Capacity Building is a collective of lawyers, academics, social scientists and students, working at the intersections of law, conflict, governance and culture. It brings together thinkers, learners and practitioners to unfold new ways of engaging with contemporary Assam, its people and politics. Our journal Nilima: A Journal of Law and Policy is an extension of these visions and seeks to create a forum to engage, reflect and dialogue on the contemporary socio-political climate of the region.

The landscape that we are exploring in this edition are the correctional spaces with a specific focus on Assam. Studio Nilima, through its initiative of Pratidhwani (the Echo), has been engaging with the correctional spaces since 2017. Our interventions have included facilitating effective legal services and care for the inmates, empowering the correctional home administration, and striving towards prison reforms with and by the stakeholders through a process of dialogue. This edition presents a collection of reflections from the inmates, insights from former Judges of the Supreme Court of India, a comment by scholar and practitioner from the School of Conflict Analysis and Resolution, George Mason University, United States of America and research articles by members of Studio Nilima.

(ii)

The volume opens with *Voices from Within* which present the works of some of inmates which we chanced upon during our visits and interactions in the correctional homes. These include poems written by Anis Ahmed, Arupjyoti Deka, Ilias Purty, Jeherul Haque, Kamal Das, Lakhyadhar Baishya, Md. Dildar Hussain, Papu Das, Swargam Kumar Rabha and Suraj Saikia. The works are presented in their original form along with translations to offer our readers glimpses of the lived experiences of incarceration of the inmates.

The next section, *Voices from the Bench* include observations by former Judges of the Supreme Court of India who have spearheaded the contemporary movement for prison reforms in India. Mr. Justice Madan B. Lokur, Former Judge, Supreme Court of India, who headed the Bench which had passed wide ranging directions relating to prison reforms during his tenure, offers an insight into "Prison Jurisprudence and Reforms". Mr. Justice Amitava Roy, Former Judge, Supreme Court of India, who is presently the Chairman of the Hon'ble Supreme Court of India's appointed Committee on prison reforms emphasize "The Role of Society in Prison Reforms".

The final section, *Studies from the Field* presents an analysis of the correctional system in United States of America by scholar/practitioner Patricia Maulden on the deep roots of disenfranchisement as a post carceral punishment. In this section, we also present with great pride, three research papers on the correctional spaces in Assam by members of Studio Nilima. Anubhab Atreya examines the existing regulatory/policy framework with regard to access to health parameters and the availability of such facilities on the ground. Tathagata Dutta studies select global reintegration policies and practices to understand frameworks that are best suited to meet the objectives of rehabilitation and reintegration. Abantee Dutta, presents some preliminary thoughts on immigrant detention in the correctional spaces of Assam exploring the idea of the "state of exception" in using detention power to enforce a period of indefinite waiting and the continuum between a quasi-administrative detention and punishment.

(iii)

I would like to extend my heartfelt gratitude to the Inspector General of Prisons, the Officers and Staff of the Correctional Homes of Assam, Officers of Assam State Legal Services Authority and the District Legal Services Authorities for their continuous support and encouragement to our team. I also remain grateful to Ms. Reeta Borbora for her generous support, time and commitment, in producing the English translations of the works of the inmates. Acknowledgements are due to Kristin K. Post and Abantee Dutta for their role as mentors and active engagement and discussions with Tathagata Dutta and Anubhab Atreya. My gratitude to Kristin K. Post also needs further reiteration for her deep commitment and unconditional support to Studio Nilima, her engagement with our work from afar, and for copy editing this volume. Thanks to the team of Bhabani Offset & Imaging Systems Pvt. Ltd., in particular to Bidhan Dev, Bibhash Dev, Prince Choudhury and Bipul Patar. It has been a pleasure working with you in bringing out this volume.

I hope this edition of our Journal provides valuable insights into the correctional spaces, and of Assam in particular, and sparks new avenues of research and inquiry in the area.

Mr. Justice Brojendra Prasad Katakey
Former Judge, Gauhati High Court
January 15, 2020

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VOICES FROM WITHIN

উপলব্ধি

স্বৰ্গম কুমাৰ ৰাভা

আচলতে জনাটোনো কি ?
যদি সেয়া উপলব্ধিয়েই নহয় !
শিকা মানেনো কি ?
যদি সেয়া ব্যৱহাৰিক কাৰ্য্যকৰী নহয় !
অজ্ঞানতাৰ বশৱৰ্তী হোৱা সকলে হয়তো ভাৱে...
সা-সম্পত্তিয়েই জীয়াই থকাৰ উদ্দেশ্য
আনক হয় প্ৰতিপন্ন কৰাই নিজৰ শ্ৰেষ্ঠতা।
কিন্তু প্ৰকৃত উপলব্ধি কৰা জনে বুজে...
মানৱ সেৱাই পৰম ধৰ্ম
প্ৰকৃতিৰ সুৰক্ষাই পৃথিৱীৰ জীৱন।
উপলব্ধিয়ে আনি দিয়ে
মনৰ প্ৰশস্তি কামত সন্তুষ্টি
জীয়াই থকাৰ মাধুৰ্য্য।
সেয়ে হয়তো মহান লোকেও কয়
শিকা বা বুজাতকৈও বেছি উপলব্ধি কৰা
যি কৰা যায় তাক
উপলব্ধিৰে মহান কৰা।

Realisation

Swargam Kumar Rabha
Central Jail, Guwahati

What is knowledge as such?
If that is not grasped.
What is learning?
If that is not practicable?
Those pressed by ignorance might
think
Riches alone is the motive to live
Demeaning others is their greatness.
But one who grasps the truth
realises...
Service to humanity is the ultimate
religion.
Realisation ushers in
Peace of mind
Fulfilment in work
Pleasure of living.
Perhaps this is why
Even great men say
Realise rather than acquire and
absorb
In whatever you do
Make it noble through realisation.

আম্মাৰ জ্ঞাতি
০

আনিচু আহমেদ

আম্মি অসমীয়া জ্ঞাতি
অসম আম্মাৰ বসতি
আম্মি অসমীয়া জ্ঞাতি ৥

জ্ঞাতি ধৰ্ম-বন নিৰ্বিশেষে- গাঢ়ে মে অসমপানি
আৰু- শাকিনে অসমত গিল্প শ্ৰদ্ধাতি-
তাতে নহম আম্মাৰ কোনো ক্ষতি
নিঃসাদম পাৰিবি- তাৰু শ্ৰেয় বিলাই দিয়াই-
আম্মাৰ বীতি,
আম্মি অসমীয়া জ্ঞাতি ৥

আম্মাৰ দুঃখত দুখি
সুখত- হুঁ আম্মি সুখী
দাৰিদ্ৰ নিৰাস্থাৰ আম্মি সাৰি
আম্মি অসমীয়া জ্ঞাতি ৥

স্বপ্ন আনোপায়ো জুগ আম্মাৰ ইতিহাস
নম্ব হুদুগ অহু অসমত আম্মাৰ অহু
ঐক্যতা আম্মাৰ ধৰ্ম উল্লি আম্মাৰ কৰ্ম
এম্মাৰ অসমীয়া বীতি
আম্মি অসমীয়া জ্ঞাতি ৥

আম্মি আনে আম্মি সকলৰ শ্ৰীতিকৰুনা
অৰ-শাৰাৰ আম্মি অসমী
হাদম্ব অ; কলন আম্মি দুপ-শাৰী
আম্মি অসমীয়া জ্ঞাতি ৥

আম্মাৰ হাদম্বৰ আপোন আৰ্জক কৰিম
জান দীপেৰে আনোক পনু কৰি
জৈয়েই অসমক সোনোবানী কৰিম
এম্মা অসমবাসীৰ অভিপ্ৰাণে
আম্মি অসমীয়া জ্ঞাতি ৥

শিৱগাঁও জিলা কাৰাগাৰ-
আনিচু আহমেদ ।
কমেই নং - ৫৩৫

Our Race

Anis Ahmed, District Jail, Morigaon

By race we are Assamese,
 In Assam we dwell,
 With peace and harmony we shall fill Assam,
 We are Assamese.

Heedless of caste creed religion, Assam stands tall,
 Let varied species abide,
 Never do we care,
 Our motto, to unfold brotherhood, defy hatred,
 We are Assamese.

We grieve at other's woe,
 Rejoice at other's joy,
 Wrapped with parity,
 We are shelter of the homeless,
 We are Assamese.

Love affection tenderness our saga,
 Modesty, humility, simplicity our custom,
 Unity our religion, progress our practice,
 This is Assam's tradition.
 We are Assamese.

We are tender props of the hapless,
 Companion of the deprived,
 Humble at heart,
 We are Assamese.

We shall attain our heart's desire,
 Shimmering with the light of wisdom,
 Turn green Assam, golden,
 It's the pledge of the Assamese clan,
 We are Assamese.

* ଅରୀଦି * କାବିତା

ତେ ଭୋଦିବାଧୀ-ବୀର ଅରୀଦି ଉକଳ ଓ ଗାନ୍ଧୀ
ଭୋଦି ବାଧୀର ଜନ ଜାତି କବିର କାବିର
ଭୋଦିବାଧୀ ଗୋଡ଼େ ଧ୍ୟାନ ଭୋଦି ଦିଲ

ଉର୍ଦ୍ଧ୍ୱ ପ୍ୟାଦି ନାହିଁ ଉର୍ଦ୍ଧ୍ୱ ବାଦ୍ୟ ନାହିଁ

ତେ ଭୋଦିବାଧୀ ବୀର ଅରୀଦି ।

ଭୋଦିବାଧୀ ଗୋଡ଼େ ଓର୍ଦ୍ଧ୍ୱ ବାଦ୍ୟ

ଉକଳ ନାମା ଓକଳ ନାମ ବିଧିଧିତ୍ୱେ ।

ଭୋଦି ଭୋଦି ବାଧୀର ଜନ ଜାତି

କବିର କବିର ଓ କବି ।

ତେ ଭୋଦିବାଧୀ-ବୀର ଅରୀଦି ଉକଳ,

ଭୋଦି ଓ କବିର ଭୋଦିବାଧୀ ଗୋଡ଼େ

ଭୋଦିବାଧୀର କବି କାବିର ଜନ କବିର ଓକଳ ।

ଭୋଦିବାଧୀ ଉକଳେ ଭୋଦିବାଧୀର

ଉକଳ ଜାତି କବିର କବିର-ଓକଳ

ତେ ଭୋଦିବାଧୀ ବୀର ଅରୀଦି

ଉକଳ କୋଟି କୋଟି ଉକଳ ଭୋଦି ।

— ୦ —

ଶ୍ରୀ ବିନୟନୀ ସାହି
ବାଲେଶ୍ୱର ଉପ ସାହିତ୍ୟ
୨୦ ଜାନୁ ୨୦୨୦

Martyr

Ilias Purty, District Jail, Mangaldai

Salute O' Adivasi martyrs valiant
You laid down your lives
To make Adivasis a reserved tribe.

I haven't forgotten
I haven't forsaken
O' Adivasi martyrs
Your sacrifice
Will never be in vain.

We pledge to make Adivasis
A scheduled tribe
O' Adivasi martyrs
We shall now accomplish
The task you left mid-way.
We shall make Adivasis
A scheduled tribe in whichever way.
O' Adivasi martyrs
Salute to you a thousand times.

ম্যাঁ

দুজোৰ বাতি উল্লীপ উঠিলো ম্যাঁ স্মিলি,
কৰিছিলো মাৰু-হাত বুলোই ছুটি।
পৰম্পৰে মাত দিছিলো সোন স্মিলি,
জাৰ পাৰে চিহ্নিৰিলো ম্যাঁ অ' ম্যাঁ স্মিলি।

নাঙনিলা কামত মে নাছিলো ছুটি,
অপ্তত্বৰে জেম্বিক উঠিল মোৰ দুচকু।
বেদনাই মোয়া ম্যাঁৰি বৰিছে বুকুত,
স্মিলিমাৰ আকাশত বজালি উৰে।

বন্ধী পুত্ৰিলে জানো তোমাৰ মনত নশৰে;
বিশ্বৰ জানে ম্যাঁ ছুটি অনন্যা স্মিলি।

মোৰ বাবে সদাস্থ লোহোৱা জানো ব্যাকুল ছুটি ?
দিবা অস্মি ছুটি পৰম্পৰে মাতত্বৰ মাত,
নতীশৰে মেম তোমাৰ বেষণৰ স্মিলা,
দিবানে তোমাৰ আশীৰ্বাদ।



লেখক: শ্ৰী সূৰ্য্য অক্ষয়

Mother

Suraj Saikia, District Jail, Golaghat

In the middle of the night I cried out "Ma"
You had caressed me with fondness.
You had dotingly called me "Darling"
Wakening from sleep I cried "Ma, oh Ma."
Didn't realise you were not near me
Tears moistened my eyes
Heart weighed down with grief.
Herons glide in the evening sky
Don't you ever think of your imprisoned son,
The world knows that unique is a mother,
Doesn't worry for me move you everyday,
You will come one day and call me tenderly
I shall bow at your feet and surrender
Will you give me your blessings?

মোহাৰ জীৱন



জীৱন মে এমনি বোৱাৰি নৈ,
 নামাকে কৰো বাবে বৈ ।
 মোৰ জীৱন বহু মৰ্ব্বিত তোশা,
 তোহ্মাবত মই দেহুৱালো দিশা ।

কিহিলো মই বট বটিল আপোন,
 কিচাৰি মোৰ সুখৰ আশোন ।
 কিহু জালো তাত এল মনৰ ছাপোন ॥

জীৱনলৈ নামি জয়া এনিশাৰ মইদায়,
 মোৰ তয় মইদায় কিবিলে পুৰি দায় ।
 থাকো মই ব্যাৱহাৰত মইদায় বিদায়,
 পাম জানো আতৰ দিন সুদায় ?

মই আদি হিলো গিৰিবেৰৰ আৰু,
 নাজানো মই কিবিলো হিলে নে শুধু,
 কিহু হিল জীৱনৰ মোৰ এতি শুধু ?

জীৱনৰ জাত হুই আদি মই লাপু,
 তথাপি পৰা নাম মোৰ দুখৰ অন্ত ।
 এটিম আকৌ পৰা নহুন দিয়াত ॥

মোহাৰি সমানে মোৰ অপমুশে বুলি,
 লেব জানো মোৰ আশাৱালি ?
 পাৰ্হিৰ সাধনোমো অস্ত্ৰব্যৰণে জয়মৰ মাত,
 দিব জানো এতি জনে মোৰ মৰমৰ মাত ?



লেখক: শ্ৰী শাম স.এ

Life of Hope

Papu Das, District Jail, Golaghat

Life is a flowing river

Waits for no-one

I had many sweet dreams

In the darkness I lost my way.

I conceived many vibrant dreams

Searching for my very own

Know not why the mirror of my heart

Shattered without reason.

The tempest of a night

That descended on my life

Burnt to ashes my shattered heart

Here I am crying in vain

Will bygone days return to my life?

Now I am confined within four walls

Have I done wrong or right, I know not

Why has my life come to a halt?

Battling with life I am now tired

Yet my woes have not come to an end.

Rinsing my disgrace

Will society embrace me?

Forgetting everything

Will people extend their helping hands?

Will each one of them offer me kind words?

প্ৰকৃতি আৰু মানুহ

লক্ষ্যধৰ বৈশ্য

হেৰৌ ককাই কলৈনো যাবা
 দা কুঠাৰ হাতত লৈ
 গছ কাটিব যেন লাগে
 বেয়া জানো নেলাগে ?
 আছে আত্মা সিহতৰো
 কবহে নোৱাৰে,
 নিৰবে ঠিয় হৈ থাকে
 কাকো অপকাৰ নকৰে।
 নিস্বার্থভাবে বিলাই সি
 মানৱৰ অমূল্য সজ্জীৱনী,
 তাকে লৈ গৌৰব কৰে
 বসুন্ধৰা আই মাতৃ বুলি।
 বছৰে সাজি কাচি ওলাই
 ধৰনী শুৱাই তোলে
 ফুলে ফলে জাতিস্কাৰ হৈ
 দেহ মন শান্ত কৰে।
 গছ থাকিলেহে জীৱজগত থাকিব
 তুমি নিশ্চয় জানা
 বহাগ মাহত ন কইনাজনী হয়
 দেখি লাগে মনোমোহা।
 হেৰৌ ককাই বুজিলেনে
 প্ৰাকৃতি আৰু মানুহৰ সম্বন্ধ ?
 ৰ'বা ৰ'বা আৰু আছে - শুনা

কাৰ্বনডাই অক্সাইড গেছ এৰে
 প্ৰকৃতিয়ে কাৰ্বনডাই অক্সাইড গেছ খায়
 অক্সিজেন গেছ আমাৰ বাবে এৰে।
 সিহঁতে দিনত ছাঁ দিয়ে
 ৰাতি দিয়ে আশ্ৰয়
 পৃথিৱীখনক জিপাল কৰি ৰাখে
 বৰষুনৰো সমল যোগায়।
 ঘৰ বনাবলৈ সামগ্ৰী দিয়ে
 পেটৰ বাবে আহাৰ
 পিন্ধিবলৈ সাজপাৰ যোগান ধৰি
 জীৱ জগতক দি আছে সম্পদৰ পাহাৰ
 অসীম ধৰ্য্যশীল
 বেয়াকৈ কাকো নকয়,
 কষ্ট সহিষ্ণু হয়
 অত্যাচাৰ কৰিলেও মাত নামাতে।
 আত্ম সংযমীও
 নিৰৱে সহ্য কৰি কল্যাণ সাধন কৰে।
 ককাই হয়নে ?
 তথাপি যদি কাটিব লগা হয়
 প্ৰয়োজনত গছ এটা
 জীৱজগতৰ হিতৰ বাবে
 আগতে গছপুলি ৰুবা তিনিটা।

Nature and Men

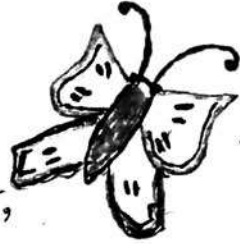
Lakhyadhar Baishya, Central Jail, Guwahati

Hey, brother where are you off to
 With knife and axe
 It appears for felling trees
 Don't you regret?
 They too have soul
 Though cannot speak
 They stand silent
 Harm no one.
 They selflessly disperse
 Men's precious elixir of life
 And take pride
 For being mother earth.
 Emerges with splendour every year
 To enhance earth's beauty
 With flowers and fruits
 Spreading tranquillity.
 If trees survive
 Living beings will survive
 Surely you know
 In Spring she's a bride
 A beauty for the eyes.
 Hey brother, did you understand
 The bond between men and nature?
 Wait, wait, there's more

Men takes in oxygen
 Give away carbon-di-oxide,
 Nature takes in carbon-di-oxide
 And give away oxygen for us.
 They give shade during day
 And shelter at night
 Keep the earth rejuvenated
 By providing rainfall.
 Providing house-building materials,
 Food for survival
 Clothes to cover ourselves
 Has given the living world moun-
 tains of resources
 Extremely patient
 Rude words to nobody,
 Tolerant
 Silent in the face of atrocity
 Self-restrained too
 Engaged in welfare while suffering in
 silence.
 Agreed brother?
 But even if you have to cut
 A tree for some reason
 Do plant three saplings before
 For the welfare of the animal king-
 dom.

নিষ্কৃৰ জীৱন

মনত পৰে মোৰ অতীতৰ স্মৃতি,
 ডাৰ্-ডেনীৰ হতে কৰা বৈমালি ।
 স্বা-বৈমালিৰ মাজেৰে মেলিছিলো,
 ল'খালি জীৱনৰ প্ৰমত্ত পাতালি ।



ডবা নাছিলো মোৰ জীৱনে,
 পেলিব নানা ফাগুৰ স্বা-
 নিষ্কৃৰ ফাগুৰ বটে- কটি নিলে;
 মোৰ যৌৱনৰ গৰলো স্বা- ।

আজি মই চাৰিবৰৰ পিন্ধু-ৰাত আৰন্ধ,
 কৰা নাছিলো তেনেকুৱা সু-কৰ্ম ।
 কিন্তু কিব- দুঃখত দুখী হৈ- আজি মই,
 হৈ- বালো পিন্ধুৰৰ মাতৃত স্বা-ৰন্ধ ।

আপোন মানুহবোৰ আদিবনে-আকৌ জেতি,
 পূৰ্বৰ দৰে ল'খনে জাৰিত মোক : ?
 ব্ৰহ্ম জীৱনত চেনা খেলুও পাৰি;
 মাথ নোহি আপোন মানুহবোৰে পানীৰ মোক

লেখক : শ্ৰী-সুৰজ শৰ্মাকীয়া

Ruthless Life


Suraj Saikia, District Jail, Golaghat

Memories of past visit my thoughts
Frolicking with my siblings
Amidst fun and laughter
Had embarked on our childhood days.
 Never imagined that life
 Would play the game of colours
 Cruel Holi snatched away the colours of life
 Colours of my days of youth.
I am now trapped within a four-walled cage.
Never had I committed any crime
But what misfortune has forced me
Now to live in captive suffocation.
 Will my loved ones return to me?
 And embrace me like before?
 Encircled by harried life
 Will I be erased from their mind?

ବସନ୍ତ ଲେଖକ: ଶ୍ରୀ ଅରୁଣ କର୍ମବିହାରୀ

ଝିଲୋ ବାଗାଝାର, ଗୋଲପହାଟି,

ବିମ୍ବ ଦିଲ୍ ଦୈବ୍ୟ ଜାଣିଲେ ନାହିଁ
 ନିର୍ଗଳ ବସନ୍ତର ଦୂପାଳ ଚିନ୍ତିନି,
 ହୀମ୍ବ ଜନ୍ମେ, ଡାକ୍ତର ଡାକ୍ତାରି, ବନ-ବନୀ
 ବାଟି ବାଟି ଦେଲେ ବାଞ୍ଚିଲି ॥
 ଦୁର ପାହାଚର ମାୟା ବାଲି
 ଅନ୍ଧା ହୃଦ୍ ବତସ୍ତ୍ର ଆଗିଲେ,
 ଜୀବି ନିବି ବିଚାରିଲେ,
 ହୋଇ ହିନ୍ଦୀ ମନ ହିନ୍ଦୀ ॥
 ଚାକ୍ଷୁର୍ ଚାକ୍ଷୁର୍ ଚିନ୍ତିତାରେ
 ଚିନ୍ତିତା ଚିନ୍ତିତା କାନ୍ତ ଧ୍ୱଜିଲେ,
 ସ୍ତମ୍ଭି ବର୍ଷା ଆହାର ଜୀବନର ଆଞ୍ଜୀ
 ସ୍ତମ୍ଭି ବସନ୍ତର ଦେ ନାହିଁଲେ
 ବନ-ବନୀ ଚଳାନ୍ତେ ଉତ୍ସାହି ଉତ୍ସାହି,
 ଏତା ବେଦ ବାଦେ ବେ ସାନ୍ତ
 ବିଶାଳ ଆହାରର ସୁରୁଲେ
 ବୈ ସାନ୍ତ ହୁଲୁ ହୁଲୁ କାନ୍ଦେ
 ସ୍ତମ୍ଭି ଶ୍ରୀ ହିନ୍ଦୀର ଅଧୁର୍ବ ସ୍ତମ୍ଭି ॥



Rain

Suraj Saikia, District Jail, Golaghat

Droplet by droplet in true cadence
Sparkling rain is descending
Flora and fauna, river and spring
Are swaying and dancing in rhapsody.
Blowing from the distant hills
A waft of soft breeze
Craving to sweep away
My heart and all my being
Birds on the trees chirping and tweeting
"Oh rain you are our true companion
When you descend as rainfall
Rivers and brooks swell in joy
Winding their way downwards
Mingle with the ocean blue
With their gurgles declare
Rain, you are God's beautiful creation.

বিষণ্ণ নিসৰ্গ

কমল দাস

অভিযোগ!

কাৰো ওপৰত নাই

নাই অকনো আক্ষেপ

সন্তানক জীয়াই ৰাখিবলৈ

বুকুৰ মঙহ দান কৰাটোৱেই

কেকোঁৰাৰ ভাগ্য । সেইবুলি

সন্তানৰ প্ৰতি অভিশাপ ?

ওহোঁ!

মোৰ জেষ্ঠ সন্তান সকল

বিলাস যজ্ঞ পাতিছে আহুতি দিছে

মোৰ সেউজী কেশ

পূৰ্ণ কৰিছে নিজৰ দুৰাকাংখা

হয়তো ভক্ষণও কৰিছে

জীয়াই থাকিবলৈ

মোৰ কেশ নিঃসৰিত সুবাস

নতুবা দেহ নিস্যন্দিত নিৰ্বাস

পিছে পৰিলক্ষিত পাৰ্শ্ব ক্ৰিয়াৰ আভাস

অসংখ্যজনৰ মাজতো বিৰল

চিত্তাৱানৰ সংখ্যা

যি প্ৰচেষ্টাত মগ্ন মোৰ যৌৱন বান্ধি ৰখাৰ

মোৰ গৰিমা ৰক্ষাৰ,

মোক সেউজী সাজেৰে সজাই ৰখাৰ ।

কোনোবাই আকৌ উঠিপৰি লাগে

মোক ব্ৰহ্মান্দত জিলিকাবলৈ

মোৰ তেজেৰে মোকেই ৰঙীন কৰিবলৈ

ব্যস্ত হয় মোৰ সুবিন্যস্ত ভাঁজবোৰ

সৰল ৰেখা সজাবলৈ ।

সিহঁতে মোৰ বুকুখন খেলপথাৰ সজাইছে

মোৰেই অস্থিতক ফুটবল সজাই

মোৰ বুকুতে খেলিছে

জয়ধ্বনি অট্টহাস্যেৰে তোল পাৰ কৰিছে

মোৰ অন্তৰাত্মা কিন্তু বুজা নাই

পকুতাৰ্থত সেয়া জয় নে পৰাজয় ।

শ্ৰেষ্ঠত্বৰ ভুৱা কিৰীটি ভূষিত

মোৰ সতি সন্ততি সকল অজ্ঞাত

নিজসহিতে ভাতৃসবৰ

কবৰ খান্দোতা যে সিহঁত নিজেই

কিমান দুৰ্ভগীয়া মই!

মাতৃ হৈ উপভোগ কৰিব লাগে

সন্তান বিলোপৰ বিভৎস দৃশ্য

তথাপি আক্ষেপ নাই কাৰো প্ৰতি

যাৰ আছে পৃষ্টি

তাৰ অনিবাৰ্য্য প্ৰস্তুতি

এয়াই ব্ৰহ্মণ্ডৰ নীতি ।

Dismal Nature

Kamal Das, Central Jail, Guwahati

Accusation

I have not any

Nor any regret

To keep alive one's child

By donating the heart

It is the fate of a crab. Yet

A curse for the child?

Oh, no

My elder children

Are celebrating opulence offering

My green tress

Fulfilling their evil desire

Perhaps even devouring

To be able to live

The fragrance emitted from my tress

Or sap secreted from my body

Yet hint of apparent side effects

Is scarcely visible among the many

Thinkers

Who are engrossed in sustaining

My youth, my dignity

And keep me dressed in green.

And some others are up and about

To showcase me in the universe

To colour me red with my own

blood

Busy flattening my smooth

curves

Into straight lines

Making my existence a football

Playing all over me

Creating commotion with victory

slogan

My essence they have unheeded

Whether it is victory or defeat.

Adorned with the fake crown of

prominence

My children are oblivious

They are their own grave diggers

And of their brethren

How ill-fated I am !

A mother delighting in

The ghastly sight of her children

perish.

"সাঁচা ভালপোৱা"

এতুপ দুতুপ কৰি চকুলো বাপৰি
 বৈ হয় এখনি নদী
 লোৱাৰো হোঁচা দি ৰাখিব মনক
 তোমালে মনত পৰি !
 হাব মোজে দুটি গাৰ জাতি ॥
 ওৰে জীৱন লগৰি মন বুলি
 মিছাতে দিলা কিয় প্ৰতিশ্ৰুতি- ।
 দুখীয়া দোখিলেই এৰি গুঢ়ি গ'লা,
 স্নেহ জানে হয় সাঁচা ভালপোৱা ॥
 সাঁচা মৰমে নিবিচাৰে ধনি-দুখীয়া,
 সাঁচা স্নেহে নেমানে জাতি- অজাতি ।
 বিচাৰি বিচাৰি পৰিবা এদিন লগৰি,
 বয়সে তোমাক ছোভিয়া নাচাব ঘূৰি;
 সাঁচা মৰমৰ হেতিয়া নাপাকা সঁচাৰি ॥



লেখক: ম: দিলদাৰ শ্বহেদ

True Love

Md. Dildar Hussain, District Jail, Golaghat

Drop after drop of tears flow
 Into a river
Cannot hold back your memory
 That wants to break the banks.


Will be my companion for life
 Why did you fake a promise,
You left me for my poverty
 Can this love be true.

True love is above rich-poor,
 True love is above caste-creed
Your quest will make you weary one day
When age will not look back
True love will then be far away.

ତୋମାର ସ୍ମୃତି

ଲେଖକ: ଶ୍ରୀ ସୁବ୍ରତ ଅଧିକାରୀ



ସାମ୍ରାଜ୍ୟବଦ୍ଧ ହେଲୁ ଯିଏ ତୋମାର ପ୍ରୀତିକୃଷ୍ଟି
 ମିଟେକତ ନାମାନ୍ତ ତୋମାର ଅନ୍ତେଷ୍ଟା କବି,
 ପାହାରିବ ପୁଣିକି ପାହାରିବ ନୋହାରେ
 ପ୍ରେମର ଏନାଜିବିୟୁ ବନ୍ଧି ବାନ୍ଧିଛା ଥିଲି ॥



ଆଗରେ ପାବତ କିଛି ନୁହେଁ ଆଲିଙ୍ଗନ କରି
 ପ୍ରେମାନନ୍ଦତ ପ୍ରେମାଲମ୍ପା ବିଶିଚ୍ଛିଲୁ ଆସି,
 ଏବି ଦିଲୁଏ ଅବଧ ନିଦୀତ ପ୍ରେମର ଲୋଚା ଲୁଗି,
 ଓହାଁ ନାଚିଲୁେ ପାଠ ନୌ ପାଠିତେ ଥିବି ଯିଲି ।
 ଆନର ପାଠୋଚନାତ ପାଠି ବିନ୍ଦୁ ଡାଳେ ପାହାରି ॥

ଦୁଃସ୍ୱତ ଡାକି ଆତ୍ମ ପ୍ରୀତି ନଲେ ତୋମାର ସୁଖ ଏବ
 ଡାବି ନରେ ପ୍ରେମାନ୍ତରେ ଛୋଟ ହୁଏ ନୟନ ।
 ପ୍ରେମାନ୍ତର ବିନ୍ଦୁ ଡାକି ଯାଏ ବିଚାରୁ ଯୋଗ ହୃଦୟ ଏବ
 ଥିଏ: ନିବିତେ ଶ୍ଯୋକାହୁଲେ ତୋମାର ଲୋଚୋବାତ ଛିନ୍ନା ଏବ ॥

ଆଶା କିବିଚ୍ଛିଲୁେ ବସ୍ତୁତ ଯୋଗ ଜୈରନତ ତୋମାରଲେ
 ଯ'ଲାଟୁେ ଆନର ଅନ୍ଧାଜିନି ଯୋଗ ଶିଖି ଥିଏ,
 ନାମାଚିଲ୍ୟା ଯଦିଓ ଯୋଗ ପ୍ରେମୋ ଥିଏ
 ପୋଶା କରେ ତୋମାର ଆମାନ ଥିଏ ବସ୍ତୁତ,
 ଆନ୍ତର ପ୍ରୀତି ଉଲଗ୍ନ ବିନ୍ଦୁ ଥିଏ ॥

In Your Memory

Suraj Saikia, District Jail, Golaghat

Your image surface in my dreams
Never find you when roused
Cannot forget you much as I want
You have moored me with love.
 Sitting on the sea shore in loving embrace
 Happily immersed in amorous dialogue,
 Drifted in the river of passion the canoe of love
 Not fearing it will sink midway.
 Why did you desert me for another?
In my eyes your face flickers every moment,
Swelling my eyes with lovelorn tears,
Why does my heart long to burn in the flame of love
My heart feels forlorn without you.
 Hopes had I many about you in my life
 You became another's wife, leaving me aside,
 Though no longer my beloved
 Wish that your life remains
 An ever burning lamp of peace.

স্মৃতি

অসমনিশা

অসমনিশা নগমি আছিল মোৰ জীৱনলৈ
 হুঁহুঁবি মোৰ একোৰ হৈ পৰিল
 ত্যাপিত্ত জীৱাই আছো
 মনত অশা হুঁহু মনোনলৈ ,
 মনৰ অশা জানো পুৰাৰ
 হুঁহু মনোন জানো জুৰাৰ !
 মনুষ্য জীৱনৰ চমসচ্চন
 জীৱন অতিবাহিত কৰি
 মনৰ কিছু অশীল ত্ৰনাৰে
 জীৱন কৰিছো বুৰুছেত ।
 ত্যাপিত্ত মই ত্ৰাৰি পৰিছো
 জাৰ ত্ৰিছো —
 মনৰ অশীল ত্ৰনাৰেৰ অঁতৰি ত্ৰেছে
 কিছু অশীলিক জ্ঞানে মন মোক
 জাৰি কৰিছে ,
 বহুদিনে নুকাই একা
 মনমে মন মোৰ জীৱনলৈ
 ত্ৰে মই হ'ব কৰিছে
 জাৰ ত্ৰে মো লগিছে
 দুইৰ অকাণত নাম অশীলিকৰ মন
 মাত্ৰমে হাত বৰ্শীনি হুঁহুমাই
 মে মাত্ৰিহুৰেই ত্ৰে হুঁহু হ'ব মোৰ
 জীৱন মনোনৰেৰ মূৰমৰ মোৰ অশীল !

* জেহেৰল হক
 ব্যৱসায়ী
 শিল্প কাৰাগাৰ মণ্ডল

Moonless Night

Jeherul Haque, District Jail, Mangaldoi

Moonless night has descended on my life
Clouding my eyes with darkness
Yet I am living
With hope in my heart,
With dreams in my eyes
Will my hopes be fulfilled!
Will my dreams be realised!
Human life is darkness-draped.
Spending life with some awful designs
I've made my life a battle field.
I am now worn-out
And I am sensing that
The awful designs have left me
Spiritual wisdom seems to have
Embraced me
The sun hidden so long
Seems to have risen in my life
But fear is looming large
In the distant sky will heavenly light appear,
Will the Moon beckon from afar
Or will my dreams burn to ashes in the fury of the Sun
Midway!

কবিগা

সামসাবিনীৰ চিকনা বিচাৰি

হৃদনাহান্যৰ দুৱাদে গভীৰ নিশাচি
 সামসাবী কৰি ছন্দিছিল,
 বন্ধিব্বৰ আৰ্হনাদবোৰ পিঠিত বান্ধি
 নীলিন্দ আকাশৰ পিনে চাৰ্হ
 সামসাবিনীৰ চিকনা বিচাৰি
 এনে নেদোমা নদীৰ স্নিপাৰনৈ স্নায়া ।
 হৌণাশৰ নিস্তব্ধতাৰ স্নাজতে
 হেঁচাঁ বতাহজাবৰ নৃত্যৰ নহবত
 হেঁ হেঁহুৰা কণোভনীৰ
 বাহ্মন মে কঁপিছে
 জোনাকী পৰ্ব্বাৰ পোহৰত
 গল্প পোৱা হৈছে ।
 দুইবিৰ এঁঙে এঁঙে মেণিসাই মেণিসাই
 জহা পলীয়া বোহঁও
 সামসাবিনীৰ বতৰা বিচাৰিছিল ,
 জানুৱাকী সাহতেই মে শেমকাৰৰ বৰে
 কামত পাৰ্হিছিল ঢাকো বৈছিল ।
 শোমনিগেৰে শেমবিত বিদীৰ্ণ পজাঁৰ পৰা
 জেনানি স্নমাৰে পৰা সামসাবিনী চিকনাবিশ্বীন
 জামৰু জাগি স্নম্মাত দুইছে জাগীৰ ,
 ম'ৰ পৰাই স্নোলি দিছো
 সামসাবিনীৰ চিকনা বিচাৰি কীৰন ডিঙা !

* একপভ্ৰেচতি জ্জকা
 কাৰাকমী
 শিলি কাৰাগাৰ সন্ডলিছে

In Search of the Mystique Woman

Arupjyoti Deka, District Jail, Mangaldoi

Fragrance of the Night Queen had made the night
Magical,
Carrying the shrieks of imprisonment on my back
Looking at the azure sky
I journey in search of the mystique woman
Across an invisible river.
In the midst of stillness
And the cadence of cool breeze
The nest of the dove with its lost feet
Is shaking
Visible in the light of fire-flies.
Shooting stars were groping their way
To the tune of whistles
In search of the magic woman.
Had met her for the last time
In January they said.
Since her farewell from the blood-soaked shabby hut
The magic woman is adrift.
And now a lofty wall before me
From where I let sail my ship of life
In search of the mystique woman!

VOICES FROM BENCH

PRISON *reforms*

- 1894 • *Prisons Act*
- 1957 • *United Nations adopts the Standard Minimum Rules for the Treatment of Prisoners*
- 1958 • *Probation of Offenders Act*
- 1964 • *Rattan Lal v. State of Punjab*
- 1973 • *Ishar Das v. The State of Punjab*
- 1973 • *Code of Criminal Procedure amendments*
- 1975 • *D. Bhuvan Mohan Patnaik and Ors. v. State of Andhra Pradesh and Ors.*
- 1978 • *Lingala Vijay Kumar and Ors. v. The Public Prosecutor*
- *Moti Ram and Ors. v. State of Madhya Pradesh*
- 1979 • *Dharambir and Ors. v. State of Uttar Pradesh*
- 1980 • *Sunil Batra v. Delhi Administration and Ors.*
- *Prem Shankar Shukla v. Delhi Administration*
- 1983 • *All India Committee on Jail Reforms (Mulla Commission) Report*
- 1992 • *India ratifies United Nations Convention on the Rights of the Child*
- 1997 • *Rama Murthy v. State of Karnataka*
- 1998 • *State of Gujarat and Ors. v. Hon'ble High Court of Gujarat*
- 2006 • *R.D. Upadhyay v. State of Andhra Pradesh and Ors.*
- 2011 • *Commissioner of Police and Ors. v. Sandeep Kumar*
- 2016 • *Model Prison Manual*

Prison Jurisprudence and Reforms- why we should not give up

Mr. Justice Madan B Lokur, Former Judge, Supreme Court of India

Prison jurisprudence is intrinsically linked to social justice, and in the case of India, we appear to be losing ground on both fronts. The 'bail not jail' principle seems to have been thrown into the dustbin of slogans; the provisions of ameliorative statutes such as the Probation of Offenders Act, 1958 might well be impacted by the principle of desuetude; *probono* legal assistance to prisoners is more or less cosmetic; and the living conditions of prisoners - men, women, and children - have not always met basic human rights standards. This overview of prison jurisprudence to date indicates where the justice system stands in regard to the humane treatment of India's incarcerated population-it is now up to the civic population to push these reforms so that they are a ubiquitous reality.

The beginnings of prison jurisprudence

In the six decades since the 1958 Probation of Offenders Act, the Supreme Court has typically followed a liberal trend in penology--that of reform rather than punishment.ⁱ These decisions have afforded rights to all prisoners, sought to eliminate cruel or unusual punishment, and paid special attention to juvenile and female offenders. We offer here a reflection on

significant decisions that support the aforementioned trend in support of prisoner reform. As this current decade draws to a close, we find that such ideals are far from fully realized. We, as a society, must look to what wrongs led some of us astray, and what can be done to correct those wrongs that have resulted in incarceration. Social evils such as dowry, domestic violence, and drug abuse have a wider impact than individual suffering--they also often are the cause of crimes committed. It is necessary, therefore, to tackle such social evils so that a harmonious society emerges in due course of time.

Fundamental Rights

In the mid-1970's, the Supreme Court passed a significant ruling that stated prisoners retain some fundamental rights guaranteed under the Constitution of India. This decision paved the way for their right to a life of dignity, which is the cornerstone of Article 21 of the Constitution of India. In *D. Bhuvan Mohan Patnaik and Ors. v. State of Andhra Pradesh and Ors.*,ⁱⁱ the Court noted that a convict is essentially deprived of the right to move freely throughout the territory of the country and the right to practice a profession - all other fundamental rights, to the extent that they can be exercised, are available to a convict. In their decision, it states:

Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. . . . the Constitution guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law.

Here, Constitutional rights, such as the right to life and personal liberty, were held to be fundamental rights that extended to convicts, and this decision paved the way for subsequent prison reforms.

Social Justice

A few years after this ruling, the decision of the Supreme Court in *Lingala Vijay Kumar and Ors. v. The Public Prosecutor*ⁱⁱⁱ introduced the concept of social justice in prison jurisprudence by pithily concluding, "Prison justice is part of social justice." In this case, the convicts were teenagers who had robbed a bank of a few thousand rupees without violence, but with the use of crude pistols and country bombs. The Sessions Court^{iv} awarded them imprisonment of two and a half years, but the High Court extended the sentence to seven years to meet "the ends of justice." In appeal, the Supreme Court expressed the broad view that rehabilitation is the aim of imprisonment. The justices stated, "Correctional treatment, with a rehabilitative orientation, is an imperative of modern penology which has abandoned *jus talionis*." The Court set aside the judgement of the High Court, agreed with the reasons given by the Trial Court, and restored the original sentence. The trend of reform and rehabilitation was sustained by this ruling.

A few years later, social justice was acknowledged as an integral part of prison jurisprudence in *Moti Ram and Ors. v. State of Madhya Pradesh*,^v in which the Supreme Court noted: "Social Justice is the signature tune of our Constitution and the little man in peril of losing his liberty is the consumer of Social Justice." This view was expressed in the context of the direction of the Magistrate granting bail to the indigent appellant (a mason) on furnishing a surety in the sum of Rs. 10,000/-. The appellant did not have the means to provide that amount, or the ability to obtain a known surety who was prosperous enough. The Supreme Court considered the social justice aspect of the case and directed the Magistrate to release the appellant on his own bond of Rs. 1,000/-. The lesson to be learnt from this decision of the Supreme Court is that criminal justice delivery cannot and should not ignore the realities of life, particularly of indigent persons who should not be incarcerated merely because of their lack of financial resources. Liberty is precious even to the poor.

Youth Provisions

Liberty is equally as precious to the young. In the decision *Ishar Das v. The State of Punjab*,^{vi} the Court held that a convict should be given a chance of reformation, and persons below 21 years of age should not be incarcerated, except in a case where the punishment is imprisonment for life and for reasons to be recorded in writing. The justices stated:

So far as persons who are less than 21 years of age are concerned, special provisions have been enacted to prevent their confinement in jail at young age with a view to obviate the possibility of their being subjected to the pernicious influence of hardened criminals. It has accordingly been enacted that in the case of a person who is less than 21 years of age and is convicted for an offence not punishable with imprisonment for life, he shall not be sentenced to imprisonment unless there exist reasons which justify such a course. Such reasons have to be recorded in writing.

Here, as we will see later, the Court felt that the adult influence on youth could have a deleterious effect, and therefore merited a higher standard for incarceration.

Rejecting retributive justice

In the 1980's, in the celebrated case of *Sunil Batra v. Delhi Administration and Ors.*,^{vii} the Court considered the constitutional validity of legislation that had been passed almost a century prior. The petition specifically challenged Sections 30 and 56 of the Prisons Act, 1894.^{viii} Section 30 relates to solitary confinement of prisoners under sentence of death, and Section 56 relates to bar fetters on 'dangerous' prisoners. The Court upheld the constitutional validity of these provisions, but mitigated their use considerably, due to their negative impact on the dignity of prisoners.

While dealing with **solitary confinement**, the Court held that a person could be said to be under sentence of death only after the clemency petition

is rejected by the President, and not when the sentence is awarded by the Sessions Court (which is subject to confirmation by the High Court). The Court also gave a broad interpretation to solitary confinement and held that merely because visitors, doctors, and officials are allowed to meet the condemned prisoner, or guards are posted by the cell, these do not negate what would otherwise be considered solitary confinement. The Supreme Court was influenced by Jawaharlal Nehru's views, as recorded in his autobiography:

Solitary confinement, even for a short period, is a most painful affair, for it to be prolonged for years is a terrible thing. It means the slow and continuous deterioration of the mind, till it begins to border on insanity; and the appearance of a look of vacancy, or a frightened animal type of expression. It is killing of the spirit by degrees, the slow vivisection of the soul. Even if a man survives it he becomes abnormal and an absolute misfit in the world (Nehru, 1941, p. 168).

The Court concluded that if a prisoner who is under a **sentence of death**, loses all along the way right to the summit court and the top executive, then and only then, shall he be kept apart from the other prisoners under the constant vigil of an armed guard. Of course, if proven grounds warrant disciplinary segregation, it is permissible, given fair hearing and review.

On the use of **bar fetters**, an issue raised by Charles Sobraj a foreigner, the Court unequivocally held that they are a barbarity and a violation of human dignity, and should be shunned. This was described, in a sense, as avoidable torture. The Court went further and held that handcuffing an accused was also not warranted. It was said:

The indiscriminate resort to handcuffs when accused persons are taken to and from court and the expedient of forcing irons on prison inmates are illegal and shall be stopped forthwith save in a small category of cases dealt with next below. Reckless handcuffing and chaining in public degrades, puts to shame finer sensibilities and is a slur on our culture.^{ix}

Appreciating the need for reform in prisons generally, the Court virtually appealed to the Administration to bridge the "gap between prison praxis and prison justice" in the following words:

Prison laws, now in bad shape, need rehabilitation; prison staff, soaked in the Raj past, need reorientation; prison house and practices a hangover of the die-hard retributive ethos, reconstruction; prisoners, those noiseless, voiceless human heaps, cry for therapeutic technology; and prison justice, after long jurisprudential gestation, must now be re-born through judicial midwifery, if need be. No longer can the Constitution be curtailed off from the incarcerated community since pervasive social justice is a fighting faith with Indian humanity.

One interesting sidelight that appears in this decision is the acknowledgement by one of the judges on the Bench (Justice Krishna Iyer) that on an earlier occasion he, along with Chief Justice M.H. Beg and some other judges, had visited Tihar Jail in Delhi and saw Charles Sobraj in chains in the yard with "iron on wrists, iron on ankles, iron on waist and iron to link up, firmly riveted at appropriate places" One may ask - since 1978, how many judges have actually visited prisons to understand the ground realities and living conditions of prisoners?

The decision in *Sunil Batra* was followed and extended in the case of *Prem Shankar Shukla v. Delhi Administration*^{*} with the mandate that a prisoner in transit from the prison to the court shall not be handcuffed, the exception being justified under conditions of judicial supervision, since handcuffing defiles the dignity of the prisoner. The consequence of this decision is that as of now, handcuffing a prisoner in transit is more or less given up all over the country.

Rehabilitation and Reformation

Two decades after the Probation of Offenders Act, the Supreme Court opened up another avenue for considering the rehabilitation and reformation

of convicted prisoners. This was through the idea of an '**open prison**' as an experimental measure. The case of *Dharambir and Ors. v. State of Uttar Pradesh*^{xi} involved persons convicted under Section 302 of the Indian Penal Code who were sentenced to imprisonment for life. Since they were in their twenties, the Court thought it appropriate to direct that rather than their languishing in prison for several years, the sentence be carried out in an open prison. Whether the suggestion of the Court was accepted by the State and if so, whether the open prison had the necessary impact of decriminalizing the criminals, is not known. But interestingly, the 'open prison' concept surfaced again in the Supreme Court a few decades later.

It is not that the prisons reform movement began only with the decisions cited above. Incremental changes were brought about even earlier (since 1966) and continued later as well. These rulings have been documented in *Rama Murthy v. State of Karnataka*.^{xii} In prior decisions, a prisoner was allowed to read and write books while in prison^{xiii}; liberal use of parole was recommended to avoid recidivism^{xiv}; and the 'one interview per month' rule was struck down as violating Article 21 of the Constitution, whereas the recommendation was that two interviews per week ought to be allowed with relatives and friends.^{xv}

In *Commissioner of Police and Ors. v. Sandeep Kumar*^{xvi} the Supreme Court once again held that the modern approach is to reform a prisoner rather than brand him a criminal all his life. Though this view had been expressed by the Supreme Court more than four decades ago, it had not been followed in letter and spirit by the authorities, making it necessary for the Court to restate it.

Prison life

Notwithstanding that over the last half century, provisions in case law as well as follow-up assessments provided in reports and studies have suggested otherwise, the living conditions in prisons seem to be where they were in the 1960s and 1970s. Despite decades of Supreme Court decisions siding with

humane treatment of prisoners, the Court in 2011 tabulated nine major problems that continue to afflict the prison system that needed immediate attention. These identified problems continue to this date, and include: (1) overcrowding; (2) delay in trial; (3) torture and ill-treatment; (4) neglect of health and hygiene; (5) insubstantial food and inadequate clothing; (6) prison vices; (7) deficiency in communication; (8) inefficient of jail visits; and (9) inadequate management of open air prisons. These problems not only continue to haunt our prison system today, but have also increased over the last few decades. Thus, the living conditions of prisoners remains in a deficient state.

Overcrowding

Some glaring and disconcerting facts and figures with respect to overcrowding were indicated by the Court in *State of Gujarat and Ors. v. Hon'ble High Court of Gujarat*^{xvii} in which it was pointed out:

Indian prisons are now crammed with prisoners. In many jails they are so over-crowded that the amenities designed for a far less number of inmates are now being shared by disproportionately large number of internees therein, e.g. in Bihar jails, as against a prison capacity of 26,300 the actual number of internees during first half of 1996 was 36,700. In Madhya Pradesh the figure is 27,300 as against a prison capacity of 17,720. Even in Delhi it has crossed 8,300 as against a prison capacity of 2,400.

...

Statistics show that in most of the States the under-trial prisoners have overwhelming majority when compared with the number of convicted prisoners, e.g. under-trial prisoners in Bihar jails are 84.04% of the total inmates of the jails. In U.P. the percentage is 85.17. In Madhya Pradesh it is 64.22% and in most other States the percentage of under-trial prisoners is above 50.

Two decades later, it is time to return to these figures and assess the state of overcrowding to date.

The negative impact of overcrowding becomes even more acute for women and children. For the first time in 2006, the Supreme Court drew its attention to the plight of women prisoners and their children in *R.D. Upadhyay v. State of Andhra Pradesh and Ors.*^{xviii} The Court considered the provisions of the Convention on the Rights of the Child to which India had acceded in December 1992. The Court also considered various schemes and programs framed by the Government of India, the research study carried out by the National Institute of Criminology and Forensic Sciences of Children of Women Prisoners in Indian Jails, as well as the field action project prepared by the Tata Institute of Social Science on the situation of children of prisoners. Finally, the Court considered the affidavits filed by the State Governments and Union Territory Administrations, which suggested that the prison population there included 6496 undertrial women with 1053 children, and 1873 convicted women with 206 children.

Neglect of Health and Hygiene

As it relates to children in prisons, the Court gave a series of wide-ranging directions, which included the rights of a child not to be treated as an under-trial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right. Directions were also issued with regard to pregnant prisoners and their entitlement to basic minimum facilities for child delivery as well as for pre-natal and post-natal care for both, the mother and the child. Matters concerning child birth in prison were also considered by the Court and necessary directions issued. The rights of female prisoners and their children were also addressed, and it was directed that they shall be allowed to keep their children with them until they attained the age of six years, after which the child would be handed over to a suitable surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. Such children were directed to be kept in

protective custody until their mother is released or the child attains such age as to earn his/her own livelihood.

Recent Developments

These poor living conditions prompted a former Chief Justice of India R.C. Lahoti to address a letter to the Supreme Court in 2013 pointing out the deplorable conditions in the prisons in India and specifically advertent to the need to take remedial steps in four areas:

- (i) Overcrowding of prisons;
- (ii) Unnatural death of prisoners;
- (iii) Gross inadequacy of staff and
- (iv) Available staff being untrained or inadequately trained.^{xix}

While entertaining the letter as a public interest petition, the Supreme Court dealt with a variety of issues that it has already addressed, and it is worth mentioning some of them as promising steps forward.

Overcrowding

As previously mentioned, overcrowding of Indian prisons has been an ongoing challenge, to the point that they have violated the United Nations Standard Minimum Rules for Treatment of Offenders, not to mention the basic human rights of prisoners. The current data from the National Crime Records Bureau (NCRB) indicates that overcrowding in the city of Delhi is 132%, and it goes up to more than 220% in the rest of the country.^{xx} This is notwithstanding legislative changes brought about by the introduction of Section 436A in the Code of Criminal Procedure, in respect of under-trial prisoners who constitute more than 75% of the prison population. In other words, legislation has been passed, but inside the prison, little has changed since 1998. And as mentioned before, the concerns for under-trial women and children also remain.

Parliament has also introduced amendments to the Code of Criminal Procedure, 1973 and included a chapter on plea bargaining. Such an amendment, if appropriately utilised, could have a significant impact on criminal justice delivery. In a large number of cases, it could avoid the necessity of incarcerating persons who are guilty of having committed an offence. Again, there is a failure of implementation of a beneficial law enacted by Parliament of India, and the proof is in the numbers of incarcerated persons.

Unnatural Deaths

Among the first few decisions taken by the Court was for granting compensation to the next of kin for the unnatural death of prisoners. It is well accepted that a person in prison is in judicial custody or in the custody of the State. Therefore, when a prisoner suffers an unnatural death, it must be thoroughly investigated and the next of kin adequately compensated. A 2017 decision of the Supreme Court notes the large number of custodial deaths and requested the High Courts to register a public interest petition for the purpose of identifying the next of kin of deceased prisoners and awarding compensation to them.^{xxi} Whether any award of compensation has been made in the meantime is not known. It would be worth the while of researchers to study this.

Inadequate Training

With regard to training of officers and prison staff, it was stated before the Court that the Bureau of Police Research and Development had prepared training manuals. It was directed that these should be shared with the stakeholders such as the National Police Academy, the State Police Academies and the Directors General of Prisons.^{xxii} Updated training manuals that are gainfully utilized to sensitize the concerned officials may have a positive impact on prison conditions.

Next steps in judicial reform

It may be mentioned that, like the letter from Justice Lahoti in 2016, there have been past committees that have been directly or indirectly concerned with prison reforms. For example, the All India Committee on Jail Reforms, also known as the Mulla Committee, studied, *inter alia*, the management of prisons and the treatment of prisoners and gave a detailed report (1983). Unfortunately, even after almost four decades of the submission of the report, there has been no substantial change in the management of prisons or the treatment of prisoners. The Law Commission of India has also looked into the reform of prisons and made recommendations but again with little progress being made.

It is in this background that it became necessary to establish the Justice Amitava Roy Committee in 2018, which will, hopefully, prepare a report that will have a more meaningful impact than those of the past. This committee was constituted by an order dated September 25, 2018 last year to extensively and intensively review the status of prisons, reforms needed including for women prisoners and their children.^{xxiii} This committee was formed in part because state governments have not yet been responsive to prior reform plans as dictated by the Supreme Court, to include the feasibility of establishing 'Open Prisons' and 'Semi Open Prisons'^{xxiv}; preparation of a Model Prison Manual^{xxv}; and preparation of a Plan of Action.^{xxvi} The Committee is in place and is in the process of considering these suggestions and others.

Conclusion

What then, is the solution to reforms in prisons and to prison jurisprudence in general, particularly keeping in mind the fact that despite several decisions of the Supreme Court and a variety of topics on which directions have been issued, there has been little or no positive change?

The preparation of a **Plan of Action** is really the first step in bringing about reforms. Unfortunately, there seems to be little interest in preparing such a document. This is perhaps because a mindset change is necessary.

Currently, the trend is to treat all prisoners, whether under-trial or convicted, as second-class citizens. The second is to dismiss the possibility of reform and rehabilitation for those who have committed crimes. If these mindsets remain, there is little chance of improvement in prison conditions.

The State must have a **philosophy in dealing with prisoners and crime**. As discussed, the tendency is to look at imprisonment as a deterrent or retribution, rather than as reformative, rehabilitative or restorative. It appears we are shifting from one philosophy to another. This is acceptable, because a particular philosophy should not be the same for all kinds of prisoners and offences. There must be some rational classification, and prisoners should be dealt with accordingly. By and large however, there is every chance of an under-trial prisoner or a convict reforming himself or herself and eventually re-integrating into society. It is this thought that must guide the State and prison officials.

Recent events have shown that it is **important to conduct research** on various aspects of prison life. For example, a lot has been learnt from studies on open prisons, by individual researchers (such as Ms. Smita Chakraborty and Ms. Vartika Nanda), and institutions such as the Commonwealth Human Rights Initiative. It is only through research material and empirical evidence that some direction can be given to prison reforms. For instance, government organisations are currently preparing training manuals and imparting training to prison officials, but unless the impact of all these efforts are studied and researched, the cycle of change will not begin or hold. Unfortunately, one of the more useful research materials, that is reports from the NCRB, is no longer available in the public domain. For some reason, publication of Crime in India and Prison Statistics has not been made available after 2016. Such reticence in dissemination of information is a significant hurdle to bringing about any change.

One of the biggest disappointments has been the lack of any serious interest in **providing free legal aid and advice** by the panel lawyers of the National Legal Services Authority as well as the State Legal Services Authorities.

Through their panel lawyers, these authorities are entitled to visit prisons and obliged to provide free legal aid and assistance to prisoners. Report after report has shown that quality legal aid is not provided to prisoners and wherever a legal aid clinic is established, there is some reluctance on the part of prisoners to avail the services of panel lawyers. There seems to be a lack of sincerity and commitment to these services. If one of the constitutional visions of providing access to justice to all sections of society is to be achieved, the legal services authorities across the country have to be far more active and vigilant in protecting the human rights of prisoners.

There are **positive human rights obligations** on States such as to ensure that the living conditions in prisons conform to international standards, including the Nelson Mandela Rules^{xxvii} and the Standard Minimum Rules for the Treatment of Prisoners as adopted in Geneva in 1955. Medical treatment should be available to prisoners, and they should be provided counselling so that whenever they are released, they can reintegrate into society and become useful citizens.

Similarly, there are **negative human rights obligations** on States. This would include ensuring that there is no overcrowding in prisons such that it results in degrading prisoners. Prisoners should also not be treated in a manner that could amount to torture or could create a situation in which a prisoner is discriminated against or there is an excessive loss of liberty not warranted by ordinary prison life.

It is also necessary to **actively involve members of civil society** through the system of a Board of Visitors who can actually visit jails on a regular basis and see the living conditions of prisoners, hear their grievances, and take remedial steps wherever necessary. It must be appreciated that prisoners are also members of society, even though some of their fundamental rights have been curtailed because of the crime they have committed or were suspected to have committed. The involvement of civil society will act as a check on the arbitrary exercise of powers by prison officials, many of whom are responsible for custodial deaths and for corruption within the prison

walls. For instance, it is a matter of common knowledge that mobile phones, SIM cards, drugs, surgical blades and various other items are smuggled into prisons. There have been allegations of celebrations being carried out in prisons which is simply not possible without the jail officials being actively involved (*The Times of India, India Today, 2019*). Such events are not possible unless there is connivance with prison officials, at least to some extent.

Perhaps the most neglected population are **women prisoners**. Not enough attention is paid to their physical and mental requirements. To make matters worse, some of them are required to look after their children while in custody. This is hardly conducive to a tolerable standard of living and can have a very negative impact on the lives of children who are compelled to spend a few years behind bars only because their mothers have been incarcerated. Issues like nutrition for the children, their education, and their upbringing are all matters of concern for society. Unless we are in a position to look after our women prisoners and their children, we will not make much headway in prison reforms.

There is now a new concept of **Detention Centres** that has emerged, particularly in the State of Assam. Like open prisons, these detention centres are neither prisons, nor do they permit freedom of movement to those detained. In other words, they are some sort of a half-way house, the existence of whose validity is still to be tested. There do not appear to be any rules or regulations or any management practices that have been developed in respect of these detention centres. Only time will tell whether they are prisons in fact, or merely a façade for something that is really a prison.

The journey for meaningful prison reforms is long and arduous. The Supreme Court has done a tremendous job over the last several decades in highlighting various issues concerning life in prison. Some of them are long-standing issues and some of them are issues of periodic importance. It is now for all of us as citizens of a great democracy to carry forward the work initiated by the Supreme Court since the mere issuance of directions, even with a follow-up through continuing mandamus, will not make a difference unless there are contributions made by civil society.

Endnotes

ⁱRattan Lal v. State of Punjab, (1964) 7 SCR 676

ⁱⁱ(1975) 3 SCC 185

ⁱⁱⁱ(1978) 4 SCC 196

^{iv}The Sessions Court is the highest forum of a District in the criminal side of the state. The Code of Criminal Procedure, 1973 vide section 9 lays down the procedure and function of the Sessions Court.

^v(1978) 4 SCC 47

^{vi}(1973) 2 SCC 65

^{vii}(1980) 3 SCC 488 (subsequently followed in Kishore Singh Ravinder Dev and Ors. v. State of Rajasthan, (1981) 1 SCC 503)

^{viii}Prisons Act 1894

(1)Section 30: Prisoners under sentence of death

a) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by order of, the Jailer and all articles shall be taken from him which the Jailer deems it dangerous or inexpedient to leave in his possession.

b) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard.

(2) Section 56 - Confinement in irons

Whenever the Superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoners) for the safe custody of any prisoners that they should be confined in irons, he may, subject to such rules and instructions as may be laid down by the Inspector General with the sanction of the State Government, so confine them.

^{ix}Even this was held to be subject to quasi-judicial oversight "even if purportedly imposed for reasons of security."

^x(1980) 3 SCC 526 (subsequently followed in Kadra Pahadiya and Ors. v. State of Bihar, (1981) 3 SCC 671)

^{xi}(1979) 3 SCC 645

^{xii}(1997) 2 SCC 642

^{xiii}State of Maharashtra v. Prabhakar Pandurang Sangzgiri and Ors. (1966) 1 SCR 102

^{xiv}Suresh Chandra v. The State of Gujarat, (1976) 1 SCC 654 and Krishan Lal v. State of Delhi, (1976) 1 SCC 655

^{xv}Francis Coralie v. Union Territory of Delhi, (1981) 1 SCC 608

^{xvi}(2011) 4 SCC 644

^{xvii}(1998) 7 SCC 392

^{xviii}(2006) 15 SCC 337

^{xix}In Re: Inhuman Conditions in 1382 Prisons, (2016) 3 SCC 700

^{xx}Here, it may be mentioned en passant that the latest figures available on the NCRB website

are only till the end of 2015.

^{xxi}(2017) 10 SCC 658

^{xxii}(2018) 16 SCC 36 and subsequent order dated 8th August, 2018

^{xxiii}2018 (13) SCALE 52 = MANU/SC/1041/2018

^{xxiv}(2017) 10 SCC 658 and MANU/SCOR/12507/2018

^{xxv}MANU/SCOR/21836/2015 and (2017) 10 SCC 658

^{xxvi}(2016) 10 SCC 17

^{xxvii}A/RES/70/175, United Nations General Assembly 2015

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Prison Reforms-Role of the Society

Mr. Justice Amitava Roy, Former Judge, Supreme Court of India

*If thou didst ever hold me in thy heart,
Absent thee from felicity awhile,
And in this hard world draw thy breath in pain
To tell my story.” (Macbeth)*

Introduction

The vastness of the thematic expanse and the profundity of its quintessential content, indeed make the present narrative venture, daunting. A driving urge to express for the immured human sector, is the overriding motivation.

The perspective setter, aptly, is the elevating proclamation of Sir. Winston Churchill, in his address, as the Home Secretary in the House of Commons, on July 25, 1910:

The mood and temper of the public in regard to the treatment of crime and criminals, is one of the most unfailing tests of the civilization of any country. A calm dispassionate recognition of the rights of the accused,

and even of the convicted criminal, against the State- a constant heart-searching by all charged with the duty of punishment- a desire and eagerness to rehabilitate in the world of industry, those who have paid their due in the hard coinage of punishment : tireless efforts the discovery of curative and regenerative process: unfailing faith that there is a treasure, if you can only find it, in the heart of every man. These are the symbols, which, in the treatment of crime and criminal, mark and measure the stored-up strength of a nation, and are sign and proof of the living virtue in it.

Society, the centre stage of the theme, perceptually and experientially, is the commodious repository of human civilization. Derived from a Latin word 'socius', it means association or companionship. Thus, society is construed to be a large group of individuals who are associated with each other, every individual being a basic component of the entity. A society, thus being essentially, a conglomeration of human beings, are engaged existentially, in a continual interface for survival and sustenance. By virtue of the heterogeneity of the constituents marked by distinctive ethnic characteristics based on social, economic, religious, cultural, linguistic hues, aberrant and deviant conduct in breach of the rights of others, induced by various factors, is a common and unavoidable experience. Such a conduct, in violation of the rule of law, and if within the coils of an offence against body or property, defined by a legislative instrument, would be culpable and amount to a crime against the society. A society without crime and criminals thus, is not comprehensible even in a social order governed by law. An inalienable coexistence of society, crime and criminals is an undeniable actuality. Any wrong committed by a person with a guilty mind and dishonest intention is an outrage of the established norms of any human order. It is then an offence, not only against the individual or individuals wronged, but is a crime against the society at large. Crime is thus an act which offends and threatens the society and needs to be punished. Crime is defined through the eyes of society i.e a social response to a particular activity, which labels the same as criminal. Laws are the result of society's need for prevention of such acts. As a sequitur, to maintain a disciplined social order, punishment of the offenders, assumes

one of the primary functions of all civil societies. The institution of punishment is thus, perhaps as old as the society itself. Punishment is one of the oldest methods of controlling crime. Such punishments are meted out, through sentences with authoritative fiat, the main purpose being to control the repetition of such wrong and to sustain a disciplined social existence.

The primordial philosophy behind sentencing is traceable to the principle in *lex talionis*- '*An eye for an eye, a tooth for a tooth*'. The earlier forms of punishment such as fines, confiscation of property, banishment, whipping, branding, mutilation, beheading, burning alive, burning at the stake, feeding to animals or immuring in dungeons, were designed to inflict pain and fear in the offenders as well as to infuse terror in the onlookers. Torture during the trial, was also a part of punishment.

The human civilization has since advanced from such primitive notions of justice instigated by retributive propensities, to much humanized concept of punishment, informed with the guarantee of right to life, subject to the due process of law. Not only this perceptual refinement in approach has provided a touch of rationality and civility in the decision making process to determine the penalty and punishment, it recognizes as well the indispensability of procedural fairness. Though, a growing acceptance of the reformatory theory, in departure from the retributive option, is gaining ground to address the sentencing process, the desideratum of the disciplining impact of a sentence with a reasonable degree of deterrence, to meet the expectation of the society and to regulate the civil order, still enjoys overall approval. The main objective behind sentencing is firstly, to reduce the crime and secondly, to enhance and consolidate the respect for the criminal law. Punishments in civilized societies however, ought not undermine human dignity.

The criminal justice system of any country, comprises of Central/Federal, State and local public agencies, that deal with the problem of law and order and crime in the society, the basic framework whereof is provided by the Legislative, Judicial and Executive branches of the Government. The major components of the system namely police, courts and corrective agencies,

prevent or deter crime by apprehending, trying, punishing, reforming and reintegrating the offenders. The system however, as a whole, has a greater purpose than to arrest, prosecute and punish criminals, in order to sustain a peaceful and law abiding society. Regulating behaviour, in order to prevent crime and recidivism i.e reoffending, is the avowed goal of the criminal justice system. Discernibly thus, curative and restorative precepts are conceptually ingrained in the mission, criminal justice. If criminal justice is the system to which crimes and criminals are processed, criminology is the study of the causes, costs and consequences of the crimes committed. Criminology looks at theories around commission of crimes whereas, Penology deals with how society looks at and responds to crime. Penology albeit, jurisprudentially, is a division of criminology and stand for the policy of inflicting punishment on the offender, as a consequence of his wrongdoing, it may encompass canons, not punitive in character, such as probation, medical treatment, education, vocational groomings etc aimed at the cure or rehabilitation of the offender. Penology, a fortiori thus, inheres correctional, reformative and rehabilitative overtones.

Prisonization embodies the system of punishment, facilitating institutional placement of undertrials and suspects facing a criminal charge, during the period of trial and the convicts after their conviction. The existence of prisons in our society, is of vintage past since the Vedic period, where the antisocial elements were confined in a place identified by the rulers to protect the society from crime. In the modern framework of laws administering the criminal justice system, through which the State exercises power and control, prison is an accepted existence, to actualize the execution of sentence of punishment. Initially, there was a belief that rigorous isolation and stringent custodial measures would bring about reformation in the offenders. With time, incarceration by way of punishment, has been viewed as a measure of social defence. The doctrine behind the punishment for a crime, has undergone a sea change with the manifold evolution of human rights jurisprudence, which advocates, that no crime ought to be punished in a cruel, degrading or in an inhuman manner. Globally, this correctional approach in administration of criminal justice is acknowledged to be the means to achieve reformative

ends. This reformative theme of correction finds expression amongst others in different international Conventions, to safeguard human dignity, decency and worth of the prisoners. Basic prison decency, it is said, is an innate component of criminal justice.

Hon'ble Justice Krishna Iyer, in this predominant context, authoritatively opined, on the curative objective of the penal system :

A reformative philosophy, rehabilitative strategy, therapeutic prison treatment and enlivening of prisoner's personality through a technology of fostering the fullness of being such a creative art of social defense and correctional process activating fundamental guarantees of prisoner's rights is the hopeful note of national prison policy struck by the constitution and the court. (Iyer, 1981, p.7)ⁱ

His Lordship's erudite exposition on the concept of crime as rendered in *Mohammed Giasuddin v. State of Andhra Pradesh*ⁱⁱ, in espousal of the cause of rehabilitation of an offender, is classical:

Crime is a pathological aberration that the criminal can ordinarily be redeemed and that the state has to rehabilitate rather than avenge. The sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturalization. Therefore, the focus of interest in penology is the individual and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times.

This insightful and benign comprehension, resonated in a resounding note, in *State of Gujarat & Anr. v. Hon. High Court of Gujarat*,ⁱⁱⁱ

Reformation should be the dominant objective of a punishment and during incarceration every effort should be made to re-create the good man out of convicted prisoner. An assurance to him that his hard labour would eventually snowball into handsome saving for his own

rehabilitation would help him to get stripped of the moroseness and desperation in his mind while toiling with the rigors of hard labour during the period of his jail life. Thus reformation and rehabilitation of a prisoner are of great public policy. Hence they serve a public purpose.

His Lordship thus, elevated the mission for reformation and rehabilitation of a prisoner, to be in furtherance of public policy, to serve a public purpose.

Historical Context of Prison Reforms

A skeletal recapitulation of the historical backdrop of the prison reforms in the country would be a befitting preface in this setting.

The current prison system in India, owes its legacy to the British rule, Lord Macaulay, being the pioneer of this change. He triggered, through his note submitted to the Legislative Council in India on December 21, 1855, the march of events, to address the inhuman conditions prevalent in Indian prisons which saw in a series, constitution of various committees and commissions culminating in the enactment of the Prisons Act of 1894, which till today is the foundational law governing the management and administration of prisons in India. Amongst others, the Government of India appointed the All India Jail Manual Committee in 1957, to prepare a Model Prison Manual, by examining the problems of prison administration and to make suitable suggestions for improvements to be adopted uniformly throughout the country. Subsequent thereto, a comprehensive study on the problems in the prisons of the country was undertaken by the 'All India Jail Committee' (1919-1920), which for the first time, in the history of prison administration, earmarked reformation and rehabilitation, as the objectives of the prison regime. This committee, emphasized upon the requirement for reformatory approach to prison inmates and repudiated the use of corporal punishment in jails. It also emphasized, on the necessity of an exhaustive and effective aftercare programmes, for the released prisoners, for their meaningful rehabilitation.

The Government of India Act, 1935 brought about constitutional changes, which resulted amongst others, in the transfer of the subject of prisons, to the control of the Provincial Governments, whereafter the said Governments, framed their own rules for the day to day administration of the prisons. The Constitution of India which came into force in 1950, retained the position of the Government of India Act 1935, in the matter of prisons and continued 'Prisons' as a State subject by including it in List II- State List of the Seventh Schedule to the Constitution of India.

The post-independent era witnessed as well, constitution of a number of committees with the primary objective of improving the condition of prisons in India, out of which, the Indian Jail Reform Committee 1980-1983, set up by the Government of India under the Chairmanship of Justice A.N. Mulla, through its report, made very many important recommendations inter-alia suggesting that aftercare, rehabilitation and probation ought to constitute an integral part of prisons service and that the prison staff ought to be properly trained and organized into different cadres. Constitution of an All India Service called the Indian Prisons and Correctional Service, for recruitment of Prison Officials was also recommended. It further recommended that the entry 'Prisons' be shifted to the Concurrent List- List III of the Seventh Schedule of the Constitution of India. This Committee also underlined the immediate need to have a national policy on prisons and proposed, a draft National Policy on prisons.

Apart from Justice Krishna Iyer Committee, appointed by the Government of India in the year 1987, to undertake a study on the condition of women prisoners in India, which submitted its report in February 1988, recommending inter-alia the induction of more women in the police force in view of their special role in tackling women and child offenders, various other state jail reforms committees were constituted from time to time, to suggest prison reforms.

In the recent times, pursuant to the directions of the Supreme Court of India, in *Ramamurthy v. State of Karnataka*^v, the Government of India

constituted All India Model Prison Manual Committee in November 2000 under the Chairmanship of the Director General of Bureau of Police Research and Development (BPR&D), as a nodal agency at the national level in the field of correctional administration, to prepare a Model Prison Manual for the superintendence and management of prisons in India, in order to secure uniformity in the working of prisons throughout the country. This committee, in modelling the Model Prison Manual amongst others, took into account, the draft National Policy on prisons proposed by the Mulla Committee. This Model Prison Manual prepared in 2003, acted as a guide, over the years, for the states and to adopt best practices taking the clue therefrom.

With the passage of time, following a better understanding of the ground realities and feeling the indispensable need to revise and update the said Manual and further in compliance of the orders of the Hon'ble Supreme Court to that effect passed in *Suo Moto Writ Petition (Civil) 406/ 2013, Re: Inhuman Conditions prevailing in 1382 prisons in India*, the Ministry of Home Affairs, Government of India, constituted an expert committee, which on an extensive review of the Model Prison Manual 2003, prepared the current Model Prison Manual 2016, which is presently the basic reference document for the governance of the prisons in the country, Manuals / Rules / Acts of the respective States / Union Territories notwithstanding. To complete the sequence of events, the Bureau of Police Research and Development, Ministry of Home Affairs, simultaneously has also drawn up, in the year 2017, Training Manual of Basic Course for Prison Officers and Prison Warders, for their required training, attuned to the spirit of reformation and rehabilitation of offenders, the ultimate objective of prison administration. The Hon'ble Supreme Court, of late, by its order dated 25.09.2018 passed in *Suo Moto Writ Petition (Civil) 406/ 2013, Re: Inhuman Conditions prevailing in 1382 prisons in India*, has constituted 'Committee on Prison Reforms' and has entrusted to it, several terms of reference, touching upon all aspects of prison administration in the country, which is presently functional. In presenting the progression of events as above, for the sake of brevity, details pertaining thereto have been avoided.

A brief reference to the relevant laws and Conventions in vogue would be instructive. The Prisons Act 1894, of the British colonial era but still in operation, is one to amend the law relating to prisons. It defines 'Prison' to mean any jail or place used permanently or temporarily, under general or special orders of a State Government, for the detention of the prisoners and includes all lands and buildings appurtenant thereto, but excludes amongst others, any place for confinement of prisoners who are exclusively in the custody of the police. It provides inter-alia, for the accommodation for the prisoners, their maintenance including food and clothing, segregation, employment, health, interaction with visitors and legal advisors etc. The statute, prescribes prison offences and the punishments therefor.

As per the Prisoners Act 1900, 'Prison' includes any place declared by the State Government by general or special order to be a subsidiary jail and provides substantially for the handling of prisoners, their detention, delivery and transportation in the contingencies as detailed therein. The preamble of this legislation proclaims the same to be one, to consolidate the law relating to prisoners confined by an order of the Court.

The other pertinent legislations in India bearing on the theme, include the Probation of Offenders Act, 1958, which provide for release of offenders on probation of good conduct or after due admonition instead of sentencing them to imprisonment in the eventualities and in the manner laid down therein. The statute mandates inter-alia, to effectuate the provisions thereof, appointment of Probation Officers, to enquire into the circumstances or home surroundings of any person accused of an offence, with a view to assist the court in determining the most suitable method in dealing with him, supervise probationers and other persons placed under his supervision and when necessary, make endeavours to find for them suitable employment etc. This legislation, as the Statement of Objects and Reasons as well as the Preamble thereof would demonstrate, underline the essentiality of evaluation of the circumstances or home surroundings of any person accused of an offence, so as to release him on probation or after admonition, instead of subjecting him to corporal punishment and place him under the supervision

of a Probation Officer, for his suitable rehabilitation, provided the prerequisites for such a course, contingent amongst others on the age and character of the offender, the nature of the offence proved and the circumstances in which it was committed, permit such relaxation. Apposite it would be to record, that an identical provision for release of a convict on probation of good conduct or after admonition, also exists as Section 360 of the Code of Criminal Procedure 1973, which makes it incumbent on a court, to record special reasons for not extending the benefit of the provisions of the Probation of the Offenders Act, 1958 or Section 360 of the Code, in a case in which, it could have dealt with such accused in terms thereof. A conjoint reading of these provisions also attest the perspective of substituting a sentence of imprisonment by one of probation or admonition, in clearly identified eventualities, making it imperative as well for the courts, not only to be vigilantly cognizant thereof but also to committedly invoke its powers to that effect, whenever warranted.

Whereas, the Protection of Human Rights Act 1993, reaffirms the significance and worth of human rights, inherently natural to a human being and is an enactment, reliving the letter and spirit of the International Covenant on Civil and Political Rights, of which India is a signatory, and provides for the constitution of a National Human Rights Commission, State Human Rights Commissions and Human Rights Courts, for better protection of human rights, the Juvenile Justice (Care and Protection of Children) Act 2000 (as amended), formulates the law relating to children allegedly found to be in conflict with law and children in need for care and protection, by catering to their basic needs through proper care, protection, development, treatment, social reintegration, by adopting a child-friendly approach in the adjudication and for disposal of matters in the best interest of children and for their rehabilitation, through processes provided and institutions and bodies established thereby. The Mental Healthcare Act 2017, guarantees mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons, during delivery of mental healthcare and services.

The above statutes, as a common feature underscore, the essentiality of a humane approach and relaxed procedure of a Court and the implementing agencies therein, in dealing with the persons contemplated, even if in conflict with law, having regard to their age, medical condition and the circumstances attendant on their violations, overwhelmingly in recognition of their basic human rights and dignity of person. Law indeed, is the functional visage of justice.

On the international plane, the noteworthy Conventions and the Rules which embody the dicta on the recognition, preservation, sustenance and consolidation of human rights are amongst others, Universal Declaration of Human Rights 1948, International Covenant on Civil and Political Rights (ICCPR) 1966, United Nations Standard Minimum Rules for Treatment of Prisoners, 2015 (Nelson Mandela Rules), United Nations Standard Minimum Rules for Administration of Juvenile Justice 1985 (Beijing Rules), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, United Nations Standard Minimum Rules for Non-Custodial Measures 1990 (Tokyo Rules), The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, 2010 (Bangkok Rules), Code of Conduct of Law Enforcement Officials 1979 etc.

Whereas, The Universal Declaration of Human Rights, the fountain head of the fundamental principles bearing on human rights in general proclaim that all human beings are born free and equal in dignity and rights and are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. (Article 1), it predicates as well, that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5). More significantly, this Universal Charter mandates, that everyone has the right to recognition everywhere as a person before the law (Article 6). That all are equal before the law and are entitled without any discrimination to equal protection of law, is also guaranteed (Article 7). The Fundamental Rights enshrined in Part III of the Constitution of India, are indeed the mirror reflections of the underlying spirit of these sacrosanct axioms of the profound Declaration.

Article 10 of ICCPR, in particular promulgate, that all persons deprived of their liberty, shall be treated with humanity and with respect for the inherent dignity of the human person. It emphatically underlines, that the penitentiary system shall comprise treatment of prisoners, the essential aim of which, shall be their reformation and social rehabilitation.

The Nelson Mandela Rules, in pith, provide guidelines to be adopted as good principles and practices in the treatment of prisoners and prison management, based on general consensus of contemporary thoughts and the essential elements of most adequate systems of the current penal institutions, with a focused prominence on the aspect of preparation of a prisoner for his/ her smooth and seamless transition to the society, with the assistance and participation of community agencies, wherever possible, in partnership with prison social workers, charged with the duty of maintaining and improving all desirable relations of a prisoner, with his/ her family and with valuable social agencies as is compatible with the law.

The Tokyo Rules, stand out in its features, for outlining the general principles for and cataloguing the non-custodial measures, as alternatives to imprisonment, being backed by legal sanctions and safeguards at the pre-trial, trial, sentencing as well as, post sentencing stages of a criminal justice dispensation. These Rules, aim to promote the use of non custodial measures as well as minimum safeguards for persons subject to alternatives to imprisonment with the predominant objective to augment greater community involvement in the management of criminal justice, specially in the treatment of offenders and more importantly to engender, amongst the offenders, a sense of responsibility towards the society. These Rules underline, that in implementing the same, the Member States would endeavour to ensure a proper balance between the rights of individual offenders and of the victims as well as the concern of the society for public safety and crime prevention. It also profess, that the implementation thereof would have to be conditioned by the political, economic, social and cultural conditions of a country and the aims and objectives of its criminal justice system.

While elucidating that the introduction, definition and application of non-custodial measures, shall be as prescribed by law, safeguarding the dignity of the offender at all times, it highlights as well, that in the application of non-custodial measures, the offender's right to privacy shall be respected as shall be the right to privacy of the offenders family. It declares that pre-trial detention, shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of the society and the victim. Further, the alternatives to the pre-trial detention, shall be employed at as early stage as possible. It predicates, that the judicial authority, if possible, ought to avail itself of a social enquiry report prepared by a competent, authorized official or agency, to contain social information on the offender, that is relevant to the person's pattern of offending and current offences. Moreover, the report ought to contain as well, information and recommendations that are relevant to the sentencing procedure. The sentencing authority, as recommended by the Rules, should take into consideration, in making its decision, the rehabilitative needs of the offender, the protection of the society and the interests of the victim. The list of non-custodial measures/ sentences has also been provided which include inter-alia, a community service order; probation and judicial supervision ; restitution to the victim or a compensation order etc.

The Rules, in the matter of implementation of the non-custodial measures, underscore the essentiality of supervision thereof, particularly to reduce re-offending and to assist the offenders integration into the society in a way, which minimizes the likelihood of return to crime. The Rules warrant that the offenders should, when needed, be provided with psychological, social and material assistance, with opportunities to strengthen links with the community and facilitate their reintegration into the society and if the competent authority in charge of supervision as prescribed by law determines, the conditions to be observed by the offender in this regard, it should take into account both the needs of the society and the needs and rights of the offender and the victim. Not only the competent authority, need to involve the community and social support systems in the application of non-custodial measures, the Rules insist that the conditions to be observed, ought to be

practical, precise and as few as possible, and be aimed at reducing the likelihood of an offender relapsing into the criminal behaviour and of increasing the offender's chances of social integration, taking into account the needs of the victim. The necessity of explaining to the offender, of the conditions governing the application of the non-custodial measures including the offender's obligations and rights has also been underlined. The Rules prescribe not only for the recruitment and training of the staff, to equip the mechanism contemplated to actualize the induction and implementation of the non-custodial measures, but also in particular decree public participation as a major resource, in improving ties between offenders undergoing non-custodial measures and the family and community, thus thereby complementing the efforts of the criminal justice administration.

It envisages, public participation as an opportunity for the members of the community to contribute to the protection of their society and advocate encouragement of government agencies, private sector and the general public to support voluntary organizations, that promote non-custodial measures. It recommends as well, that every effort should be made to inform the public of the importance of its role, in the implementation of the non-custodial measures and as an essential aspect of the planning process, to make efforts to involve both public and private bodies in the organisation and promotion of research on the non-custodial treatment of offenders. Not only, to facilitate establishment of linkages between services responsible for non-custodial measures, other branches of the criminal justice system, social development and welfare agencies, both governmental and non-governmental, in fields of health, housing, education and labour and mass media, suitable mechanisms have been suggested to be evolved at various levels, the scope of availing international cooperation through research, training, technical assistance and exchange of information amongst the Member States has also been hinted at with due emphasis.

A relatively exhaustive coverage of the Tokyo Rules, is in consonance with the perspectival essence of the theme, to limnid the preponderant indispensability of societal and community cooperation in effectuating post

release rehabilitation and reintegration of a prisoner stepping out from the prison precincts into a setting, at times rigidly hostile, inimically resistant and inexorably non-cooperative.

The Bangkok Rules, which chiefly dwells upon the treatment of women prisoners and more significantly non-custodial measures for them, call upon the Member States to respond appropriately with the needs of women offenders and prisoners and for all practical purposes to complement and supplement the Tokyo Rules, with specific priority to alternatives to imprisonment for women offenders.

Back in India, though there is no guarantee of prisoners rights in particular as such in its Constitution, the inviolable and non-negotiable right to personal liberty in its widest amplitude has been acknowledged and consolidated by the Hon'ble Supreme Court in its illuminating enunciations qua the scope and ambit of Article 21. This right, as the Apex Court has propounded, is available even to those incarcerated. Apart therefrom, the right to speedy trial, free legal aid, right against torture and right against inhuman and degrading treatment accompany a person to the prison, breach whereof would be a constitutional sacrilege. The judicial expositions, dilution whereof, in the interest of brevity, is obviably, pertain to protection of a person in the matter of arrest, post arrest treatment of prisoners, guarantee against prison torture, prolonged detention of undertrials, women prisoners and their children, use of iron fetters, rights of death row convicts, legal aid, prison wages, contact with the outside world, premature release, sentencing policy, security, et al.

The genesis of the human rights jurisprudence in India, essentially is embedded in Article 21 of the National Charter, which in a way, toll the death knell on human bondage, beyond civilized limits. In *Sunil Batra (II) v. Delhi Administration*,⁹ Hon'ble Justice V.R. Krishna Iyer in his inimitable diction observed:

Are prisoners persons? Yes, of course. To answer in the negative is to convict the nation and the Constitution of dehumanization and to repudiate the world legal order, which now recognises rights of prisoners in the International Covenant on Prisoners' Rights to which our country has signed assent.

In the same rendering, His Lordship also underlined, that no prisoner can be personally subjected to deprivations not necessitated by the fact of incarceration and the sentence of the court and to that effect, made it incumbent on the courts, which sign off a person to prison, to be the guardian of his rights, so much so, that they have a duty to secure the execution of their sentences, without excesses and to sustain the personal liberties, without violence to or violation of their physical and mental integrity and dignity.

The precedential precepts as above, thus humanize the prison jurisprudence, imbued with constitutional culture and conscientious compassion with the core conviction, that an offender does not shed his fundamental rights, and dignity and worth of personhood, at the prison gates. Not only a prisoner, while in jail custody, would deserve as a matter of right, security and dignity of his self, it is the solemn obligation of the prison regime and all other stake holders, to ensure that he is transformed, during his term, to a worthy social being, equipped and deserving to be assimilated in the main stream of the human order, to which he belongs.

Sans a brief reference to the Model Prison Manual 2016 and the Training Manual of Basic Course for Prison Officers and Prison Warders 2017, the factual frame would be wanting. This document, is an exhaustive treatise on prison administration in minutiae, presented as a complete code on penitentiary governance and encompass a panoply of gaol existence. It addresses in details, the aspects of institutional framework of the prison regime, living conditions of the inmates (men, women and children with them) including lodgement, diet, medical care, education, vocational and skill development training, legal aid, premature release, aftercare and rehabilitation, inspections, staff development and prison computerization,

in particular. The provisions discernibly, carry a human thread of jail jurisprudence. The chapters on vocational training and skill development programmes, aftercare and rehabilitation and open institutions, in particular do preponderantly insist on the association and participation of the civil society, for meaningfully effectuating the schemes comprehended, the overwhelming mission being to ensure an uninterrupted and interminable contact of the inmates with the community, to facilitate an unimpeded and unhindered relocation in the societal fold.

The training manuals in their turn, are informed with the dynamic principles governing prisons and correctional administration in consonance with the international best practices, the domestic laws and the technological innovations. These inscribe the insightful comprehension, that imprisonment would be justifiable, if it ultimately leads to the protection of society against crime, a goal, which can be achieved only if the custodial confinement is constructively utilized, to motivate and prepare the offender to be a law abiding citizen, with the confidence to conduct a self-supporting life after his release. The realisation, that as imprisonment deprives the offender of his liberty and self-determination, the prison system should not, compound his sufferings already inherent in the process of incarceration and that all possible efforts have to be made to ensure that they emerge from the prisons as better individuals compared to what they were at the time of their admission thereto, is consciously documented as well. The provisions of these Manuals thus, aim at restructuring of the prison system in terms of humanization of prison conditions, and to achieve this end, reorganize prison programmes and train and reorient the prison staff, with due emphasis, to inculcate in them, the values of integrity, humanity, professional capacity and personal suitability, as per the institutional needs. Though over the years and currently as well, numerous distinguished committees and personalities committed, to prison reforms have immensely contributed for the improvement thereof, having regard to the topical contours, detailed reference thereto has been avoided.

Prison reforms: Role of Society

The evolutionary paradigm of prison jurisprudence ergo, unmistakably portrays a conscious and purposive shift from retributive dispositions to reformative dispensations. Correctional and rehabilitative components of prison practice, compose the heart and soul of custodial existence, to prepare and present the captives lodged in a setting hidden away from the outside world, to the open milieu of contemporary civilized order. Though a secured and dignified custody of the prisoners, is one of the prime responsibilities of the prison administration, the facilities for grooming them mentally and physically, as correctional therapy, are with the eventual salutary goal of their rehabilitation and reintegration in the society. The prison authorities therefore, are entrusted with the task of coaching and training the prisoners for this hallowed cause. Social justice and social defence being the justification for the transient quarantine of the offender, rehabilitation is the prized purpose of prison therapeutics. Prisoners, to reiterate have enforceable liberties though truncated, but certainly not non est. The cardinal goal of internment is correctional, by awakening the dormant consciousness of the offender to ensure social weal. Hence, the unsparing role and responsibility of the society in such capacity building enterprises, to prevent a relapse to delinquent and indictable ways, in securing its defence. Goal of imprisonment is not only punitive but restorative, to make an offender a non-offender.

Prison reforms, to be nurtured and furthered, not only would need a political will, but also require supportive legislations and a symbiotic partnership with organizations in civil society with an interest in human rights and social welfare. A basic tenet of international Human Right instruments, is that prisons should be civilian institutions, run on rehabilitative lines viewing the prisoners and as citizens rather than enemies or adversaries. On the aspect of social integration, the global view is that, prisons are part of civil society and therefore, should be integrated as far as possible into civilian structures, so as to keep the prisons in public gaze which can minimize the ill treatment. This comprehension favours, restoration to the prisoners, some control over their lives and opportunities

to make decisions for themselves, as a key to reformation. It is strongly held, that without civil society involvement, prison reforms is unlikely to be achievable or sustainable. It is internationally acknowledged, that prisons cannot be rehabilitative civil institutions without the cooperation and support of the wider society and that the involvement of the civil society amongst others would effectuate, the social integration of released prisoners. It is envisaged that the involvement of the community, not only the prisoners benefit by their association with fellow citizens in manifold ways, the community also gains because of its knowledge about the reality of prison life, to facilitate dissemination thereof to offset many misgivings. Developing relationships with civil society organisations, can also be advantageous for prisons working with insufficient resources thus, reinforcing them with human and material assistance. For prison reforms to be sustainable, civil society organisations devoted to prison welfare, are thus indispensable and therefore, projects with civil society involvement acquired through adequate propagation of rehabilitative imperatives, to secure social defence and security, is an impelling necessity.

The recipe of prison reforms, thus unequivocally predicates, a blend of sensitized institutional and societal participation for a consummate accomplishment. An offender, who is insulated from a society on the ground of social defence, nevertheless continues to be a constituent thereof, to return thereto chastened and corrected. Except for convicts awarded the death penalty or a sentence of life imprisonment, reinstatement in the societal fold, sooner or later is inevitable, whereafter, if treated as discards or condemned for their antecedent past, they would certainly relapse to crime, thus setting at naught, all efforts for their correction, reformation and rehabilitation. It is a matter of common experience, that an offending act defined as a crime against the society, on many occasions has its roots in factors beyond one's control like illiteracy, poverty, socio-economic disparity, family environment, mental instability, wrong company, addictions as well as non-deliberate loss of self-control on the spur of the moment. A deviant conduct ensues at times, also from a momentary and unintended lapse. The society at large, however, is not readily disposed to gloss over the delinquent past of an offender, even

after his release on serving the sentence inflicted by law as punishment for the offence proved against him.

Hon'ble Justice V.R. Krishna Iyer recited the quintessence of prison mission with his astute literary flair, in *Sunil Batra (II) v. Delhi Administration*^{vi}:

The final panacea for prison injustice is, therefore, more dynamic, far more positive, strategies by going back to man, the inner man. The ward-warden relationship needs holistic repair if prisons are, in Gandhian terms, to become hospitals, if penology, as modern criminologists claim, is to turn therapeutic. The hope of society from investment in the penitentiary actualises only when the inner man within each man, doing the penance of prison life, transforms his outer values and harmonises the environmental realities with the infinite potential of his imprisoned being...

The correctional and rehabilitative enterprises initiated and implemented during the prison term, after the deliverance of the offender from the privations of incarcerated life, ought to be pursued beyond the prison precincts to secure social defence, which is a constitutional compulsion. It is a matter of common experience that prisons, prison staff and prisoners are all in need of reformation and in the post release phase the role and responsibility of the community, in meaningful reintegration of an offender, cannot be over emphasized. The society in the interest and security of the human order, has to assume a vigilant and versatile role to guarantee a smooth transition of an offender to the society as a worthy constituent thereof.

An indispensable need for internal invigilation to fathom the inner self and independent surveillance, by the community in tandem with the other stake holders is the desideratum, to transform the erring segments of the society into righteous, responsible and respectable integrants of the social order, a preambular promise of social justice, ingrained in the Paramount Parchment. As a released convict after serving his sentence, in law purges the scar of the crime, his aspiration for a new lease of life deserves recognition

and response from all the stake holders, in charge of sustaining a law abiding and disciplined social order. With abundance of creative faculties and enthusiastic zeal, the release inmates aspiring for individual and collective well-being, with an indomitable urge to connect with and converge to the social set up, do deserve affirmative dispositions. Social duty to prevent recidivism, is also a measure of social justice, in furtherance of the fundamental duty cast by the constitution on every citizen of the country. A quantum and quality lift in higher consciousness in general is desirable to motivate and stimulate all the stake holders involved to guarantee and guide the transition of a prisoner from the penitentiary confines to the societal settings, of course acting within a mechanism informed with operational vigilance, accountable commitment and responsible interventions.

Prison reforms thus cannot be confined to the custodial perimeters of the physical lodgement of an offender, but has to necessarily transcend beyond such bounds to the social sphere of contemporary existence. Society's participation in the prison processed rehabilitation measures is thus, indispensable so as to actualize a released prisoner's expectation for self-development to his full potential with self-respect and dignity, lest a social cause is lost and the society fails to remain the ultimate repository of its denizens. A convict or a person indicted of an offence, nevertheless does not cease to be an integral constituent of the social order - an undeniable reality. Life and liberty are precious values and civilized consciousness with a sober balance, ought to fertilize the humanizing initiatives for wholesome community protection, by facilitating the reintegration of the once errant brethren. A positive and an accommodative mindset is the call of the hour.

Isopanisad, augments with a spiritual dimension :

*yastu sarvāṇi bhūtāni ātmanyevānupaśyati |
sarvabhūteṣu cātmānaṁ tato na vijugupsate ||*

(He who sees everywhere the Brahma in all existences and all existences in the Brahma, does not hate or despise any one.)

Globally, a desistance based perspective has emerged which conceptualizes, that a change of attitude can lead to end of criminal career and that such change can also be externally catalysed by social ties, participation and opportunities. The notion is of sharing the responsibility between the offender on one hand and the society on the other, to bring about this change of mind and approach. There is also a growing comprehension, that the offender as a member of the society, ought to compensate it, for the damage caused by his crime and therefore, ought to be involved in productive undertakings in the process of his rehabilitation and reintegration. It stands demonstrated, that interdependence between the prison regime and welfare, reintegration and rehabilitation programmes, has a major impact on the successful assimilation of the offenders in the society. Empirically, potential recidivists are less likely to reoffend, if the factors which influence them to commit the crime, are appropriately addressed and if such measures are incorporated into the rehabilitation and reintegration processes. Departure from the punitive approach, that a prison sentence is only a device of punishment and a prison is the place for execution thereof only, has proved to promote the standards of welfare, reintegration and rehabilitation. A model ensuring State's support to the offender, to address the reasons that had lapsed him to crime and to encourage the inner process for his change, would be desirably productive. The collaborative participation of the community through social service groups and the civil society in the prisons sponsored schemes would not only build the bridge between the prison inmates and the community, but also would ensure their unhindered transition to the civic setting, through the prison gates after their release. As mere detachment from social life, has a major impact on an inmate's physical and mental composure, a promising reintegration strategy needs to be evolved from the time of his incarceration, till his eventual reunion with the community. Though a balance between the security principle of a prison regime and the needs of the inmates is a significant factor, that designs the framework of prison governance, according to the principle of proportionality, risk- need-assessment should be used to apply, the lowest possible security measures to inmates, to favour relatively more space for reformatory and rehabilitative achievements. Experience has authenticated, that the focus of rehabilitation

activities should not be confined in one area but needs to be diversified to address the varying needs and the range of potential of the inmates. To facilitate a seamless passage from prison supervision to probation supervision or aftercare there thus has to be studied action plans, clearly marking the roles and functions of the service providers inside and outside the prisons, as unprepared release would carry with it the risk of reoffending. It is generally emphasized and rightly, that the level of awareness of efficacy of welfare, reintegration and rehabilitation of criminal offenders within the society, has to be appropriately raised to effectuate successful reintegration. The less the alienation between the prison and the outside world, subject however to the legal and procedural restraints for the sake of security of the prison and the prisoners, the more prepared, understanding and willing would be the outside world, in terms of its cooperation, in the reintegration of its ephemerally estranged members.

Research has revealed that following their release, the offenders face a number of practical challenges qua acceptability, accommodation, livelihood etc. and in absence of material, psychological and social support, many are likely to be caught in a vicious cycle of release and re-arrest. Effective and balanced mix of supervision and assistance and finding ways to do so through effective collaboration, involving prison administrations, law enforcement agencies and community based organizations, has proved to be an effective mode of managing the re-entry of released prisoners to the community space. Programmes requiring community participation, have emerged to be meaningful tools to respond to the offenders predicaments.

The Nelson Mandela Rules (Rule 90) proclaim that the duty of the society does not end with the prisoner's release and emphasise on the need for efficient aftercare, to be provided by governmental and non-governmental entities for lessening the prejudice against him/her and towards his or her social rehabilitation. The Tokyo Rules (Rule 9) also predicate for availability and early consideration of a wide range of post sentencing alternatives, amongst others, furlough and half way houses (open prisons), in order to avoid institutionalization and to assist offenders in their early integration into the

society. Both these Rules therefore, encourage public participation in the social integration of offenders and community based interventions in the spirit of an opportunity for the members of the community to contribute to the protection of their society. Indubitably, to achieve this objective, involvement of various public and non-governmental entities, effective coordination mechanism and linkages are unyielding imperatives. The avenues of support in the process of rehabilitation and consequent reintegration as earmarked over the years pertain to assistance in opening opportunities for the job market; finding suitable accommodation for lodging; ensuring access to healthcare and social security by establishing linkages with health services with the community; securing family support, interventions for which, ought to begin while the prisoners are still in custody (this challenge is more acute amongst released women prisoners who tend to be stigmatized and ostracized, more than men); need based supervision of offenders by adopting a surveillance- based approach with a treatment and skill development component, in partnership amongst police, public service providers, community members, victims and offenders and their families etc. As communities are not always approvingly responsive to the idea of community-based initiatives to receive and support former offenders, volunteers as contemplated in the Tokyo Rules (Rules 19.1 & 19.3) have been identified to motivate the community as well as the offenders and their families to develop meaningful ties inter se, to provide/ avail much needed support to the offenders struggling for rehabilitation. Partnerships between community and the criminal justice system, through carefully selected programmes and conducted by professionally trained volunteers have also been advocated with the perception that high standards of mutual transparency, accountability, integrity and openness is likely to secure different forms of community involvement. As the community can not only be a source of informal social support, but also one of social control, its multifarious roles as above are construed to be the bulwark of the enterprise of successful rehabilitation and reintegration of former offenders, as a potential step towards securing a crime free society.

Conclusion

Understandably, casting of this mechanism and coasting of the process to its logical end, to achieve the above goal, is not a promenade. The stake holders, including the community at large, as partners in this mission, have to act with moral maturity, collective collegiality, sententious sincerity and resolute responsibility, with a vision and a passion, so much so, that the working model is unsparingly scrupulous in efficiency and enforcement, with punitive consequences for any deliberate lapse adversely impacting upon the pursuit, along with a system of periodical survey of impact assessment and appropriate remedial updates to make the undertaking meaningfully, result oriented.

Bob Kennedy sounds inspirational:

*Some men see things as they are and say why,
I dream things that never were and say why not.*

Endnotes:

ⁱIyer. (1981). A National Prison Policy- Constitutional Perspective and Pragmatic, p.7 Parameters

ⁱⁱA.I.R 1977 S.C.1926

ⁱⁱⁱA.I.R 1998 S.C 3164:

^{iv}A.I.R 1997 SC 1739

^v(1980) 3 SCC 488

^{vi}(1980) 3 SCC 488

STUDIES FROM THE FIELD

Former Incarcerated Persons and Disenfranchisement: Civil Death in the United States

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Introduction

The United States' determination of when or if convicted felons lose their voting rights varies across the fifty states and District of Columbia. Approaches range from permanent loss of voting rights to a restoration sequence that involves parole, probation, payment of fines or fees, mandated restitution, and restoration directly after prison. States can also disenfranchise individuals convicted of a minor offense post release. Only two states currently allow voting from prison. These variations create confusion and foster an unequal distribution of rights and inclusion within the public sphere. The article explores the impacts of the various state laws in relation to four concepts – infamia, atimia, outlawry, and civil death – whose roots go back to ancient Greece and are reflected within United States' historical law and statute as well as in more recent court decisions and legislation. The codification of atimia in Greek translations indicates a loss of honor and a subsequent loss of rights, infamia as a legal term indicates loss of reputation or 'good name' that occurs as a result of criminal prosecution or 'breach of faith.' The loss of the franchise, an invisible punishment, impacts civic engagement, job prospects, housing options, student loans, welfare aid, and more.

This study brings in court rulings as well as existing research, analyzing the deep roots of disenfranchisement as a post-carceral punishment – a civil death – that can follow former incarcerated persons to the grave exploring firstly, theoretical and historical underpinnings, secondly, civil death, social impacts, and the carceral state, thirdly, scope and implications, and lastly, synthesis and steps forward.

Theoretical and Historical Underpinnings

A study of the individual effects of ostracism using both exclusion and being ignored as variables (Wirth, Bernstein, & LeRoy, 2015) determined that social disconnections such as incarceration and difficulties post-incarceration impact multiple human needs thereby fostering feelings of not belonging, physical impacts such as rise in blood pressure and activation of brain centers dealing with physical pain, lowered self-esteem, and hopelessness. The sanctioned legal, social, cultural, economic, and political ostracism of the returning former incarcerated person has ancient roots and thereby a legitimacy that can be seemingly impossible to overcome. The earliest records of disenfranchisement resulting from a crime appear in writings from ancient Greece and Rome. Greece denied citizenship, the right to vote, and the right to appear in court. *Atimia*, in this case, began as a technical legal concept focusing on disenfranchisement and ostracism from the polity. In time, however, moral determinants of dishonor, infamy, and the concurrent deprivation of particular civic rights added the descriptor of ‘enemy of the people’ leaving the individual unprotected socially, legally, politically, and economically (The Classical Association, 2015).

Rome denied the right to vote, to serve in the Roman legion, and pronounced a moral censure, attaching the label of *infamia* to the person, meaning the embodiment of ignominy and disgrace. The underpinning theory for the use of *infamia* focused on declaring the person morally tainted and ascribing a civic disability from which the larger society and the state needed protection. After the fall of the Roman Empire, Germanic peoples in Europe and England employed the concept of outlawry (*bando*) to

lawbreakers who created a 'loss of peace.' Practice then dictated that the individual lost the protection of the law, faced the persecution of the entire community, and was comparable to a wolf. Any person so marked who did not flee to another country became forced to live in the forest like a wild beast. The outlaws became infamous, deprived of their rights, had their property confiscated, lost all honor, and were subject to being killed with impunity. In other words, the term outlaw comprehensively subsumed infamia, atimia, and civil or social death (Itzkowitz & Oldak, 1973; Manville, 1980). Following the Middle Ages, outlaw status expanded significantly, the outlaw declared civilly-dead, deprived of rights and with the term 'capital' crime included, faced more severe punishments that included the idea of corruption of the blood, or the dishonor and incapacity among the offender's descendants.

In settling North America, the English colonists brought the heritage of common law including civil disabilities, forfeiture of property known as attainder—or a return of all property to the control of the King (Grady, 2013)—and the concepts of infamy and outlawry. After the American Revolution and the adoption of the United States Constitution, forfeiture and corruption of the blood were prohibited except during the life of a person convicted of treason. The unamended Constitution itself, however, did not protect voting rights (Grady, 2012). In consequence, eleven state constitutions between 1776 and 1821 adopted statutes to deny voting rights to convicted felons and/or authorized their state legislatures to do so. Prior to the Civil War, 19 of 34 states removed the franchise from serious offenders. These sanctions, with slight differences from their earlier interpretations, imposed civil disabilities and potential civil death upon the offender dependent upon those allowed them by their social and economic status, race, or gender (Itzkowitz & Oldak, 1973).

Enfranchisement was already a limited right among Americans, and therefore its loss was punitive only to a smaller subset. Before the passage of the Fifteenth Amendment to the Constitution in 1870 that gave black men the franchise, only white landowning males could vote. The subsequent 1890

poll tax, a capital tax that had to be paid prior to voting, placed financial limitations specifically, in some cases, to prevent southern African American males from the voting (Grady, 2012). The poll tax was frequently waived but only for poor whites. In time, women gained the franchise with the passage of the Eighteenth Amendment in 1920. In 1964 the Twenty-Fourth Amendment prohibited the use of poll taxes for federal elections. Five states enforced payment of poll taxes for state elections until 1966, when the U.S. Supreme Court declared them unconstitutional.

Social, political, economic, and culturally framed theories of punishment and subsequent sanctions, in the cases of Ancient Greece and Rome, Middle Ages Europe, and colonial through independent United States history, share variations of the same penal sanctions as well as justification for those sanctions. In effect, the social, political, economic, and cultural punishment for a crime continues to be framed, to varying degrees, by the punitive theories of retribution and deterrence (Itzkowitz & Oldak, 1973). Retribution can be thought of as getting even with the offender, deterrence as preventing future crime. Disenfranchisement as embedded within the punitive rationales of rehabilitation, deterrence, retribution, and incapacitation, a modern form of outlawry, would appear to fit primarily within rehabilitation practices and programs. To operationalize rehabilitation in part through a reinstatement of voting rights could address issues of self-esteem, community investment, and feelings of political and social legitimacy. Often, however, if it is even possible to have voting rights restored within the communities and societies into which the former incarcerated person returns, the reality of infamia, atimia, and the realization of social death continue to play out.

From the legal side, for example, in the 1960s, the Warren Court handed down a series of decisions to establish the right to vote as fundamental in a free and democratic society. Multiple follow-up cases emerged. These cases framed challenges to state disenfranchisement laws under the Equal Protections Clause of the Fourteenth Amendment but lower courts hesitated to strike down felon disenfranchisement based on this argument. *Green v. Board of Education* dismissed plaintiff's challenges to felon disenfranchisement

laws citing John Locke, using social contract theory to satisfy a rational basis to allow the disenfranchisement laws to stand. The Richardson Court, reversing a decision by the California Supreme Court ruling, deciding that the state's disenfranchisement provisions did not serve its 'proffered interest' in protecting against election fraud, and supported previous rulings that allowed an exclusion from the sanction (Grady, 2012). The legal struggle to remove felon disenfranchisement as a legitimate punitive and social response continues state by state.

A review of current state by state franchise restoration requirements by the National Conference of State Legislatures highlights the diversity of state by state responses. For example, in Maine and Vermont, felons never lose their right to vote even while they are incarcerated. In sixteen states and the District of Columbia, felons lose their voting rights only while incarcerated and receive automatic restoration upon release. In 21 states, felons lose their voting rights during incarceration and for a period of time after typically while on parole and/or probation. Voting rights are automatically restored after this time period. Former felons may also have to pay any outstanding fines, fees or restitution before their rights are restored as well. In 11 states felons lose their voting rights indefinitely for some crimes, or require a governor's pardon in order for voting rights to be restored, face an additional waiting period after completion of sentence (including parole and probation), or require additional action before voting rights can be restored.ⁱ

Civil Death, Social Impacts, and the Carceral State

While the landscape expands somewhat regarding options for reinstatement of the franchise, legal and procedural impediments continue to block more broad understandings of voting rights as human rights. For example, in more recent court cases such as *Johnson v. Bush, 2002*, the federal court ruled that felons 'choose' by engaging in illegal acts to be disenfranchised. In 2000, the Supreme Court affirmed that states are not required to extend suffrage to ex-felons. *Bush v. Gore, 2000* attested that individual citizens have no federal constitutional right to vote for electors for the president of

the United States, thus eliminating millions of votes in states across the country that significantly impacted the outcome of the electoral college in presidential elections (Miller & Spillane, 2012). A judge in the 1951 case *McLaughlin v. City of Canton* wrote concerning the importance of the right to vote and disenfranchisement as the harshest civil sanction imposed by a democratic society, severing the disenfranchised from the body politic, condemning them to the lowest form of voiceless citizenship. Hence, punishing crime through limiting citizenship remains a viable link to infamia, atimia, outlawry and a sentence of social death, restricted liberty, and lack of opportunity for the formerly incarcerated (Miller & Spillane, 2012).

Given the comprehensive implications of these punishments, results from a recent Department of Justice recidivism study come as no surprise. The study tracked state prisoners released in 2005 over a nine-year period. The researchers found that five in six (83%) across 30 states were arrested at least once during the nine years following their release, about four in nine (44%) were arrested at least once during the first year after release, about one in three (34%) were arrested during their third year after release, and nearly one in four (24%) were arrested during their ninth year (U.S. Department of Justice, 2018). The issue of preparation for reentry, markedly insufficient as it is now constituted, continues to be an ongoing dilemma. Adding to that the roadblocks faced by the formerly incarcerated individual as previously discussed and the purpose of the entire system seems to be not about rehabilitation but more about incapacitation (Miller & Spillane, 2012).

Additionally, large-scale shifts in the nature of social control, the concept of a mass imprisonment society, and the possibility of viewing the social context of the formerly incarcerated as 'in between' or a liminal space - not prison, not freedom, not liberty as generally understood- affects how the incarcerated and the formerly incarcerated are seen, 'managed,' and controlled. These individuals are excluded but expected to be good citizens within their limited realm. They carry their convictions and the labels associated with those convictions with them to the grave, asked to self-identify as such on a regular basis, and are then denied benefits, jobs, and opportunities by so

doing. They 're-enter' an environment in which they may never have been fully welcomed in the first place. This is particularly the case with racialized punishment and the hypercriminalization of the black man who is six to eight times more likely to be in prison than a white man. Black men born in 2001 face a one in three chance of going to prison during their lifetime (Martin, 2013). These realities impact the racial framing of infamia, atimia, outlawry, and social death in the United States. Barlow (1998), as mentioned in Martin (2013), notes that from the 1960s onward, the ideological connection of young black males with crime means today that crime is *shaped* around race symbolically and practically.

The current display of racially based policing practices seen daily on multiple media sources can either call these practices out as racial injustices or reinforce the now discredited superpredator theory. The superpredator theory proposed by John DiIulio and colleagues in 1996 attributed crime rates to 'superpredators' or 'intrinsically flawed evil-doers' who, they determined, were growing in number and had to be stopped and contained (Pratt, 2019). More often than not, fingers pointed to predominately male African American or Hispanic/Latinex youth. Although crime during this time was dropping, these statistics were not reflected in the federal government rhetoric. Misconceptions or misrepresentations fueled the national fear of crime, supported stronger sanctions on low-level offenders given their ascribed superpredator potential, and the increased construction of prisons leading to the current levels of mass incarceration. This pattern embedded and deepened the embrace of atimia, infamia, outlawry, and social death in policy and in the public imagination.

Historically, penal institutions have been key to policies designed to govern marginal social groups. To remain exclusionary, as the United States is today, it is essential to emphasize the undeserving, unreformable nature of 'deviants' or the incarcerated and former incarcerated, to stigmatize and separate the socially marginal in all ways possible. Prisons can from these points of view be seen as institutions or instruments for the management and maintenance of social marginality particularly important in United States'

racial repression and in embedding white privilege and nonwhite disadvantage (Roberts, 2004). These practices create ‘the prison beyond the prison’ (Gottschalk, 2015) furthered by the denial of voting rights for persons with a criminal conviction allowing the carceral state to define and redefine citizenship accordingly.

The increasing numbers of incarcerated African Americans has significant and more personal negative effects for families as well as the social norms in their home communities. Evidence indicates that high levels of incarceration in impoverished communities destabilizes community life, damaging mechanisms of informal social control, in essence, reproducing the dynamics that sustain crime (Ochs, 2006; Roberts, 2004). Additionally, geographic concentration of mass incarceration leads to the denial of individual voting rights that can lead to the disenfranchisement of entire communities, diluting the African American communities’ voting power (Roberts, 2004) much as did the poll tax from 1890 until declared unconstitutional in 1966. Essentially, four decades of criminal justice system growth have served to undermine black progress evidenced by the incarcerated and former incarcerated explicitly deprived of civil rights at the federal, state, and local levels. These restrictions include higher education grants and loans, housing access, employment opportunities, classes of employment opportunities, voting, serving on juries, and access to public or subsidized housing (Jacobs, 2015; Pettit & Sykes, 2015). If, as has been argued here, disenfranchisement constitutes a life-long set of punitive practices and thereby a violation of human rights, from that point of view, the legally sanctioned restrictions that support the walls of the prison beyond the prison need to be called into question.

Scope and Implications

Incarcerated persons are disenfranchised in 46 states and the District of Columbia. An estimated six million people or 2.5% of the voting population has, temporarily or permanently, been disenfranchised due to a criminal conviction (Barkow, 2019). Additionally, restoring voting rights, if

possible, generally requires payment of fines or court costs, working with multiple agencies each requiring different sets of forms and documentation, navigating unclear requirements and changing bureaucratic expectations. This process demands adequate funds, time, transportation, access, and endurance while at the same time looking for work, holding a job, managing reentry stress, and reintegrating into family and community life. Given the economic, social, and political realities and limitations particular to African Americans formerly incarcerated, these processes have been likened to ‘the new Jim Crow’ and the rebirth of caste in the United States (Alexander, 2012). The Fourteenth and Fifteenth Amendments ban explicit race-based disenfranchisement, the ‘criminal exception’ encoded in the Fourteenth Amendment, however, coupled with state authority to set voter qualifications as per Article I, Section 4 of the Constitution opened the door for creative racial discriminatory measures following Reconstruction. With this particular entry point, post-Civil War southern states in particular used felon disenfranchisement as a legal means of preventing black voters, further adding poll taxes, literacy tests, grandfather clauses, and violent intimidation to strengthen their exclusionary rationale. The notion of former slaves being on the same footing as white southerners challenged the theory of white supremacy which had long upheld and sustained the enslaving of black persons. As engagement with the former enslaved as fellow citizens and equal humans was determined to be unconscionable, political oppression through felon disenfranchisement proved one remedy (Taylor, 2011).

The United States is the only country in the world that so comprehensively disenfranchises people who are released from prison. The United Nations Human Rights Committee has gone so far as to declare the U.S. disenfranchisement policies discriminatory and in violation of international law. The International Covenant on Civil and Political Rights (INCCPR) to which the United States is a signatory and has been in force since 1992, argues that denying former incarcerated persons who previously held rights to vote withholds a defining element of political and social identity, makes the individual politically unequal, and degrades these individuals to a lower status. As voting advances the individual and their social group interests,

disenfranchisement harms both, particularly if the social group is over-represented among the disenfranchised. This can aggravate feelings of alienation, distrust of institutions, skew political processes by under-representation of disenfranchised views, solidify the powerful voter and essentially remove the disenfranchised from the political landscape (Ziegler, 2011).

From a transnational judicial discourse perspective, the global trend is the inverse of trends in the United States. For example, the lack of a constitutional right to vote combined with implicit constitutional sanction for disenfranchisement allows both states and the Supreme Court to block challenges to disenfranchisement. As discussed previously, the United States created ‘mass incarceration,’ meaning that millions of people are being held in federal and state prisons and local jails. Those millions are negatively impacted by disenfranchisement legislation. The United States has less than five percent of the world’s population, the world’s highest rate of incarceration per country, 25% of the globally incarcerated, and yearly disenfranchises approximately 5.3 million potential voters. Ultimately disenfranchisement legislation in the United States disproportionately affects marginalized social groups, particularly African Americans (Ziegler, 2011).

Concerns related to mass incarceration and mass disenfranchisement of African American citizens include the criminal justice system’s role in supporting and expanding black inequality through the creation and perpetuation of the prison industrial complex. The Prison Industrial Complex, or PIC, developed in recent decades, turns the managing of some of its state and federal prisons over to private corporations. These corporations then run the prisons for profit. With that end in mind, the corporate leadership lobbies to influence the passing of legislation favoring conditions for profitability. Total monies paid for the mass incarceration system in 2016 is \$182 billion (Wagner & Rabuy, 2017). Private corporations and contractors earned \$3.9 billion to operate the sites, contractors made \$2.9 billion to provide telephone and other services. This has affected the prison environment and the entire criminal justice system in a number of ways. For

example, the corporations are listed on the stock exchange and such as incarceration rates become linked to capitalist markets through people's 401K plans. The PIC stocks are presented by brokers and fund managers as smart investments.

What may not be discussed is the moral dilemma of creating wealth dependent on the mass containment of millions. If we consider, however, the containment of the enslaved and the wealth generation that occurred thereby, this dynamic can be said to repeat, at least to a point, previous patterns of past wealth accumulation built upon dehumanization, human containment, and suffering. Through capitalist wealth promoting incarceration becomes ethically cleansed and the human costs of incarceration, punishment, disenfranchisement, and marginalization made as invisible to outsiders as the social death pronounced upon the incarcerated. Additionally, as Fosten (2016) argues, the transfer of incarcerated predominately African American labor removes wealth potential from urban communities and transfers it directly to rural and poor white communities where prisons are built and where local outside workers benefit.

Synthesis

The incorporation of ancient as well as more recent historical determinations of who can and who cannot be given full citizenship rights allows a pattern of exclusionary practices. These practices become justified by individual actions and society's responses claimed as necessary to protect the integrity and sanctity of the polity, or those included in the polity. A Greek person in ancient Athens who could claim citizenship needed to be male, free, and born in Athenian holdings; women never had full citizenship rights. To be a Roman citizen, both parents needed to be citizens, although one of them, usually the mother, might be an alien or *connubium* with the right to contract a Roman marriage. In neither Greece nor Rome were women ever given full citizenship rights. In the Roman empire they were considered under the perpetual guardianship of father, husband, or other male associated with her (Chatelard & Stevens, 2016). Standards for Roman citizenship,

although more flexible than those in Greek city-states, still bestowed a full complement of citizenship rights only upon high status men (Gorman, 1992).

Historical patterns of assimilation occurred as reasonably high born male scholars reviewed ancient well born male scholar's writings over time. This embrace of existing merit within the texts (including gender, race, and status valuation) created nodes or links of connection from the ancient to whatever present in which the study occurred, explaining in part the absorption and reification of similar values and practices over time (Meir, 2008). Given this pattern of assimilation the framing of atimia, infamia, outlawry, and civil death following classical patterns can be seen as a continuing of control mechanisms to assure that power and rights remained with those deemed best qualified to employ them. In colonial and post-independence America, this meant rich, landowning men. Enslaved Africans, indentured poor whites, First Nation Peoples, and women were under perpetual white male ownership or guardianship. Interestingly, at a different level of analysis, indentured white women or women married to indentured white men, were under a double guardianship – to the landowner and holder of the bond of indenture and to their husband who held her by the marriage bond. These men made and enforced the rules and determined punishments for rule breakers. A variety of infractions such as the those framed by atimia, infamia, outlawry, and civil death could be operationalized and the subsequent punishments inflicted upon those who stepped outside of the determined higher valuation of individual action, potential, and worth. This can be seen today in communities with large numbers of incarcerated parents or youth who because of a legally or socially attributed lack of civil worth as 'superpredator' or 'dangerous' exist with significant lack of public investment in schools, health care, local infrastructure, and job training. In these cases, civil death involves the removal of things most needed by the community - investment, support, opportunity, and even perhaps a grocery store.

Civil death as seen through the social impacts of mass incarceration and mass disenfranchisement within the carceral state can be further evidenced

through court rulings using, for example, the ‘original meaning’ determination of pertinent language in the Constitution. In actuality, eight approaches to interpretation may be used depending upon the Supreme Court Justice’s own leanings – textualism, original meaning, judicial precedent, pragmatism, moral reasoning, national identity or ethos, structuralism, and historical practices. From the historical practices view, not only prior decisions but also long-established historical practice provides the key to constitutional meaning (Murrill, 2018). Returning to the previous discussion of assimilation of values and practices over time, this lens for determining constitutional meaning and thereby judicial determination may be problematic in relation to race and gender issues, the ideas of social exclusion and isolation based on criminal convictions, the value of the human being, and associated dilemmas as explored throughout the article. There is no reason new laws cannot be passed spelling out exactly what, based on the impacts of historical practices, would amend the harm done through these practices at least going forward. If that law, however, makes it to the Supreme Court to be determined whether or not it is constitutional, the findings will very much depend upon the judicial, social, and political values held by each individual justice.

Therefore, if outlawry can be aligned with the superpredator theory it could be argued that the move toward mass incarceration and mass disenfranchisement makes sense. If a person can be likened to a wolf (a feared animal from fables through the present time) then the wolf must be caught prior to doing more damage and either killed or contained, using *atimia*, *infamia*, and social or civil death as guiding principles. Additionally, if the determined dangerous person, by existing, is seen as frightening or capable of any evil, then the same remedies would apply. These hypotheses are frames of dehumanization shaped by racism, fear, hatred, and other social, cultural, political, and psychological phenomena determining whom we see as human and as not-quite or less-than human. Once this determination is made, psychological and moral dispositions can allow us to accept that whatever harm is inflicted upon these individuals correctly reflects necessary actions in the name of security or public good (Smith, 2016). Current markers of dehumanization processes can be seen in the ‘new Jim Crow,’ the return of

the caste, the prison industrial system, mass incarceration, mass disenfranchisement, and the 'prison outside the prison.' With these images in mind, it can be useful to imagine and then act on what might change if the franchise returned to those who best know its value, have felt its lack, and are living with consequences directly affecting their lives but over which they have little or no control to change.

Endnotes

¹<http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>

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Indefinitely Incarcerated Assam and its Non Citizens

Abantee Dutta

Introduction

In August 2019, Assam became home to 1.9 million people, whose names were excluded from the National Register of Citizens (NRC) for Assam and whose status until then had remained a subject of immense contestation and conflict in India, particularly in Assam (Ahmed, 2019). A complicated history of settlement and demographic change caused due to the continuous migration from neighboring Bangladesh has been a defining factor creating a “crisis of citizenship”, snowballing into decades of intractable conflicts in a region that faces daunting developmental challenges (Barbora, 2019). As part of the Assam Accord, signed between the Government of India and the people of Assam, the NRC was promised as a measure to verify the legal status of every inhabitant of Assam (Misra, 2018). However, it was only in 2015, after a lapse of 19 years, that the promise was finally operationalized by the Supreme Court of India, to identify the “rightful Indian citizens” in the state of Assam (Misra, 2018). As a result, 1.9 million people have been excluded as “rightful citizens of India” in effect, declaring them to be *defacto* citizens of Bangladesh, a position that is strongly contested by Bangladesh, thus creating an entire constituency of non-citizens (Ahmed,

2019). Media reports and the political rhetoric suggest that Assam is in the process of building ten detention centers across Assam to detain such non-citizens, who are now awaiting a final adjudication on their status from the Foreigners Tribunals set up across the state (Rahim, 2019).

All liberal, democratic states today practice some form of immigrant detention although it presents many troubling aspects (Silverman & Massa, 2012). Many jurisdictions such as the United States of America and United Kingdom continue to detain children (Costello, 2015). The legality of detention is determined administratively (Costello, 2015). However, there are strong evidences of serious mistreatment and abuse of non-citizens and protests are reported regularly. For instance, Isa Muazu was on hunger strike in detention, seeking to avoid deportation to his country of origin (Allison, 2015). Again, strong instances of abuse have been reported by guards of women detained in Yarl's Wood (Hansard, 2015). Bail applications may be filed; however, they do not review the legality of detention and many detainees do not bring such applications (Costello, 2015). Scholars have contrasted its policies and practice to the German concentration camps and commented on the various function of immigrant detention which includes to punish, discipline, extract labor and to deter illegal migration (Nethery, 2009; Ordez, 2017).

It is commonly understood that the socio-political condition of migrants, whatever their juridical status within the larger immigration system of any given nations, remain more or less deportable (Genova, 2019). To this, the situation and specific conditionalities in Assam create a unique exception. Bangladesh's refusal to accept and recognize any of the stateless persons as its citizen makes them susceptible to an indefinite period of detention. In absence of any detention facilities, since 2009, Assam has been detaining non-citizens in six of the correctional homes of Assam notified as detention centers (Studio Nilima, 2018). This paper attempts to present an overview of the nature of immigrant detention in the correctional homes of Assam. Drawing on reports of human rights organizations and firsthand accounts of the author derived from visits to the detention centers, the paper

highlights the material conditions of such incarceration. It explores two themes, first, it illustrates the continuum between immigrant detention and punishment, second, it explores Agamben's idea of "state of exception" that justifies such use of detention power in enforcing a condition of indefinite waiting and the ramifications of such application.

The paper is presented in four parts. Part II starts with a brief literature review. Part III is an overview of the immigrant detention practice in the correctional homes of Assam. Part IV explores the centrality of citizenship to criminal law and punishment and proposes that the existing detention practices in Assam fail to satisfy the core principles of punishment, its justifications and rationale. Exploring this continuum of coercive confinement, Part V engages with the notion of "state of exception" developed by Agamben, as applied to immigrant detention in Assam. The paper ends with a brief conclusion.

Literature Review

Immigrant detention presents one of the most disturbing challenges to the idea of rule of law and human rights in contemporary times (Costello, 2015). Scholars argue that the modern-day immigration detention apparatus has become a "leviathan" (Hernandez, 2014, p. 1413) with a wide network of prisons, jails and other secure environments reinforced by a powerful network of intergovernmental operators designed to identify and apprehend suspected immigration law violators (Hernandez, 2014). Although International human rights standards prescribe detention as an administrative measure, yet in its most basic outline it involves a coercive deprivation of a person's most elementary liberties (Genova, 2019).

Several scholars have used the theoretical framework of the "cimmigration system of control" exploring the growing convergence between immigration and criminal law (Stumpf, 2006; Stumpf, 2013). Drawing from Foucault's idea of rationalities and techniques of government, they comment on "the systematic and calculated ways of thinking and acting

that aim to shape, regulate or manage the comportment of others” (Inda and Dowling, 2013, p.2). Scholars further develops this idea of “governing through crime” to describe the situation in which “crime and punishment become the occasion and institutional context for shaping the conduct of others. (Macjcher & Senarclens,n.d.). Applying this to immigration detention and control, Miller develops this concept to “characterize the recent trend to construct problems of regulation of migrants as problems of crime and in doing so making available a host of tool and techniques of crime punishment that would otherwise be unavailable and wholly inappropriate” (Miller, 2003, p.5). Such trends of pursuing criminal law objectives and its punitive character has been illustrated through case of deportation by a few scholars while others have specifically applied this to the instance of immigration detention. (Simon, 1998; Bosworth, 2012)

Zedner (2013) suggests that the centrality of citizenship to criminal law and punishment poses “intractable problems for those whose citizenship status is absent” (p. 42). She proposes that immigration offences fail to satisfy the core principles of criminal law, particularly the basic requirements of Mill’s harm principles. (Mill 1859; Zedner, 2013; Bhui, 2013). The simple formulation of detention as a tool to achieve deportation hides a multitude of other, less overt functions and meanings of detention, which find expression in the manner in which immigration control operates (Bhui, 2013). Such measures although arguably serve administrative convenience in filling detention centers (prisons in case of Assam) pay little regard to the emotional and practical impact on detainees who may be moved far away from legal and family support (Bhui, 2013). Stumpf (2013) further illustrates the dangers of the lack of due process and breakdown of protection that comes with placing immigration and criminal law on the same continuum. Part IV will illustrate some of these ideas as applied to the Assam case.

Another framework that supports a nuanced understanding of immigrant detention is the much-cited notion of the “bare life” of Agamben (1998, 2005). When applied to immigrant detention, it suggests an empty monochrome existence characterized by misery, lack of self-determination

and irrelevance. Detainees, in Agamben's formulation are without rights and have relevance to the system of justice as far as it relates to exclusion. "Homo Sacer" is a vivid way to conceptualize the unwanted foreigner as it expresses so strongly the human illegitimacy imposed on the individual in detention (Johansen, 2013). This also explains Zedner's (2013) observation and tendency towards social exclusion of non-citizens, who if they are undocumented or irregular are categorized as objects of distrust by the state and as outsiders, they owe no loyalty to the polity. As Agamben argues, the state derives its capacity to reduce certain individuals to what he calls a "zone of indistinction" and create an ambiguity where it is possible to suspend the separation of "rights" and legitimize the exercise of state's power through brute force. In such an order, one which Agamben defines as "state of exception" or a "state of emergency", requires the state to disregard or suspend the law in order to preserve the larger political order that relies on the rule of law. Part V explores these ideas as applied to the case of Assam.

The following section presents a brief overview of some of the elements of immigrant detention practices in Assam. Most of the observations and accounts presented are based on reports of human rights organizations and firsthand accounts of the author derived from visits to the detention centers.

The practice of immigrant detention in Assam

The immigration detention apparatus in Assam is nested in an evolving framework of immigration and citizenship laws.ⁱ Since, 2009, in absence of a proper detention infrastructure, the Government of Assam has been detaining non-citizens in the notified jails of Assam. As of 2019, six jails operate as the notified detention centers.ⁱⁱ The intention of such detention as evident from the statutes is to restrict the movement of non-citizens and detain them temporarily until they are deported to their country of origin (Studio Nilima, 2018).

A large proportion of the non-citizens are from Bangladesh and in absence of a bilateral agreement, their fate remain uncertain and incarceration

becomes indefinite (Studio Nilima, 2018; National Human Rights Commission Report, 2018). The length of a time that non-citizens may spend in detention varies greatly. Reports of human rights organization and NGOs suggest some non-citizens have been incarcerated for more than 10 years (Studio Nilima, 2018). Recognizing the gravity of such incarceration, the Supreme Court of India has made available the provisions of bail to non-citizens who have remained incarcerated for 3 years or more. However, due to lack of financial means to furnish the bail amount, they fail to avail such legal remedies and continue to languish in the detention centers (Supreme Court, 2019).

The law also provides opportunities to challenge such detention before the higher courts, however, in many cases, the remedies provided are neither speedy nor effective as their rights are not clearly defined. For instance, although it has been clarified by the Supreme Court of India that non-citizens are entitled to the right of effective legal aid, however due to ongoing structural causes, the access to effective legal aid continues to be a challenge, either due to inadequate legal representation or because non-citizens are not informed of the status or decision in their cases and/or language barriers (Supreme Court, 2019a; Studio Nilima, 2018). As such, the exercise of formal rights remains highly curtailed in practice. These problems are further compounded because of the scattered locations of the detention centers as many non-citizens are removed from their original places of residence, which makes contacts with lawyer and other family members difficult (Studio Nilima, 2018). Further, often family members are separated and detained in different centers which present formidable challenges to communication due to a lack of access to telephone etc. (Studio Nilima, 2018).

The practical implication of such immigrant detention in Assam entails accommodating the non-citizens in the correctional homes along with other inmates, both undertrials and convicts. Consequently, they are exposed to the correctional home environment in its entirety and for all effective purposes are imprisoned. (Studio Nilima, 2018; National Human Rights Commission Report, 2018). Such practices run contrary to international guidelines around

immigrant detention.ⁱⁱⁱ In absence of any substantive law that defines the procedure and practice of immigrant detention, different standards are being followed in each of the detention centers. For instance, the correctional home administration often selectively applies the constituent statutes and regulations of the Assam Jail Manual on non-citizens, which are otherwise prescribed for the undertrial and convict inmates (Studio Nilima, 2018). Reports reveal that the dietary allowances given to non-citizens are the same as earmarked for non-laboring prisoners and undertrials, however, unlike such inmates, non-citizens are not entitled to parole/leave who are governed under the same set of rules (Studio Nilima, 2018; National Human Rights Commission Report, 2018).

One of the most emotionally challenging aspects of the conditions of detention in Assam continues to be the separation of families. The primary reason for separation may be because of the haphazard application of the law where not all members of the same family are declared non-citizens at the same time (Studio Nilima, 2018; National Human Rights Commission Report, 2018). Often a mother may be declared as such and assigned to a detention center when her husband and children may be leading "normal lives" (Studio Nilima, 2018). Separation is also caused to family members as couples may be separated and assigned to different detention centers (Studio Nilima, 2018; National Human Rights Commission Report, 2018). For instance, the central jail of Dibrugarh houses only male detainees and district jail of Kokrajhar accommodates only women detainees (Studio Nilima, 2018; National Human Rights Commission Report, 2018). However, even within the same detention centers, male and female detainees are separated, and their rights of meeting are curtailed like other convicted inmates (Studio Nilima, 2018; National Human Rights Commission Report, 2018). Children below the age of 6 years are lodged with their mothers and suffer an indefinite separation from the father even when lodged in the same detention center (Studio Nilima, 2018).

Further there exists no framework for the treatment of children declared as non-citizens (Studio Nilima, 2018). Reports assert that a well-defined

perspective into the special needs and vulnerabilities of children are often overlooked when policies are formulated on migration due to the assumption that their policies operate under that all or most are adults (Studio Nilima, 2018; National Human Rights Commission Report, 2018). Serious concerns have been expressed in these reports about the detention of non-citizens in the correctional homes of Assam as the legal foundation of such detention lacks legitimacy. Further, no guarantees exist to prevent the deprivation of their liberty because of their incarcerated status (Studio Nilima, 2018; National Human Rights Commission Report, 2018).

Although, there is no space here to comprehensively discuss the conditions in the jails, it appears to be conclusive that the conditions in the detention centers and often the undetermined length of confinement have caused psychological and physical damage to the non-citizens (Studio Nilima, 2018; National Human Rights Commission Report, 2018). These problems stem from confinement within the prison environment, under constant surveillance, roll calls, lack of adequate access to mental and physical health practitioners, educational and legal services, insufficient communication technology, conditions that are symptomatic and plague the correctional system in Assam (Studio Nilima, 2018; National Human Rights Commission Report, 2018). An extract of a reflection from one of my field visits reads as follows:

Let's start on a verandah of a long room. The room is cemented and dark with a small window on one side. It is an enclosed space with a locked gate, situated in the corner of what resembles a village precinct, encircled by a red brick wall. There are about 20 women and a few children, huddled outside in the verandah, some withdrawn and distant and others eager to tell us what's happening to them. I am in the women and children's ward of a correctional home in X. The women huddled up outside are all allegedly the declared foreign nationals, or illegal migrants as they are referred to, from neighboring Bangladesh. They find themselves indefinitely incarcerated in the jail, which has been notified as a detention center for irregular migrants. The jailor, a fine

man with a pleasant demeanor walks into the space and breaks out into the Indian national anthem and commands them to sing along with him. The women struggle and in broken language surrender into submission, terrified and humiliated (Dutta, 2018).

Such instances of (inhumane) treatment of detainees by staff are not often reported. Detainees lack any protection of abuse by staff, other inmates or by other detainees. The staff within the correctional environment have absolute authority to punish non-citizens which may include suspension of basic rights. There has been increasing reportage of protest within the detention centers which has brought attention of the media and the Assamese community on the issues of immigrant detention (Pisharoty, 2019). Many of such concerns have been subject to some marginal degree of public criticism: the potential for unlimited incarceration, the detention of children, the harmful effects of detention, deprivation of life and liberty, separation of families, lack of adequate legal protection etc. Such concerns have been brought to the notice of the higher courts, including the Supreme Court of India, which are pending in these forums (Supreme Court, 2019b; Gauhati High Court, 2019).

Detention as more than punishment

In Assam, non-citizens have faced extreme dehumanization, particularly in populist and political rhetoric equating them with "criminals", "terrorists", "garbage" (Ahmed, 2006-07; Ramachandran, 1999, Chaudhuri, 1992, Joshi, 1992, Shukla, 1995). Infact, dehumanization of specific groups of people as we observe in Assam is usually coupled with policies and edicts that strip them of their rights and exclude them from wider human community making them "superfluous" creating conditions where "radical evil" can unfold (Arendt, 1951/1968). Arguably, detention of non-citizens in the correctional homes is one such policy. Such categorization of non-citizens as objects of distrust legitimizes the State's authority to isolate and create a legal framework for social exclusion of non-citizens (Zedner, 2016). "Criminalizing migrants invokes a rationale that therefore legitimizes detention: migrants might be

criminals, necessitating detention; migrants must be criminals, because they are detained" (Mountz et al, 2013, 527; Zedner, 2016). Under such circumstances, the ambiguity that confronts the correctional administration is palpable. As narrated by one such officer and discussed above, in absence of any guidelines migrant detainees are treated as non-convicted non laboring category of prisoners (Studio Nilima, 2018). They are detained and held in the cells of the housing unit that are overseen by officers in uniform. Movement within the correctional home is strictly regulated according to a daily timetable. Under such circumstances, they are viewed much like the convicts and the undertrials in the correctional home. Such observations provoke the question if immigration detention is punishment.

In liberal democracies, punishment is meant to be restrained by due process (Bosworth, 2019). At the least, it is expected to be predictable and transparent in order to be defensible and legitimate. (Zedner, 2016). Further, those who are punished have rights. However, reports of human rights organizations have found the existing immigration detention system in Assam to be lacking on all these counts (Studio Nilima, 2018, National Human Rights Commission Report, 2018). For instance, there are reports that document the different procedures that are being followed in an ad hoc manner by the detaining authorities in handing over custody of the detaining migrants in absence of a valid specified procedure (Studio Nilima, 2018). At least three distinct procedures have been identified where detaining migrants are either detained by the Deputy Commissioner of the concerned district or by the Superintendent of Police (Border) or where the detaining authority, i.e. the Foreigner's Tribunal directs the detainee to custody (Studio Nilima, 2018). Therefore, the existing immigration system does not encounter the same levels of due process that exist for the criminal justice system. That makes the system not just unequal but also unpredictable (Zedner, 2016, Bosworth, 2019). Infact, the reports further suggest that procedural lapses are abound in decisions pertaining to immigration cases, where such cases often proceed without giving an opportunity for a face to face hearing and increasingly, those who are subjected to a detention order are unable to contest it due to acute financial hardship (Studio Nilima, 2018; National Human Right Commission,

2018). As Eagly (2013) explains, such procedural differences raise normative legal distinctions and also generates differential and more burdensome outcome, drawing fundamental principles of equality into question.

Further, as argued by Zedner (2016), detention "hollows out" the rationale of criminal punishment as it places additional burdens on detainees which citizens do not face. In absence of a substantive law that is applicable to the detainees, the correctional home administration has been compelled to apply the provisions of the Assam Jail Manual prescribed for the under-trial prisoners and convicts (Studio Nilima, 2018; National Human Right Commission, 2018). However, the provisions that grants the convicts for home visits, leave and parole are not extended to the detainees making the detention system, in its own terms, inconsistent (Studio Nilima, 2018; National Human Right Commission, 2018). Compounding matters further, the detainees are also excluded from a range of activities that are geared towards rehabilitating other prison inmates (Studio Nilima, 2018).

Scholars reason that in times of crisis, decision makers have to act quickly, often with little information about the current event and without informed projections of the consequences of their decisions (Nethery, 2009). They state that, to overcome these limitations, decision makers rely on "shortcuts" (Nethery, 2009). It is arguable that in the early 2005, notifying correctional homes as detention centers perhaps became a shortcut for the Government of Assam. However, such imprisonment entails the most severe punishment and its effects remain undeniable. It exposes the expansion of a "shadow carceral state" and "shadow penal state" through civil, administrative and hybrid legal forms and channels to contain its non-citizens. (Beckett and Murakawa, 2012, p. 222-223; Zedner, 2016). States have been quick to claim that the detention regime is for prevention or administrative convenience and therefore not by definition designed to punish. (Zedner, 2016). However, alluding to this purpose does not by itself mitigate a cynical subversion of the criminal process and its human rights protections. Quite obviously, immigrant detention in the State of Assam is not part of its criminal justice system nor is the period of

confinement in the prisons a sanction handed down in response to a criminal act (Bosworth, 2019). By its very nature, it is an administrative custody that is pursuant to removal or deportation (The Foreigner's Act, 1946, the Foreigners (Tribunal) Order, 1964, the Citizenship Act, 1955, Passport Act, 1920, the Immigrant (Expulsion from Assam) Act, 1950 and the Passport Act, 1967).

Evidently, detention, as it exists in Assam today, renders a whole section of community unwelcome and case them as expendables (Arendt, 1951/1968). It also alters the justification of the expansion of penal power where identity rather than culpability triggers state intervention (Bosworth, 2019). In a system that is designed towards exclusion rather than re-integration, serious questions need to be asked about the limits of state power and the nature of punishment and justice (Aas, 2014; Baker, 2013). The existing immigration system maps symbolically and in more practical terms who belong and those who do not (Anderson, 2013). In doing so, it exposes an approach where those who are excluded face fundamental inequalities within the law, its rationale, justification and effect.

Further, immigrant detention in Assam as institutionalized in the correctional spaces, in its most basic outline involves a coercive deprivation of a person's most elementary liberties. It appears as "the inevitable fact of life" that tends to be "naturalized", "rendered as unquestionable" and one that stems from the self-evident "violation of the law" (Genova, 2019, p.95). In applying the codes and statutes that govern its incarcerated population, it is alarming that something that the state is routinely and in the most mundane manner subjecting its non-citizens to the experiences that are otherwise felt by its incarcerated populations. Ironically, such conditions of detention transmute migrants to a defacto status of non-personhood. Infact, being detained introduces both legal ambiguities and existential uncertainties that far exceed the ordinary criminal citizens serving their time for conventional convictions. Detention then becomes more than punishment situated uncomfortably within the nexus of diverse forms of captivity and confinement. (Foucault, 1972-73/2015, 197/1979; Walters 2004, p. 248, Genova, p. 98). Serious questions therefore need

to be asked about the limits of the state's penal authority and its justification for being applied to the immigrant detention practice in Assam.

Detention as a state of exception

While locating detention within this continuum of coercive confinement, immigrant detention in Assam must also be distinguished from other forms of incarceration. In denying the non-citizens with privileges of parole, remission etc. the state selectively, at its own discretion, treats the non-citizens as "non prisoners". Infact, here Arendt's crucial insights that common criminal is entitled to more legal rights and recognition than those "interned" in the Nazi camps is instructive (Arendt, 1951/1968, p. 286). As observed by Genova (2019), "to be a criminal... is to be inscribed within the law... in contrast to be a detainee...to potentially be figured as outside the purview of the law." (p.98). In detaining a non-citizen, the state derives its capacity to reduce certain individuals to what Agamben calls a "zone of indistinction" and create an ambiguity where it is possible to suspend the separation of "rights" and legitimize the exercise of state's power through brute force. In such an order that Agamben's defines as "state of exception" or a "state of emergency" requires the state to disregard or suspend the law in order to preserve the larger political order that relies on the rule of law.

In the instant of immigrant detention in Assam, such state of exception is routinely enacted without any direct proclamation of martial law where punitive punishment of detention and suspension of rights are being activated on the non-citizens in order to maintain the interest of 'order and security" (Studio Nilima, 2018; National Human Rights Commission, 2018). For the ordinary correctional home guards acting as detention authorities, the law, in its abstraction and generality, remains largely silent about how it must be applied and enforced through greater or lesser acts of violence (Studio Nilima, 2018; National Human Rights Commission, 2018). As observed by Genova (2019), "such mundane acts of enforcement are largely authorized by the law, and yet operate outside of strict purview of the law and depend

on the discretion and predilections of those who embody the state's sovereign power in the 'zone of indistinction' that is everyday life" (p. 97).

The reports that capture testimonies of non-citizens reveal the deep existential predicament that they experience. Their detention often provides instructive examples of what Agamben calls "dislocating localization" where people are dislocated from their lives but are confined to a particular place. For instance, there are testimonies abound where non-citizens have been separated from their children. One of the detainees who is now confined in the Goalpara detention center informed us about how he hadn't seen his daughters since he was detained and had no knowledge of their whereabouts (Studio Nilima, 2018; National Human Rights Commission, 2018). As evident, such captivity causes a violent interruption of their sense of time and normal rhythms of life. Hence, detention as it manifests in Assam capitalizes on the unstructured temporalities of indefinite waiting. As Pierre Bourdieu notes,

Absolute power is the power to make oneself unpredictable and deny other people any reasonable anticipation, to place them in total uncertainty... The all-powerful is he who does not wait but who makes others wait.... Waiting implies submission... It follows that the art of 'taking one's time' ... of making people wait ... is an integral part of the exercise of power... (Bourdieu 1997/2000: 228)

Therefore, such conditions of detention subject non-citizens to a banal administrative power that conceals brute violence of the law. The seemingly mundane and merely bureaucratic condition enacts a state of exception on a routine everyday basis by enforcing a condition of indefinite waiting. It is a manifestation of brute authoritarianism in making non-citizens live with protracted uncertainty and inflicting torturous life conditions that deprive them of their right to liberty and life existing in a perpetual state of exception outside the purview of the law.

Conclusion

As this paper has demonstrated, the continuum between criminal law and immigrant practices in the Assam is undeniable. The intensity of isolation from family, locked quarters, closed supervised and restricted movements of being confined in the correctional homes, exposed to its environment reveal the myth that immigrant detention is civil. Infact, the myth is backed by the full power of the state. As discussed, the law creates powers to detain immigrants and such powers are being treated more indulgently than other forms of incarceration. Under the rule of law, there is no general power to indefinitely lock non-citizens. Coercive detention/ incarceration is the exception and not the norm. However, trapped within the pompous gestures of 'national' sovereignty and a state's prerogative to enforce its own (bordered) legal order, the detention of non- citizens - a punishment activated merely because of a person's status as an 'irregular' non-citizen rather than his/her culpability - underscores the more elementary fact that some people's lives are plainly judged to be unworthy of justice.

As Assam grapples with one of the biggest humanitarian crisis in its history, arising out of excluding 1.9 million people from the NRC, the time may be ripe to revisit its immigration practices. Any reformulation of the immigration practices however needs to acknowledge that the existing immigration detention system in Assam has developed within the broader historical trends of anti-immigrant sentiment and the increasing conservatism turn towards nationalism fueled by the conservative turn in politics with the national mandate to the right-wing led Government. (Shull, 2014). Further, the laws need clear articulation of whether they are enveloped by the criminal procedure doctrines that characterize imposition of detention in the penal context, or if they are truly civil. In any case, there is an urgent need to move away from the present "state of exception" into a future where detention is the exception and liberty is the norm. We require something more than a "lock them out" or "lock them up" approach to the non-citizens. The present path is too damaging to our constitutional, social and moral systems and to our humanity.

Endnotes :

ⁱ The relevant statutes that govern the identification, detention and deportation of migrants in Assam are the Foreigner's Act, 1946, the Foreigners (Tribunal) Order, 1964, the Citizenship Act, 1955, Passport Act, 1920, the Immigrant (Expulsion from Assam) Act, 1950 and the Passport Act, 1967. Drawing from the provisions of these statutes and to accommodate the perceived burgeoning number of declared foreigners, the Government of Assam adopted a temporary resolution to restrict the movement of the persons who have been detected as foreigners by the Foreigner's Tribunals and detained in detention centers set up by the Government until they are deported.

ⁱⁱ The central jails of Dibrugarh, Jorhat and Tezpur are in the upper districts of the Brahmaputra valley of Assam. The central jail of Silchar is in Barak valley and the district jails of Goalpara and Kokrajhar are in the lower part of the Brahmaputra valley. At present, they collectively house about 1100 such declared foreign nationals (Fortnightly Prison Report, 2019).

ⁱⁱⁱ The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment which was adopted by General Assembly resolution 43/173 of 9 December, 1988 states in Principle 8:

Persons in detention shall be subject to treatment appropriate to their un-convicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

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Discrimination and Inertia: Exploring the Right to Health in Assam's Correctional Homes

Anubhab Atreya

Introduction

Assam's correctional homes have an unique environment that needs to be experienced first-hand, to be understood fully. For me, as a first time visitor, it challenged my preconceived notion of a "prison" which was principally based on exposure to scholarship and reportage relating to prisons. Surprisingly, it was the architecture of the correctional home complex itself which had the most telling effect upon me. For example, most correctional homes have large central courtyards which are used for horticulture, limited cultivation etc and several continue to retain barracks built in the traditional Assam type style architecture.ⁱ This results in a situation where the environment and operation of the correctional home is often based on a strong community based style of functioning.ⁱⁱ While it is not to contend that issues on the human rights front do not exist, the ecosystem of the average correctional home is not based on an authoritarian security regime.

Primarily three kinds of correctional homes exist in the State: Central Jails, District Jails and Special Jail/Sub-Jail. The Central Jails are large correctional homes in terms of registered capacity and are placed in areas

which are prominent cities or towns. District Jails, on the other hand, are located in most district headquarters and have lesser registered capacities than Central Jails.ⁱⁱⁱ Currently only one Special Jail exists in the State in Nagaon which was instituted to serve as a high security prison while the Sub-Jail in Haflong is a correctional home with limited capacity and infrastructure and is not a full-fledged correctional home. There are issues with the general infrastructure, hygiene, sanitation facilities and even the medical infrastructure of most of these correctional homes. This is compounded by the fact that there exists a perennial understaffing problem in the correctional services which also extends to medical and healthcare personnel.

With the introduction of detention centres within some correctional homes by the State Government, the environment within those correctional homes have undergone a transformation as it has generated a resource crunch within the home as between the inmates themselves and also foisted a heavy burden upon the officers and staff manning these correctional homes.^{iv} To accommodate persons who are declared foreign nationals (“DFNs”) by the Foreigners Tribunals under the Foreigners (Tribunals) Order, 1964; the Government of Assam in 2009 and 2015 notified the correctional homes at Tezpur, Jorhat, Dibrugarh, Silchar, Goalpara and Kokrajhar as “detention centres”. This has led to a situation where declared foreign nationals who have not been convicted of any offence are detained in the correctional home itself with undertrial prisoners and convicts. As for the correctional homes generally, the infrastructure has not received adequate attention over the years which has led to rather deplorable standards of living for both inmates and staff.

This has a huge implication on access to healthcare for inmates and has an immediate impact on the quality of their life, both individually and collectively. In such a situation, where the anomie of the system is not overtly manifest; it became quite puzzling for stakeholders like us who were not ‘insiders’ to understand whether any dysfunctionality existed in the healthcare delivery mechanisms within the correctional homes and whether it impacted its stakeholders. Among the many systemic challenges which are faced by

these correctional homes today, healthcare and its many constituent components, leaps out as one of the more neglected issues.

In that light, this article seeks to analyse and understand the policy framework with respect to the health ecosystem in the correctional homes of Assam vis-à-vis the right to health. With a focus on the health infrastructure and facilities available to the average inmate in a correctional home, this article explores whether there is a mismatch between the regulatory/policy framework with regard to access to health parameters and the actual availability of such facilities in the correctional home.

Literature Review

The impact of health or public health measures in correctional homes has been subject to extensive research scrutiny due to the implications they have on public finance and mass incarceration, especially in the United States of America. The literature can be divided into certain recurring themes such as research on specific diseases such as HIV incidence and detection mechanisms among inmates at various stages of incarceration or research into incarceration and its relationship with hepatitis (Alemagno, 2009; Harawa, 2009; Buck, 2006; Costumbrado, 2007). There are other macro themes focussing on aspects related to correctional homes such as criminology and public health, health of inmates, health and race, impacts on gender and age which have been studied in much depth (Nunn, 2009; Fazel, 2011; Sykes 2009; Eliason, 2009). The third strand of themes is the research into areas arising out of the specific impacts of incarceration such as maternal health in incarceration, mental health and incarceration, premature mortality, and drug use in correctional facilities (Ferszt, 2011; Clarke, 2006; Adams, 2008; Krinsky, 2009; Rosen, 2008; Spaulding, 2011).

However, the problem which arises is that by their nature, most of the work on correctional homes is context specific. There is a marked lack of research into health care in correctional homes with respect to India, except for a few studies such as the one carried out by Murali Karnam in Andhra

Pradesh which found a state of neglect, characterized by foregoing of medical screening at admission or only resorting to symptomatic treatment, across the correctional homes in the State (Karnam, 2009). There has also been some research focused on carceral experiences of female inmates such as Chatterjee's work which found that female inmates perceived food as negatively affecting their health during incarceration and even used it as a medium to create 'special identities' for themselves as a contestation to the power of the prison which controlled their food (Chatterjee, 2017).

Research using "structural violence" analysis has been used extensively in recent years in varying fields, but mostly in research dealing with marginalized and, at times, disenfranchised groups of persons. Structural violence was first introduced to analyse conflict generating social systems by the Norwegian peace and conflict theorist-practitioner Johann Galtung (1969). Galtung defined structural violence as "a force or influence exerted in accordance with patterned social arrangements that prevent people from realising their human potential and satisfying basic developmental needs." (Rubenstein, 2017, p.54).

For example, claims have been made that the disproportionate distribution of infectious diseases like Ebola are a form of structural violence which requires international intervention (Sirleaf, 2018). More recently, the 'failing' Prison Re-entry Industry (PRI) in the United States of America has been termed as an intentional form of structural violence "perpetuated by the state to ensure continued oppression of marginalised groups." (Ortiz, 2019). In public health, structural violence has been identified as an important cause of premature death and disability (Farmer, 2006). It has also been understood as one of the primary indicators in cases of health disparity or inequity within health systems (Page-Reeves, 2013; Montesdeoca, 2013; Basnyat 2017)

Apart from incarcerated populations in correctional homes, the structural violence framework has also been used to analyse systemic impacts on other marginalised communities. For example, structural violence has also been applied in the context of discriminatory restrictive income

management laws upon indigenous people in Australia (Bielefeld, 2014). It has been suggested that in the present world order, reinforced as it is by the Universal Declaration of Human Rights (UDHR) and the Responsibility to Protect (R2P) doctrine, protection needs to be extended to “large populations” susceptible to structural violence (Kingston, 2012). In the specific context of Kingston’s work, this large population consists of internally displaced persons and stateless persons.

Thus, there is a clear gap in the literature with respect to access to health in correctional homes, especially in the State of Assam. While some of the international insights on methodology are relevant, it still needs to be assessed before being adopted in its entirety. Reflecting upon this, this article seeks to explore its primary question which is: Whether the healthcare facilities and services in correctional homes of Assam reflect the regulatory and policy framework governing them?

Methods & Limitations

Research Design

For the purposes of this paper, the wider understanding of public policy as “an officially expressed intention backed by a sanction, which can be a reward or a punishment” is used as a frame of reference (Lowi and Ginsburg, 1996, p. 607). For this definition, a public policy can take the form of ‘a law, a rule, a statute, an edict, a regulation or an order’ as a course of action (or inaction). As a result, this article takes into consideration the legislative and legal framework (including orders of the Supreme Court of India) apart from executive instructions/policy as constituents of ‘policy’.

The research paradigm adopted for the paper is qualitative research as the data though being of both qualitative and quantitative nature, has been used for the limited purposes of identifying qualitative inputs. Using a doctrinal framework, the article makes use of data collected from applications filed under the Right to Information Act, 2005 (which is a Central Act

passed by the Indian Parliament) and data available with Studio Nilima: Collaborative Network for Research and Capacity Building.

The doctrinal method is applicable primarily because the fundamental starting point is the “black letter of the law” or the “doctrinal core of the law” through an examination of the contours of the right to health and regulatory models like the prison manuals (Creswell, 2014, p. 381). In the form of this ‘reform-oriented’ research, there will be interdisciplinary inputs from fields such as conflict resolution, public health, and criminal justice. As has been argued elsewhere, the discipline paradigm of law is becoming increasingly interdisciplinary, which is quite relevant in the area of prison studies (Hutchinson, 2015). While the method itself may be doctrinal, there has been infusion of inputs and reliance on frameworks which are non-doctrinal in nature.

The underlying assumption is that an analysis of the current standards of medical facilities and services available in the correctional homes would reveal whether or not the current state of affairs in the homes reflect the mandate of the regulatory framework. It is assumed that in case a lack of consonance is revealed, it would necessitate a requirement for revisiting the current framework and mandates.

The sample size that has been included in the article includes all the 31 correctional homes across the state which have demonstrably different challenges with respect to infrastructure and human resources.^v This selection has been done with a view to yield diverse responses from stakeholders in different locations within the same system. The question has been restricted to identifying the implementation of the “right to health facilities, goods and services” as envisaged in Article 12.2(d) of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) and within the limited parameter of health-related provisions included in the Model Prison Manual 2016. However, it is worth noting here that the right under Article 12.2(d) is broader than the health-related provisions included in the Model Prison Manual 2016 and this fact limits the scope of the data.^{vi} The

UN framework for the analysis of the right to health makes use of a human rights approach to public health issues. Similarly, in this article, some traditional health indicators such as availability of health facilities in prison hospitals have been used to draw inferences on status of human rights concerns such as inequity and discrimination (Gruskin, 2009).

Apart from the pre-eminent implication on human rights, the question which is explored through this article has important implications on health policy. It is acknowledged that healthcare access and quality are two of the most crucial issues in health policy today (Ruger, 2007). In 2007, Ruger put forth a framework which argued that justice with respect to health cannot be viewed in the limited 'equality' scale, rather it extended far beyond a minimum equitable distribution of resources. In Ruger's (2007) view, "justice must encompass health agency, health norms governing behaviours and choices, and the impact of healthcare resources on individuals' ability to achieve health functionings" (p.79). These standards, however, have not been utilised in this article, as it is quite clear that access remains the touchstone before more advanced variables like health agency and health norms can be evaluated.

Ethics

All necessary ethical considerations have been followed during the course of the research. There are no standards of professional associations for research which are applicable in this field. Most of the data is gathered through applications under Section 6 of the Right to Information Act, 2005 (hereinafter referred to as "RTI Act") and the relevant replies have been cited and annexed. The authenticity of secondary research which has been cited has been verified only by reference.

As regards the selection of sample size, entries of details from all the 31 correctional homes in the State have been included. In certain cases, more illustrative cases have been used where available on Studio Nilima's files but with a conscious effort at not inadvertently suppressing, falsifying or inventing

findings to meet the author's needs. The research will potentially benefit the subject of the study which includes various stakeholders including the inmates and staff. The author has no conflict of interest with the publication of the research and the ownership of the data remains vested with Studio Nilima: Collaborative Network for Research and Capacity Building.

Achieving Objectivity and Validity

The data which has been collected through applications filed under S.6 of the Right to Information Act, 2005 were based on questions and themes which had been finalised keeping in mind the policy and implementation gaps noted in the findings of *Parked in Lot: Consolidated Report on the Correctional Homes, Assam, 2018* published by Studio Nilima: Collaborative Network for Research and Capacity Building.

The research involves the qualitative method and makes use of a two-fold research design with a document review process and data assimilation process. The research is limited to a substantive document review which primarily relies on the methods of doctrinal analysis and draws theoretical inputs from multiple disciplines.

Document Review Method

The documents which have been reviewed are the replies to applications filed under the RTI, which were addressed to all the correctional homes in the State of Assam. The applications were sent in the prescribed format by post as the online RTI process is not available in Assam as yet. Every application also mandates a fee of Rs. 10/- in the form of an Indian Postal Order of that same value which were attached to all the applications. The replies have been sent by the State Public Information Officer as mandated by the 2005 Act, which is generally the Superintendent in cases of the correctional homes in Assam. In certain cases, scanned copies of the replies were also sent to the Studio Nilima email address by certain correctional homes to ensure faster delivery.

However, this is not standard practice and was presumably due to the working relationship Studio Nilima has with several correctional homes across the State.

In cases where replies have not been received, as in the case of the correctional home at Tezpur, the appeal process under the RTI has been resorted to in the prescribed format. However, the appeal process does not form part of the dataset.

Data Assimilation Method:

The applications themselves had separate questions addressed to correctional homes which were categorised as Set 1: Women and Child Health (with 4 questions); Set 2: Medical Facilities (with 5 questions) and Set 3: Medical Staff (with 4 questions). The categories were formulated on the basis of the common theme of the questions in the application and was used only for organising them. In all, the data in this report consists of replies to a total of 8 questions from each of these 3 categorised sets.^{vii} The questions were generated from the initial literature review and were framed with a mind so as to elicit both quantitative and qualitative replies (as in Set 2, Q.1) which were fact-based and objective, as opposed to judgement-based or subjective.

The replies received through applications were then entered into standard forms in the same phraseology which had been used by the replying authorities so as to minimise transcription errors.^{viii} The replies were then entered into the tables for each indicator based on the pre-formulated set of categories. The categories themselves were not evolved prior to analysing the data set so as to avoid bias. Rather the reading of the data generated a set of common factors which were recurring in the entries in the data set which were then used to formulate the categories in the table for each indicator.

While there is usage of public health records, no personal medical records have been used or referred to at any point; only omnibus details from databases of correctional homes sourced through applications under RTI have been

referred. The data has been checked for authenticity and the actual records with correspondence details are available on file with the author.

The data inferred from the documents have been assimilated through the means of theme analysis to arrive at a better understanding of the status of access to health parameters in the correctional homes. After operationalising the data collected through the document review process, the final analytic process relies on regulatory and theoretical frameworks. The secondary data which have been relied on occasionally for observations and inferences draw from the work published by Studio Nilima. They reveal that correctional homes in Assam face severe challenges both on the human resources and medical facilities front.

Discussion

The health infrastructure available at any of the 31 correctional homes in Assam reads reasonably well on paper. There are statutory mandates for appointments of medical officers, psychiatrists, nursing staff and pharmacists in correctional homes along with dedicated medical infrastructure under the mandate of the Model Prison Manual 2016. On the ground however, most correctional homes have no access to in-house medical officers and no correctional home has access to in-house specialists like psychiatrists. This state of affairs has led to a situation where, for example, a general group of drugs mandated for mental illnesses are prescribed, without any attention to the specific mental illness suffered by the inmate (Parked in Lot, p. 52). However, the healthcare delivery mechanism in Assam's correctional homes is in no way non-functional. In fact, in Central Jails located in urban areas, the availability of healthcare is substantial, often with access to tertiary care centres like the Gauhati Medical College & Hospital and Assam Medical College and Hospital.

As has been mentioned before, the questions were framed with a view to evaluate elements of the "right to health facilities, goods and services" as mentioned in Article 12.2(d) of the ICESCR through the limited parameter

of health-related provisions included in the Model Prison Manual 2016. The questions were drawn from Chapter VII (Medical Care) of the 2016 Manual which provides the basic healthcare service framework in the correctional home. When the data was analysed, two primary themes leaped out: human resource challenges and medical facilities. These two themes have been used for the analysis of the data which follows:

Human resource challenges

For one, the data revealed that appointed gynaecologists or paediatricians are not available in any of the correctional homes. Only 3 (all of them Central Jails) of the 27 correctional homes which replied stated that they had access to tertiary medical care centres in the form of government medical colleges with respect to gynaecological care, while 3 correctional homes revealed that they had access to secondary medical care centres in the form of District Civil Hospitals.^{ix} This essentially left the mechanism for access to gynaecological care and advice in 21 correctional homes in a state of ambiguity.

Table 1.1: Access to Specialist Care in Gynaecology

No. of replies received	27
No. of correctional homes with appointed gynaecologists	Nil, while one correctional home did not have provision for women inmates (Mahendra Nagar Open Air Jail, Jorhat)
Reported access to tertiary medical care centres Access in the form of referral and in the form of visiting specialists who are deputed for that purpose	Dibrugarh, Silchar, Jorhat
Reported access to higher referral authority Access in the form of referral and in the form of visiting specialists who are deputed for that purpose	Abhayapuri, Biswanath Chariali, Karimganj

Source: Right to Information Act Applications, Studio Nilima files, 2019

6 correctional homes stated that they had access to tertiary medical care centres in the form of government medical colleges with respect to paediatric care while 6 correctional homes revealed that they access to secondary medical care centres in the form of District Civil Hospitals for paediatric cases. This meant 15 correctional homes did not state the level of access to paediatric care as they did not state what alternative mechanism existed for availing specialised paediatric care for the inmates. On a question as to visits by specialist doctors in general in the correctional homes; 7 correctional homes reported that no specialist doctors conduct visits while 12 correctional homes reported less than five visits per month.^x

Table 1.2: Access to Specialist Care in Paediatrics

No. of replies received	27
No. of correctional homes with appointed paediatricians	Nil, while one correctional home did not have provision for women inmates (Mahendra Nagar Open Air Jail, Jorhat)
Access to tertiary medical care centres Access in the form of referral and even in the form of visiting specialists who are deputed for that purpose	6 (Dibrugarh, Guwahati, Jorhat, Silchar, Tinsukia, Barpeta)
Access to higher referral services Access in the form of referral to nearest Civil Hospital and even in the form of visiting specialists who are deputed for that purpose	6 (Abhayapuri, Biswanath Chariali, Dhubri, Karimganj); 1 paediatrician on weekly basis, Nagaon)

Source: Right to Information Act Applications, Studio Nilima files, 2019

With 750 women inmates and 84 children of inmates (and 10164 male inmates), it is quite clear that there are alarming gaps in access to specialised medical attention let alone preventive care. While contextualising the general state of affairs with respect to Assam’s healthcare scenario; a lack of direct access to specialised medical attention may still be excusable.^{xi} What is alarming, however, is that only 13 correctional homes in the state have Medical

Officers who visit the correctional home on a daily basis (see Q.3 Set 3); with several of them being on deputation from the state medical services (deputed by the Joint Director, Health Services).^{xii} Two correctional homes have stated that medical officers only visit on a weekly basis while five correctional homes did not specify the number of visits of medical officers. The Medical Officer even under the older Assam Jail Manual, which continues to hold the field, is envisaged as an essential part of the prison environment who has a larger public health monitoring role within the jail apart from her regular duties as a doctor.^{xiii} In fact, the Medical Officer also has the responsibility of attending to jail officers and their families and ensuring their fitness for duty under Rule 57.

Table 1.3: No. of Visits of Medical Officers

No. of replies	22
Not specified	5 (Guwahati, Goalpara, Hailakandi, Hamren, Karimganj)
Visits once/twice a week	2 (Majuli, Tinsukia: Medical & Health Officer 1 on deputation from Joint Director, Health Services)
Visits daily	13 (Diphu: Monday to Saturday; Golaghat: 4 days a week on deputation from Joint Director, Health Services; Morigaon: visits twice a day)

Source: Right to Information Act Applications, Studio Nilima files, 2019

There is tremendous pressure on the availability of nursing staff and pharmacists too, who in the absence of doctors and other medical staff, form the backbone of the healthcare delivery system in the correctional home. Twelve correctional homes have the availability of only one pharmacist while 3 correctional homes reported appointment of no nurses or compounders. 2 Central Jails (Guwahati and Silchar) are the only ones which reported availability of laboratory technicians while 2 District Jails (Goalpara and Golaghat) reported the availability of both pharmacist and nurse.^{xiv}

Table 1.4: Availability of Nursing Staff/ Pharmacists

Number of replies	22
Number reporting one nurse/+ one pharmacist/+one compounder	5 (Guwahati: one lab technician instead of compounder; Silchar: one laboratory technician but no compounder; Goalpara: pharmacist and nurse; Golaghat: pharmacist and nurse)
Only one pharmacist	12(Diphu, Hailakandi,Karimganj, Kokrajhar, Majuli, Mangaldai, Morigaon, Tinsukia
No such appointments	3(Hamren, Sonari, Haflong)

Source: Right to Information Act Applications, Studio Nilima files, 2019

Replies to Q.3 Set 1 on the availability of separate medical wards reveal that only 4 correctional homes in the State have separate medical wards for women inspite of it being a mandate under the new Model Prison Manual. The Model Prison Manual 2016 under Chapter IV provides for four categories of medical personnel: Medical Officers, Psychiatrist, Nursing Staff and Pharmacist under Rule 4.03. When considered together, it was quite clear that none of the correctional homes had staff allocation at the rate as has been envisaged by the Model Prison Manual 2016.

Medical facilities challenges

Set 2 in the question set had only one question which requested an enumeration of the medical facilities available in the respective correctional homes. The replies received were then assimilated by using the mandates for medical facilities provided in the Model Prison Manual, 2016. One of the primary mandates of the updated Model Prison Manual, 2016 is the decision to introduce Prison Hospital of two categories (Type A and Type B) in prisons.^{xv} A fundamental requirement therefore would be the capacity of such establishments which is reflected in the number of beds available. The Model Prison Manual, 2016 made a prescription of 5% of the registered capacity of the correctional home. However, the data reveals that only 3 correctional homes in the State have beds in that ratio.

Apart from the number of beds, the Model Prison Manual provides a prescriptive framework as to medical facilities.^{xvi} None of the correctional homes reported facilities which were marginally close to the mandate. In fact, certain correctional homes provided details of the facilities available. 1 Central Jail (Silchar) reported that “only first aid facilities” were available in the jail hospital. 2 District Jails (at Abhayapuri and Biswanath Chariali) recorded their replies as “no medical facilities and no doctor in jail hospital”. On the other hand, the Central Jail at Guwahati reported X-ray facility, ECG machine and lab facility. The same remained the question with availability of ambulances which were also not provided.

Analysis

To explore the research question, the documents which have been reviewed are those which contain the regulatory and policy framework such as the Assam Jail Manual, the 2016 Model Prison Manual and other statutes like the Mental Healthcare Act, 2017 which have a direct impact on the area of study. There are also policy documents which provide normative international standards/guidelines from organisations like the World Health Organisation which have been reviewed from the perspective of doctrinal analysis. The replies to applications filed under the Right to Information Act, 2005 are primary sources which provide a recorded statement of facts apart from a key indicator to organisational stance and have been reviewed during the course of this work.

Legal and regulatory framework

The regulatory framework for correctional homes exists on multiple levels in various forms and emanate from various fora ranging from the state government, the judiciary and international bodies. Of course, all of these are not of a binding nature. It includes a statutory framework which includes the Assam Jail Manual, Assam Prison Act, 2013 and the Model Prison Manual 2016 and also international conventions such as the International Covenant on Civil and Political Rights (“ICCPR”), ICESCR, other international

guidelines and protocols such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (“Nelson Mandela Rules”).

The Assam Jail Manual which is essentially a compendium of several prison related statutes, government notifications and other executive instructions which are applicable to the governance of correctional homes in Assam continues to hold the field, inspite of a Supreme Court directive in *Re-Inhuman Conditions in 1382 Prisons*, W.P(C) 406/2013 to the States to adopt the Model Prison Manual 2016.

In this directive, the Supreme Court had appointed the Ministry of Home Affairs to undertake a review of the Model Prison Manual 2003 prepared by the Bureau of Police Research and Development, which on the date of the hearing had not been updated for 12 years. During a subsequent hearing in January, it was submitted before the Supreme Court that considerable progress had been made with respect to the Model Prison Manual which had been finalized and circulated to all the States and Union Territories.^{xvii} After detailed deliberations on the Model Prison Manual during several hearings, the Supreme Court in a comprehensive judgement passed on 05.02.2016, the Court directed as follows^{xviii}:

7. The Ministry of Home Affairs will conduct an annual review of the implementation of the Model Prison Manual 2016 for which considerable efforts have been made not only by senior officers of the Ministry of Home Affairs but also persons from civil society. The Model Prison Manual 2016 should not be reduced to yet another document that might be reviewed only decades later, if at all. The annual review will also take into consideration the need, if any, of making changes therein.”

...

57. A word about the Model Prison Manual is necessary. It is a detailed document consisting of as many as 32 chapters that deal with a variety of issues including custodial management, medical care, education of prisoners, vocational training and skill development programmes, legal

aid, welfare of prisoners, after care and rehabilitation, Board of Visitors, prison computerization and so on and so forth. It is a composite document that needs to be implemented with due seriousness and dispatch.

With this binding directive, it became necessary for the States to update or substitute their Prison Manuals, many of which had not been updated since the colonial era.

The Right to Health

The constitutional framework of India and several decisions of the Supreme Court guarantees every person the right to the highest attainable standard of physical and mental health in India. However, the contours of the right to the highest attainable standard of physical and mental health and its philosophical basis have received much more detailed attention in international law.

In international law, the ICESCR which provides the most comprehensive statement on the right to health. The ICESCR was ratified by India on 10 April, 1979. Article 12.1 of the Covenant recognises "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" while Article 12.2 enumerates the steps which are to be taken by the State parties to achieve the realisation of the right.^{xix}

The right to health in Article 12 of the ICESCR contains several *freedoms* such as the right to control one's health and body and the right to be free from torture while it also contains *entitlements* such as a right to the enjoyment of a variety of facilities, goods, services and conditions which are necessary for the achieving the highest attainable standard of health.^{xx} In addition, the right to health contains several determinants and elements which are: *availability, accessibility, acceptability* and *quality*. As with all rights, there exists a relational obligation upon the State parties to respect, protect and fulfil the right to health. Most importantly, the obligation to *fulfil* requires States

to adopt” appropriate legislative, administrative, budgetary, judicial, promotional and other measures” which would ensure the facilitation of the right.^{xxi} The UN General Comment on the Right to the Highest Attainable Standard of Health also specifically states the States have the obligation to respect the right to health by ”refraining from denying or limiting equal access for all persons, including prisoners or detainees...”^{xxii}

India ratified the ICESCR on 10th April, 1979 which makes this framework applicable to India. The preamble to the Constitution of the World Health Organisation defines health as a “state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” While the ICESCR framework for right to health may not be so broadly worded, it too brings within its purview underlying determinants such as socio-economic factors. Elements of the constitutional right to health in India and the international principles finds cosmetic reflection in the regulatory framework applicable to the correctional homes of Assam too. This is reflected in the various health related provisions in the Model Prison Manual 2016 and also in the Assam Jail Manual.

Where Assam stands

However, more than 3 years after the Supreme Court directive, the Model Prison Manual and therefore, its enhanced health related standards have not become directly applicable in Assam because it has not been adopted by the State Government as of the time of submission of this article. This fact came on record when the State Government made a statement to that effect before the Gauhati High Court in an affidavit.

In an affidavit in opposition filed on behalf of the Inspector General of Prisons, Assam (one of the respondents) in *Studio Nilima: Collaborative Network for Research and Capacity Building v. State of Assam*, before the Gauhati High Court; it was stated in paragraph 6 as follows^{xxiii}:

That as regards to the statements made in paragraphs 5 to 7 of the Interlocutory Application, the deponent begs to state that the Model Prison Manual, 2016 circulated by the Ministry of Home Affairs has not yet been adopted as such. However, the State Government has recently constituted a Committee for revision of the Assam Jail Manual on the basis of the newly enacted Assam Prisons Act, 2013 and also adopting the provisions of the Model Prison Manual with such modifications as are relevant to the State of Assam.

On the administrative front, the Government of Assam has constituted a Committee of officers from Home and Political and other Departments to look exclusively into the matters relating to the health of the prisoners and health facilities available in the prisons in Assam.^{xxiv}

The import of this is that the Model Prison Manual, which contains provisions with contemporary health standards, becomes reduced to a normative framework to which the inmate in the correctional home cannot claim any right upon. The Model Prison Manual provides specific guidelines on medical facilities, personnel and their monitoring and supervision in respect of most areas in correctional administration. The Assam Jail Manual also provides a framework for healthcare services and facilities but with a much more limited and one-dimensional focus. For example, it vests most of the essential health care functions including delivery of healthcare services and monitoring of hygiene and sanitation upon the Medical Officer without much institutional support or external monitoring.

Nature of administrative inertia

The primary statement of fact however remains that the Model Prison Manual 2016 has not yet been adopted by the Government of Assam as a result of which the Assam Jail Manual and more specifically its constituent Rules for Superintendence and Management of Prisons continue to hold the field. The non-adoption of the Model Prison Manual in spite of clear judicial directions to that effect by the constitutional court of the country has a

direct implication on the rights of the inmate and must be attributed to an inexplicable *administrative inertia* which demonstrates a lack of proactive engagement with the primary stakeholders such as correctional officers, staff and inmates. The underlying factors behind this inertia can only be concluded through focussed research.

Multiple discrimination and structural violence

The principle of non-discrimination and equal treatment is one of the major underlying principles of the right to the highest attainable standards of physical and mental health.^{xv} It is necessary to note that there is no overt discrimination with respect to healthcare facilities and services in Assam's correctional homes, but even inappropriate health resource allocation is tantamount to discrimination within the ICESCR framework.^{xvi} What emerged from the data is that there is discrimination in provision of health facilities, goods and services at three separate levels.

The *first level of discrimination* exists with respect to the general non-incarcerated population. Incarceration under Indian law expressly restricts several rights. For example, the right to personal liberty under Article 21 of the Indian Constitution, the right to freedom of movement under Article 19 is restricted or even the right to vote which is restricted by Section 62(5) of the Representation of Peoples Act, 1951. However, the right to health as recognised by the constitutional framework or the right to the highest attainable standards of physical and mental health is still available to the incarcerated population. With the present data, it is clear that the already marginalised population in correctional homes is placed at a disadvantage as opposed to the general non-incarcerated population who have access to second opinions and alternatives in medical care.

The *second level of discrimination* exists as between correctional homes in the state. As the data demonstrates, large Central Jails located in urban centres have access to tertiary care centres and enhanced healthcare facilities such as X-ray, ECG machine and lab facilities. While even these Central Jails

are under equipped, there is an unexplained policy position as to these facilities as a larger inmate population does not necessarily explain inequitable addition of such amenities. In fact, even all Central Jails do not have access to such facilities as only one Central Jail (at Guwahati) reported X-ray, ECG machine and lab facilities. This speaks of a clear case of inequity in distribution of health resources.

The *third level of discrimination* exists as with respect to marginalised sections within the prison population such as women, children and inmates of advanced age requiring geriatric care. The data obtained reveals that both women and children in correctional homes do not have access to specialist attention in the form of gynaecologists and paediatricians on a regular basis as a matter of policy. In the absence of any appointed specialists (which the Model Prison Manual 2016 prescribes), the only access inside the correctional home is through visits of specialists which also remains infrequent and is not available at several correctional homes. Inmates of advanced age requiring geriatric care are also equally affected by the lack of access to equitable medical facilities and services. These sections of the correctional home population therefore face discrimination on multiple grounds, firstly due to their status as inmates and secondly due to their specific identity as women, children or inmates requiring geriatric care. This is a clear example of *intersectional multiple discrimination* which can only be sufficiently addressed when the lack of homogeneity of the correctional home population is specifically acknowledged in practice.^{xxvii} Even though the Model Prison Manual 2016 recognises that separate mechanisms are needed for women and children by providing separate chapters, this awareness needs to be reflected in the field as a matter of day-to-day policy.

This has led to a situation where an indirect form of violence is committed upon the inmates by both the administrative inertia of the system and the multiple levels of discrimination as regards access to healthcare facilities. The systemic denial of an intrinsic human right perpetrates a form of structural violence which can only be understood through an expanded understanding of the general perception of violence as one involving direct violence (Galtung,

1969). An understanding of this as a form of structural violence would also potentially have an impact on advocacy efforts as it would make the issue more conspicuous among stakeholders, especially policy makers.

Conclusion

Keeping in mind this particular systemic challenge, it is also important to note that certain standards set by the Model Prison Manual 2016 such as hospital beds in the ratio of 5% of registered capacity of the correctional home is unrealistic in Assam's present state of affairs as mandated by Rule 7.03, Chapter VII of the 2016 Manual. While it can be argued that being a normative framework, it must set idealistic standards, it still cannot be unrealistic primarily because it is a 'manual' and not a charter of rights or objectives. Meeting such standards would obviously take a proactive approach from the Government starting with a feasibility assessment as the financial implications of such upgradation might be too onerous. In the meantime, other policy alternatives, such as linking prison healthcare with the primary health care network in the districts may be evaluated.

However, there is need for a long-term and comprehensive evaluation of all the elements of the right to attain the highest standards of physical and mental health in Assam's correctional homes which would cover socio-economic factors and underlying determinants of health such as housing, sanitation, working conditions etc. Only then, an informed policy decision could be taken on ensuring the right to health in the correctional homes.

Endnotes

ⁱThe Assam type house is a style of architecture found commonly in the northeastern states of India. For a more detailed account of the Assam type style of architecture, see Housing Report: Assam-type House; World Housing Encyclopaedia, Retrieved November 6, 2019, from <http://www.world-housing.net/WHEReports/wh100172.pdf>.

ⁱⁱ For specific findings as to the environment and infrastructure in correctional homes in Assam, see *Parked in Lot: A Consolidated Report on the Correctional Homes: Assam 2018 INDIA*.

ⁱⁱⁱ There are 31 correctional homes in Assam according to the official list of the Assam Prison Headquarters, available at <<https://prisons.assam.gov.in>> This covers almost all the 33 districts of the state except some of the newer districts such as South Salmara-Mankachar and Hojai.

^{iv} For a detailed discussion on detention centres in Assam, see Studio Nilima: Collaborative Network for Research and Capacity Building (2018), *Parked in Lot: A Consolidated Report on the Correctional Homes: Assam 2018 INDIA* (Vol.1), p.29.

^vOne of the observations of the Consolidated Report (supra 2) was that the various correctional homes such as district jails etc have varying access to health standards which is influenced by various factors such as access to funds, numbers of inmates etc.

^{vi}The Model Prison Manual, 2016 was recently updated by the Bureau of Police Research and Development in compliance of an order of the Hon'ble Supreme Court in *Re-Inhuman Conditions in 1382 Prisons*, W.P(C) 406/2013

^{vii}The questions in the sets are available as an Appendix to this paper

^{viii}The standard forms used for the data in this paper are attached at Annexure I.

^{ix} Q.1, Q.2 of Set 1

^x Q.1 of Set 3

^{xi}For analyses and mapping of the issues plaguing Assam's healthcare delivery system, see Assam: Health Policy Note, 30095, World Bank, South Asia Region, June 2004 and Indraneel Dutta et al, *Health and Healthcare in Assam: A Status Report*; Centre for Enquiry into Health and Allied Themes (CEHAT) and Omeo Kumar Das Institute of Social Change and Development, 2007. Recent primary studies of Assam's healthcare system are conspicuous by their absence.

^{xii} The Directorate of Health Services is one of the constituent directorates of the Department of Health and Family Welfare, Government of Assam which has Chief Medical and Health Officer (CMHO) and Sub Divisional Medical and Health Officer (SDM&HO) who head their own units at the district level. The overall health services facilities at the district level is headed by the Joint Director of Health Services for that particular district. For a detailed explanation, see Indraneel Dutta et al, *Health and Healthcare in Assam: A Status Report*; Centre for Enquiry into Health and Allied Themes (CEHAT) and Omeo Kumar Das Institute

of Social Change and Development, 2007, p.9. The official organogram of the Department of Health and Family Welfare can be accessed at <https://hfw.assam.gov.in>

^{xiii} Section of the Prisons Act, 1894 mandated the presence of a Medical Officer in every prison. The Government of Assam built on that mandate and outlined the specific responsibilities of the Medical Officer in Chapter IV of the Rules for Superintendence and Management of Jails in the State of Assam. The larger public health monitoring role of the Medical Officer is outlined in Rule 54, 55, 56 and 58.

^{xiv} Q.4 of Set 3

^{xv} Rule 7.03 of the Model Prison Manual provides for two categories of prison hospitals. Hospitals with more than 50 beds and above are classified as Type A hospitals and hospitals with less than 50 beds are classified as Type B hospitals.

^{xvi} Chapter VII, Medical Care, Model Prison Manual 2016

^{xvii} In order dated 29.01.2016 in Re-Inhuman Conditions in 1382 Prisons, W.P (C) No. 406/2013

^{xviii} Orders dated 07.08.2015, 18.09.2015, 29.01.2016 contain suggestions/directions by the Supreme Court and the submissions of the Union of India on several issues concerning the Model Prison Manual including composition of the Committee responsible for updating the Manual.

^{xix} Reference to the human right to health is found in several international instruments starting with Article 25.1 of the Universal Declaration of Human Rights, Article 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination, 1965; Article 11.1(f) and Article 12 of Convention on the Elimination of All Forms of Discrimination against Women, 1979 and Article 24 of the Convention of the Rights of the Child, 1989. The right to health is also provided by several regional human rights instruments.

^{xx} CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12); Document E/C.12/2000/4. The General Comment was adopted at the 22nd Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000.

^{xxi} Paragraph 33, CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)

^{xxii} Paragraph 34, CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)

^{xxiii} In PIL 55/2017, an affidavit was received by Studio Nilima: Collaborative Network for Research and Capacity Building on 20.04.2018 and a copy is on file with the author.

^{xxiv} This Committee was constituted after the Supreme Court's direction in order dated 19.09.2017 in W.P (C) No. 406/2013 Re-Inhuman Conditions in 1382 Prisons in India. The Secretary, Home and Political Department, Government of Assam made a statement to that effect in affidavit in opposition filed in *Studio Nilima: Collaborative Network for Research and Capacity Building v. State of Assam*, PIL 55/2017 before the Government of Assam. (available on file with Studio Nilima: Collaborative Network for Research and Capacity Building)

^{xxv}Article 2.2 and Article 3 of the ICESCR in effect prohibits any discrimination in access to health care and underlying determinants of health on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or *other status*. In the context of Assam's correctional homes, it is the status of the inmates as "prisoners" which has become the basis of systemic discrimination.

^{xxvi}Paragraph 19, CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)

^{xxvii}Multiple discrimination refers to discrimination on the basis of more than one ground or identity. For an analysis of multiple discrimination with respect to anti-discrimination law, see Equality at the Intersections: The Legislative and Judicial Failure to Tackle Multiple Discrimination, Oxford Journal of Legal Studies, Vol. 23, No.1 (2003), pp. 65-86

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Appendix

Set 1:

Q.1 How many gynaecologists are appointed or available for visits in the correctional homes of Assam? Please provide the number of such doctors and frequency of visit (of last 3 years) along with institution/hospital where they are appointed or available.

Q.2: How many paediatricians are appointed or available for visits in the correctional homes of Assam? Please provide the number of such doctors and frequency of visit (of last 3 years) along with institution/hospital where they are appointed or available.

Q.3 Whether any separate medical wards are available for women and children in any correctional home?

Set 2:

Q 1. Please list the medical facilities including ambulances available for inmates within the 31 correctional homes of Assam

Set 3:

Q.1: How many specialist doctors visit the correctional homes in a month?

Q.2: How many times has the civil surgeon visited the correctional homes?

Q.3: How many times does the Medical Officer visit the correctional homes in a week?

Q.4: How many nurses and compounders are presently appointed in the correctional homes?

Rehabilitation and Reintegration - A concept study for Assam

Tathagata Dutta

Introduction and background

The basic concept regarding jail is that it is an institution where the offenders of the law and one who is considered unsafe for the society is sent for a period of time. The major purpose of such correctional homes is not only to detain the offenders but also to provide them with proper rehabilitation and make them ready to be reintegrated into the society.

It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.

(Nelson Mandela)

This has been quoted by the United Nations Office on Drugs and Crimes in the starting of the United Nations Standard Minimum Rules for the Treatment of Prisoners, or which is famously known as the Nelson Mandela Rules (The United Nations Standard Minimum Rules for the Treatment of Prisoners, 2015) The United Nations named it the Nelson Mandela Rules to pay homage to Nelson Mandela who spent 27 years in jail, and they extensively discuss the importance of rehabilitation and reintegration. For example, Rule 4 states that to fulfill the objective of imprisonment, i.e.

protecting society against crime and to reducing the recidivism rate, reintegration is very important. Similarly, Rule 90 states that it is the duty of the society to provide rehabilitation to the inmates.

One of the primary aims of the criminal justice system has been rehabilitation and reintegration. (Penal Reform International, 2018). Rehabilitation is to be understood as to those strategies, measures, and programs, which are provided both inside and outside the prison, and are used in the period of incarceration for preparing the inmate for going back to the society and resettling (Gisler, Pruin, et al, 2018). Reintegration encompasses those concepts, programs and structures in psychological, legal, moral and social dimensions that take place after release from prison and aim at "de-labelling" the former prisoner toward a "normal citizen" (McNeill, Fergus, et al, 2012).

Rehabilitation and reintegration have been considered an integral part of the criminal justice system, but during the mid-1970s, the importance of rehabilitation and reintegration diminished and it was considered to be a waste of resources (McNeill, Fergus, et al, 2012).

This was due to the development of the "nothing works doctrine" by Robert Martinson in 1974 in his article "What Works?" This had huge impact upon the policies relating to prison and less or no importance was given to rehabilitation and reintegration (Michelle S Phelps, 2011). It was because "nothing works" doctrine stated that rehabilitation and reintegration does not result in the decline of the recidivism rate (Martinson, 1974).

However, after a course of time, with further research being done in this field, the perception revolving around rehabilitation and reintegration changed and is now being considered as a very important aspect in the criminal justice system (Ubah, Robinson, 2003 and MacKenzie, 2006). In recent times rehabilitation and reintegration has been widely recognized and has been given importance. For instance, the Supreme Court of India, in the case of Sunil Batra v Delhi Administration, (1980 AIR 1579) stated that the correctional homes should give importance to rehabilitation programs and

stated that the Prison Act should also give importance to rehabilitation.

Within India, there has been a minimal level of research regarding rehabilitation and reintegration and their application to the current prison system. That said, various states have implemented many initiatives and programs to rehabilitate and reintegrate the inmates. However, further research is needed to ascertain the objectives that these initiatives fulfill and analyse the effectiveness of such rehabilitation programs. Measuring and analyzing the effectiveness is an important missing aspect of research into Indian correctional homes (Miceli, 2009). The study goes on to recommend the Rhode Island Department of Corrections tool as an effective way to measure the impact of rehabilitation measures.

According to the (Ministry of Home Affairs Government of India New Delhi, (MHA, New Delhi, 2003), it is the duty of the State to provide rehabilitation to the inmates. If looked into the context of Assam, the researcher could not find any study on the rehabilitation and reintegration initiatives in context to the prisons in Assam.

The researcher intends to study the various rehabilitation and reintegration programs and initiatives that other states have implemented from the perspective of their application in Assam. The researcher also intends to explore the literatures concerning rehabilitation and reintegration and see if there's a need of having a proper framework for rehabilitation and reintegration for the jails in India. What are the various practices all over the world in regards to rehabilitation and reintegration and should jails in India adopt such frameworks for achieving the goals of rehabilitation and reintegration?

Theories of Punishment

Punishment can be defined as - "any pain, penalty, suffering, or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court, for some crime or offence committed by him, or for his omission of a duty enjoined by law" (Black, 1891, p. 1234). There are many theories of

punishment, which can be broadly classified as non-utilitarian and utilitarian. The main difference between these two broad classifications is the focus and objectives that these theories strive to achieve. While non-utilitarian theories of punishment are backward looking, i.e. interested in the past acts and the mental states; utilitarian theory has its focus on the future and future consequences from punishment (Goudappanava, 2013).

The major theory under non-utilitarian is retributive theory, which focuses on punishing the offender for the wrongs. Retributive theory puts its focus on the wrongdoers rather than the victim. (Maki, 2005) The utilitarian theory of punishment can be further classified as preventive, compensatory, deterrent, or reformative. Rehabilitation theory of punishment is one of the most prominent theories in the current prison practices. (Maki, 2005)

The rehabilitation theory of punishment stresses preventing future crime by providing opportunities to the offenders in the jail. These opportunities include training on education, skill building, more family time for the inmates, etc. Rehabilitation theory holds that an individual is not born as a criminal but is one moulded by one's environment (Goudappanava, 2013). This theory holds the prison system and the society responsible for rehabilitating the offender, and focuses on reducing the recidivism rate. (Goudappanava, 2013). With the development of the concept of the welfare state, the focus has shifted from retributive theory to rehabilitation theory. (Bernard, Hass, et al, 2017)

Economic and Social Rehabilitation

Economic rehabilitation refers to providing the offenders with initiatives, trainings, and skill development intended to result in a better economic condition once the offender is released back into society. (Reitz, 2015) Sometimes this type of rehabilitation also implies that prisons would provide the offenders with some economic support for a given period of time, such as during the period of parole.

Many prison systems across the world provide economic rehabilitation, which includes providing employment, or letters of recommendation which would help in securing a source of income for the offender. As has been noted earlier, lack of employment opportunities available to the offenders can result in re-offense, contributing to the recidivism rate. Economic rehabilitation is one of the essential practices which aims at reducing the recidivism rate. (Reitz, 2015)

Social rehabilitation includes initiatives and programs that ease the transition into the society once a prison term has been completed. It has been observed that it is difficult for offenders to be accepted by their families or wider social groups. Many times, due to the non-acceptance from the society or the family or both, the offender reoffends and this leads to the increase in the recidivism rate. Hence, prison systems with social rehabilitative programs may also decrease recidivism rates. (United Nations Office on Drugs and Crimes, 2018).

There was no scholarly article found by the author to state the difference between the social and economic rehabilitation. But through looking into the various rehabilitation practices around the world, it can be determined that the major difference between these two types of rehabilitation is the implementation approach. Economic rehabilitation are designed to assist the inmates to provide for themselves after they have completed their sentences, whereas social rehabilitation focuses on preparing inmates prior to re-entry. The social rehabilitation also focuses on the mental health and the well-being of the inmates and stresses on providing ways to make the families more accessible to the inmates, so that the reintegration into the society is a smooth process. Many countries seek balance by implementing both the social and economic rehabilitation practices into the prison system, which will be discussed next.

Countries Practicing Economic Rehabilitation

Thailand is one of the countries which has started providing economic rehabilitation to its offenders. Many of their rehabilitative programs have been focused on the providing economic rehabilitation to the women offenders. *The Lila Thai Massage Ex - Inmate and Skill Development Centre* is one such initiative. This program provides employment to the women inmates and the women inmates enrolled in this program are reported to earn more than the average income of a Thai citizen. It has been reported that women inmates through this program earn an equivalent of USA \$950 per month, which is double than the average of the average income of a Thai citizen (Sagredo, Sa-ardyen, 2018). The Thai prison system has also started providing training to the inmates regarding how to establish their own small and medium scale enterprise. In 2018, the Thai prison system launched yet another one of its economic rehabilitation programs, *Model Prison Plus (+)*, which aims at equipping the inmates with financial and debt knowledge.

Jamaica has one of the highest youth crime rates and youth unemployment rates (Wong and Ramakrishnan, 2017). The Jamaican youth's involvement in the crime is considered as a result of many factors, which include unemployment, poor educational opportunities, feeling of being excluded from the government initiatives (Caribbean Human Development Report, 2012). The UN Development Program has concluded that youth violence is more than the security concerns. It is a major human development problem. Jamaica too has been providing such economic rehabilitative programs. One of the major chunks on prison population in Jamaica is of youth. *A New Path* is an initiative of the Jamaican government along with the Organization of the American States. (OAS), which makes rehabilitation and reintegration programs accessible to the youths. Under this initiative, the youth inmates are offered training on marketing and technical skills. This program also provides assistance to the youth once he/she is out of the jail by assisting them in accessing educational and employment opportunities. Under this project the young offenders are trained on marketable technical skills, life skills and also provided with individual psychological support to

ensure that the inmates have a successful reintegration back to the society (Penal Reform International, 2018). This project also aims at providing assistance to the inmates even after they are released. The project aims at providing inmates assistance in accessing educational, vocational, internship and employment opportunities. This project has resulted in assisting many of the youth offenders and have succeeded in providing them with proper rehabilitation and reintegration initiatives. (Jamaica Observer, 2018).

While Kenya focuses on community services as a way of rehabilitating its offenders, it also aims at empowering them economically, so that the inmate can support himself and his family. In the *Kenya Project, 2014-16*, economic empowerment opportunities were given to the offenders who had completed their community services. Economic conditions have been a major reason for increase in the crime rates in Kenya and a key challenge to overcome in the rehabilitation of the offender (Penal Reform International, 2018).

The Singaporean prison system has tried to implement the use of technology to fulfil its economic rehabilitation goals. They have given prisoners access to tablets which can be used to access online courses for employment and skill building. (Penal Reform International, 2018).

Indian prisons also have started to providing economic rehabilitation to its inmates. The Andhra Pradesh Prisons have started encouraging the inmates to pursue educational courses through Open Universities and have started providing them with skill building trainings such as plumbing and masonry to make them capable to provide for themselves once they have served their sentence. For a successful reintegration of the inmates into the society the prisons in Andhra Pradesh have set up industrial units in the prison itself to train the inmates. (Prison Statistics India, 2014). The Government of Andhra Pradesh have also partnered with various companies to allow the prisoners to work there and in addition to all these practices the prison system in Andhra Pradesh has also started imparting computer training to the inmates.

Another Indian state which has partnered with private companies to provide the inmates with employment opportunities is the State of Goa. The Goa prison administration has partnered with Himalayan Drug Company for plantation of medical plants to deal with the employment issue faced by inmates (United News of India, 2015).

The State of Gujarat too has started providing industrial training to its inmates. The prisons in Gujarat has started providing with the inmates with various training - cum production schemes for improving their skills in the industry field (Ministry of Home Affairs, 2010)

The jails in the State of Manipur too have initiated economic rehabilitation programs for its inmates. For instance, the jails in Manipur have started collaborating with the Indira Gandhi National Open University (IGNOU) centres to let the inmates enrol in their programs to undertake training courses. The prison system in Manipur has also started encouraging the inmates to appear in various examinations conducted by Board of Secondary Education, Manipur (BSME) and Council of Higher Secondary Education, Manipur (COHSEM) (Prison Statistic India, 2014). Similar process has also been initiated in the correctional homes of Assam.

Countries Practicing Social Rehabilitation

Jamaica under its initiative with the OSA, alongside its economic rehabilitation also has undertaken various social rehabilitation programs. Under its program, '*A New Path*', youths are also provided with psychosocial support services to ensure a smooth reintegration back to the society. (Penal Reform International, 2018).

Costa Rica has initiated some major social rehabilitation initiatives, of which the government has played an important role to fulfil its rehabilitation and reintegration objectives. Having a criminal record results in social discrimination and having a criminal record always is a barrier in achieving

the objectives rehabilitation and reintegration. (United Nations Office on Drugs and Crimes, 2018)

To deal with this the Government of Costa Rica came up with a legislative reform in the year 2017 - Law 9361. The Law 9361 provides an opportunity to the incarcerated to erase his/her criminal record. There is a set criterion which needs to be satisfied at first to fulfil the eligibility to erase one's criminal record. (Cortes, Molina, 2017). The criteria consider the length of the sentence, the offence committed and, when relevant the "situation of vulnerability" of the offender. This power to erase the criminal record also depends upon the discretion of the court (Penal Reform International, 2018).

The prison system in Singapore too has come up with some strong social rehabilitation programs. The initiatives by the Singaporean prison system has been a great initiative to allow the inmates to reconnect with their families. The Singaporean prison system to ensure proper reintegration encourages the prison inmates to develop closer relationship with family during the four-hour long family day. During this time, the inmates are allowed to meet with their family members freely without any glass barrier between them (Tan, 2017).

The Singaporean prison system also includes the use of technologies for a better rehabilitation and reintegration. The Singaporean Prison services started with a new initiative where the prisoners were given tablets to share in their cells. Connected to a secure internal network the inmates are free to use the tablets to communicate with their families and also participate in online courses and read news and books (Huiwen, 2017).

Kenya is another nation which has along with its economic rehabilitation programs has also initiated social rehabilitation programs. To provide proper rehabilitation and reintegration to the offenders, the Kenyan prison system has given importance to community services. The Kenyan prison system to deal with its growing prison population and stop the unnecessary use of imprisonment, has increased the use of community services. (Penal Reform

International, 2018) The fact that the prisons have a negative impact upon one's life has also resulted in the community services being given much more importance. The community services in the Kenyan prison system aims at empowering the offenders economically through the community services. Increase in the use of community services allow prison to be avoided and these community services programs try to ensure that the offenders become economically empowered to lift themselves and their families (Tanui, 2016).

Zimbabwe has given due importance to the relationship inmates maintain with their families to help in the reintegration of the inmates into the society. The Zimbabwean prison system has come up with family weeks with aims at promoting a closer relationship between prisoners and their families. (Razemba, 2017)

The Italian prison system too has initiated many social rehabilitation programs, to fulfil its rehabilitation and reintegration objectives. Italy in the recent years have dropped its incarceration rate by 20 per cent to approximately 89 per cent per 100,000 citizens. (Boatwright, 2017) The Italian prison system has given public interaction as its priority to fulfil its rehabilitation and reintegration commitments. Public interaction aims to change the attitude of the society towards the incarcerated (Huiwen, 2017).

One prison in Italy has started a restaurant on its prison grounds named the "In Galera," which when translated means "In prison" (Boatwright, 2017). This has resulted in the changing the views of the public regarding the incarcerated and this kind of public interaction also eases the reintegration process of the offenders back into the society. Tihar Jail in New Delhi, India has a similar project going. An NGO named *Bambini Senza Sbarre* in Italy has started organizing football matches for prisoners and their children. This initiative makes the reintegration process smooth and the visits of the families to the prison more normal and enjoyable (Keh, 2017).

The Government of Cambodia, like the prisons in Italy and Zimbabwe, with the aim of ensuring a smooth reintegration process for the inmates and

also to ensure proper rehabilitation introduced open visits for pregnant women and women with children by passing a ministerial regulation (Penal Reform International,2018) The Cambodian prison system also came up with the pilot programme of community services as an alternative to prisons for a better rehabilitation process (The Phnom Penh Post, 2018).

The Indian prison system in its pursuit to provide social rehabilitation initiatives to its inmates have tried to reach out to the prisoners religiously. The Government of Haryana in its initiative named, *Cow Therapy* has provided six jails with six hundred cows to be looked after by the prison inmates. This has been done with the aim of improving the psychological and the physical health of the inmates. This has been done as cows are considered to be holy in the Hindu religion. The prisons in the State of Haryana has also given importance to the involvement of families and helping the inmates to maintain a healthy relationship with their families by introducing a system called the, *Prison Calling System*. (Abbas; Dhanuka, 2019). To allow interact with people, the prisons in the State of Haryana has also established, *Mulakat Kaksh* in various jails in Haryana. (Prison Statistics India, 2014).

The State of Andhra Pradesh ensures that the inmates maintain their family ties and enable that by installing telephones in the jails to make the communication process between the inmates and the family easier (Prison Statistics India, 2014). Similar to the prisons of the State of Andhra Pradesh, the prisons in the State of Himachal Pradesh have come up with a initiative called the, *Jail Vatra* which provides video conferencing facilities to the inmates, so that they can talk to their family members (Prison Statistics India, 2014).

Analysis

Rehabilitation and reintegration are a major objective of the prison system which should be given focus so that the inmates are able to provide for themselves properly once they have served their sentence and its easier

for them to reintegrate back into the society. But notwithstanding some efforts in this direction, India is lagging behind in the field of rehabilitation and reintegration. A comparative analysis of global practices evidences the fact that India has much work to do in the field of rehabilitation and reintegration.

It will be unfair to say that the Indian prisons have not tried to implement rehabilitation and reintegration programs, but it needs to be increased and there also needs to be proper study to look into what practices would be effective in various states of India. While looking into the practices of various jails in India, it was observed that there is a much need of upgradation of practices in most of the Indian jails and also that its time to use technological means to fulfil the rehabilitation and reintegration goals. Very few jails in India have started taking the assistance of technology to provide rehabilitation and reintegration programs.

There is an urgent need to conduct proper study of the practices of rehabilitation and reintegration practices of jails in India and especially of Assam. The need is obvious as there exists very few literature on the rehabilitation and reintegration practices of India and even if there were a few like the Prison Statistics India, 2014, there was no mention of Assam jails. This clearly shows that there is a dire need to have a proper study on the rehabilitation and reintegration practices of Assam jails.

Another aspect which the author would like to stress upon would be the need to have a mix of both economic and social rehabilitation. Many prisons implement only economic or just social rehabilitation programs. But after looking into the various literatures it can be said that there is a requirement to have programs of both kinds in the India. Some jails like those in the States of Haryana and Andhra Pradesh have both the practices and this needs to be implemented throughout the jails in India.

Conclusion

Rehabilitation and reintegration is one of the most major obligation of the prison system and as well as of the society. There have been many practices which have achieved some goals of rehabilitation and reintegration, but it seems that somewhere it has come short.

Crimes are still occurring every day and most of them are by repeat offenders. (Alper, Hass, et al, 2017). The recidivism rate doesn't seem to stop increasing and the prison population is not decreasing, but rather increasing and the population in prison is filled with reoffenders. (Alper, Hass, et al, 2017). This shows that rehabilitation and reintegration and its models have lacunas which needs to be solved.

India has been trying to implement number of rehabilitation programs to rehabilitate the offenders. But the major problem with India is that prisons are under the state list, i.e. the state governments are responsible to run the prisons and provide for rehabilitation. There is serious deficiency in allotment of funds to ensure a proper management of jails. This seems to be a major problem for providing proper rehabilitation and reintegration to the inmates as there is a dire need of having accountability and most importantly a structure for providing rehabilitation. India requires a proper vision and framework which ensure that the jails across the states to ensure proper rehabilitation and reintegration.

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Our Contributors

Mr. Justice Madan Bhimrao Lokur, Former Judge, Supreme Court of India is one of the most revered jurists of India. During his six and half year's tenure at the Supreme Court of India, he established himself to be a legal polymath. Justice Lokur is known for his keen interest in juvenile justice and judicial reforms along with judicial education, legal aid and alternate dispute resolution. He has been a member of Mediation and Conciliation Project Committee and Judge-in-Charge of E-Committee of the Supreme Court of India. Justice Lokur was appointed as a judge of the non - resident panel of the Supreme Court of Fiji, making him the first Indian judge to be bestowed with such honour. Apart from his valuable contribution as a Judge, Justice Lokur is recognised as a visionary administrator through his contributions such as the National Judicial Data Grid, which provided an all India case management system for all the Courts across India. His tenure in the Juvenile Justice Committee influenced and reinvigorated the juvenile justice mechanism in the country and brought in several systemic innovations. While serving as the Judge of the Gauhati High Court, he streamlined many administrative processes and treated all Benches of the Gauhati High Court (then spread across the seven states of Northeast) with equal respect and sensitivity.

Mr. Justice Amitava Roy, Former Judge, Supreme Court of India is one of the leading legal luminaries who have been contributing towards the development of the judicial system even after his retirement. Justice Roy has had an illustrious career from being the Senior Government

Advocate of the Government of Arunachal Pradesh in the Gauhati High Court from 1991 to 1996 to being a member of Assam Law Commission till his elevation. He was designated Senior Advocate by the High Court on 03.06.1999. After an illustrious career as an advocate of the Gauhati High Court, Justice Roy was elevated as Judge of the Gauhati High Court on February 4, 2002. Justice Roy also served as the Chief Justice of the Rajasthan High Court for a period of two years before being elevated as a Judge of the Supreme Court of India on February 2015. After an impactful tenure at the Supreme Court of India where he delivered several landmark pronouncements which reflected both his erudition and sense of empathy, he retired on February 24, 2018. At present, Justice Roy serves as the Chairman of the three - member committee constituted by the Supreme Court of India to review and recommend prison policy reforms across India.

Patricia A. Maulden is Associate Professor of Conflict Resolution and Director of the Dialogue & Difference Project with the School for Conflict Analysis and Resolution at George Mason University. Her research and teaching interests include disarmament, demobilization, and reintegration processes (DDR), generational and gendered dynamics of conflict and peace, social militarization and demilitarization processes, post-conflict transitions, and peacebuilding practices. She has worked in Sierra Leone, Liberia, Burundi, Ethiopia, Turkey, Morocco, Kosovo, Ukraine, Brazil, and Colombia. Dr. Maulden also designs and implements experiential learning programs that bridge theory and practice from the instructor, student, and host community perspectives. She conducted student field courses in Liberia, Brazil, and West Virginia exploring conflict and peace dynamics, working closely with local organizations in their peace building efforts. She investigates the post-conflict paradox of engaging war while creating peace, explores the trajectories of post-conflict knowledge, and examines the psychic dilemmas of research and practice. Dr. Maulden's current research projects examine reconciliation as praxis and the cross- sector nexus of youth engagement with violence and peace. Her work domestically focuses on incarceration, solitary confinement, gangs, education inside prisons and

jails, and building peace in divided societies. She is co-founder of the Praxis Conference and Network.

Abantee Dutta is the co-founder of Studio Nilima. A reluctant lawyer, she is presently a Masters candidate at the School of Conflict Analysis and Resolution, George Mason University, USA. Her interest lies in post conflict reconstruction of societies with a specific focus on Assam. She enjoys working at the intersections of disciplines, primarily law, policy, conflict and governance. She believes in breaking the silos within which law exists and in exploring its connections with society. An action research practitioner, she has initiated and designed several innovative interventions in the correctional spaces of Assam. A traveller of roads less taken, she pretends to read, enjoys writing, cherishes conversations and enjoys a good laugh.

Anubhab Atreya is a final year law student at the National Law University and Judicial Academy, Assam. He is one of the core (founding) team members of Studio Nilima and works as a principal associate for Pratidhwani (the Echo), an initiative at Studio Nilima to provide legal care and services to the Inmates in the correctional homes of Assam. Seeking to specialise in criminal practice, Anubhab has a growing interest in public policy research concerning Assam. At present, he is the principal research representative from Studio Nilima assisting the Committee on Implementation of Clause 6 of the Assam Accord appointed by the Ministry of Home Affairs, Government of India as one of the designated Resource Institutions. His interests are varied and spans from issues concerning public health, disability rights and land reforms. He is an avid reader, a quizzier and enjoys a good cup of coffee.

Tathagata Dutta is a second year law student at the Gujarat National Law University (GNLU), Gandhinagar. He is one of the team members of Studio Nilima and nurtures a keen interest on criminal, constitutional and business laws. He holds key responsibilities as a Council Member of Law and Technology Student Group Council and Student's Collective Public Interest Litigation at the GNLU. Armed with a disarming smile, Tathagata straddles multiple and diverse worlds of law, theatre and music with ease.

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ABOUT STUDIO NILIMA

Studio Nilima is a not for profit research collective based in Guwahati. It seeks to be at the forefront of engaging and initiating dialogues on the contemporary public policy concerns of the northeast of India. It brings together lawmakers, thinkers, learners, policy makers, academicians and practitioners from across the arts to unfold new ways of learning, thinking, research and practice.

