

Protection of People in Custody and Institutions

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Abstract

The thirty articles of the Universal Declaration of Human Rights adopted as early as 1948 reiterate the idea that Human rights are inalienable in nature and it should be extended to every human being by the virtue of the fact that she is born as a Human being.[1] Interestingly, when we think of people who are incarcerated or are behind the prison bars for a crime that they have probably not committed, the principles laid down under the UDHR doesn't seem to be extending to them. It is understandable that given the current pandemic situation with which our country is continuing to reel even after a year, makes following the social distancing guidelines of WHO (World Health Organization) not practical for those in custody and institutions, but does that in any case give us a leeway to treat them as persons whose health and safety does not matter to us at all?

With the help of this paper we will be navigating and looking at different measures that have been taken by the executive and the over enthusiasm of the judiciary which has not been enough to save the cause of those behind the bars. We will also be doing a comparison in order to understand what were the measures taken by the different governments around the world in order to combat similar situation.

INTRODUCTION

The thirty articles of the Universal Declaration of Human Rights adopted as early as 1948 reiterate the idea that Human rights are inalienable in nature and it should be extended to every human being by the virtue of the fact that she is born as a Human being.¹ Interestingly, when we think of people who are incarcerated or are behind the prison bars for a crime that they have probably not committed, the principles laid down under the UDHR doesn't seem to be extending to them. It is understandable that given the current pandemic situation with which our country is continuing to reel even after a year, makes following the social distancing guidelines of WHO (World Health Organization) not practical for those in custody and institutions, but does that in any case give us a leeway to treat them as persons whose health and safety does not matter to us at all?

With the help of this paper we will be navigating and looking at different measures that have been taken by the executive and the over enthusiasm of

1 Universal Declaration of Human Rights. art. 1.

the judiciary which has not been enough to save the cause of those behind the bars. We will also be doing a comparison in order to understand what were the measures taken by the different governments around the world in order to combat similar situation.

PRISON OCCUPANCY IN INDIA

One of the first issues that we have to look at before we address the impact of covid 19 on the persons in custody and institutions is the existing state of prisons in our country. As of June 2020, India ranks fifth in the world which has the highest number of incarcerated individuals.² The Prison Statistics Report of 2019 tells us that the occupancy rate of the 1350 prisons in our country is close to 118% which is a clear indication of the fact that there is severe over crowding in our prisons. In 17 out of 36 states the occupancy is close to 100%. The PSI also indicates that there has been an increase of 8% in the number of convicts between 2010 and 2016 while between the same duration there has been an increase of 22% in the number of undertrial prisoners. An interesting information also surfaces in the Tata Trust report (2019) which points towards the vacancies in most of the prisons of our country. One might not understand how the vacancies for the post of prison staff has anything to do with the welfare of the inmates but it does have a direct impact on the same. These vacant positions when left unoccupied creates several practical hurdles in the management of the affairs within the prison. Despite of the availability of empty barracks, prisoners are compelled to be locked up in smaller spaces, the segregation of offenders on the basis of young and first time offenders becomes almost impossible. The requirement of Principle 8 of the Body of Principles for the protection of all persons under and form of detention or imprisonment is also violated which mandates the segregation of prisoners on the basis of the status of their conviction.³ The welfare and reformative initiatives

- 2 Countries with the most prisoners 2021, *available at*: <https://www.statista.com/statistics/262961/countries-with-the-most-prisoners/>. (last visited on January 4th, 2022)
- 3 Body of Principles for the Protection of All Persons

therefore remain without much impact. Further PSI report also provides that as of at the end of 2018 there were 1732 women prisoners with 1999 children, given the affect that the second wave of covid 19 has had on young children, this number becomes very relevant. The Report of National Consultation published in 2017 also indicates the deteriorating health conditions of the inmates and states that HIV, sexually transmitted diseases, Hep C and Hep B and tuberculosis in prison populations is much more higher than the general population.⁴ The PSI report revealed that 1559 prisoners died in the year 2018 including heart, lung, liver ailments and also complications arising out of tuberculosis and cancer. The Basic Principles for the treatment of prisoners requires that the prisoners should not be discriminated on the basis of their legal situation when it comes to access to health service.⁵ But the PSI report indicates otherwise stating as to how the prisoners do not have access to medical facilities in proportion to the number of incarcerated persons which directly has an impact on the quality of the health care facilities accessible to them. This definitely puts the prisoners at a higher risk of not only contracting the virus but also the probability of the virus impacting their vitals much more severely and hence increases the possibility of compromising their health.

All of the data listed above becomes much more relevant to our discussion as we look to the 'release, transfer and movement of the prisoners'.⁶ Since one of the easiest the mode of transmission of covid is persons coming in contact with each other, we

under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988), *available at* <http://hrlibrary.umn.edu/instreet/g3bpppdi.htm> (last accessed 7th Sept 2021).

- 4 Report of National Consultation held in 2017, New Delhi, *available at*: http://naco.gov.in/sites/default/files/Brief%20write%20up%20on%20the%20publication%20-prisons_0.pdf.
- 5 Basic Principles for the Treatment of Prisoners, G.A. res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (1990), *available at* <http://hrlibrary.umn.edu/instreet/g2bpt.htm> (Last accessed 7th Sep, 2021)
- 6 PSI, 2018, *available at*: <https://ncrb.gov.in/sites/default/files/Executive-Summary-2018.pdf>.

cannot over look at the above data at all. Several convicts, undertrials and detainees are released out of the prisons after the completion of their term (sentence or detention), some are released on bail or are even released before the completion of sentence awarded. There is an active movement of the inmates from the prisons to the courts and even to the hospitals. Further the data also indicates that there are several persons who are arrested during the course of the year and eventually are released from the prisons. All of this information indicates us towards the fact that there is an active and visible movement of people which happens in and out of these protected walls which makes it easy for the virus to travel as well. And this in turn makes the possibility of the virus travel from one place to another a real possibility.

SAFEGUARDS UNDER THE INTERNATIONAL AND NATIONAL INSTRUMENTS

Universal Declaration of Human Rights is the most central document when we talk about Human Rights and one of the basic principle that runs across the document is that it does not make any discrimination. A very important instrument which focuses on the civil and political rights of all persons is International Covenant on Civil and Political Rights and Article 10 of it requires that all persons who are deprived of their liberty shall be treated with humanity and for the respect of the inherent dignity of the human person. The General Comment on Article 10 of the ICCPR also states that this particular provision puts a positive obligation on the part of the States towards the prisoners as they are vulnerable because of their status as persons deprived of liberty. It is relevant to look at different conventions and agreements that exist both at an international and national level which is ideally aimed at compelling us to follow certain basic safeguards and measures in order to secure the interests of the prisoners in the midst of the pandemic. Principle 24 of The Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment (1988)⁷

7 Body of Principles for the Protection of all persons

also gives paramount importance to the health of the prisoners and puts an obligation on the state parties to ensure that all the facilities with respect to the health of the prisoners is given priority. Article 6 of the Code of Conduct of the Law enforcement Officials (1978) also states that the Law Enforcement Officials shall ensure the Full Protection of Health of persons in their custody and shall take immediate action to secure medical attention. Principle 1 of the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982) begins with the principle of non-discrimination and states that the parties must ensure that the treatment and the safety of the prisoners should be extended to them without any discrimination whatsoever. Rule 24 and 25 of the United Nations Standard minimum rules for the Treatment of Prisoners which is also very famously known as the 'Nelson Mandela Rules' states that the health care of a prisoner is the responsibility of the State and that any inmate should not be discriminated on the basis of their legal status which is that of a prisoner.⁸ The introduction to chapter VII of the Model Prison Manual for the Superintendence and Management of Prisons in India, 2003 states that:

Medical Administration is one of the most important concerns of prison management. The Medical Officer of a prison has to give careful attention not only to the treatment of sick prisoners but also to every matter connected with the health of prisoners and over all hygiene of the prison.⁹

under any form of detention or imprisonment, *available at*: <https://www.ohchr.org/Documents/ProfessionalInterest/bodyprinciples.pdf> (last accessed 11th Nov, 2021).

8 United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), *available at* https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf (last accessed 11th Nov, 2021).

9 Model Prison Manual for the Superintendence and Management of Prison in India, *available at* <https://bprd.nic.in/WriteReadData/userfiles/file/5230647148-Model%20Prison%20Manual.pdf> (last accessed 11th

Rule 108 and 107 of the same Resolution adopted by the General Assembly requires that special attention must be given in order to improve the relationship between the prisoner and his family and necessary steps should be taken for the same.¹⁰ This clearly means that the prisoners are expected to be kept in the prison systems which would facilitate their meeting with their family members at regular intervals. Most of the Conventions and the Principles mentioned above requires the States to focus on reintegrating the prisoners back into the society and acknowledges that it would not be possible to do the same without having their families around. This was a provision which was clearly violated during the Covid 19 pandemic as the prison authorities were primarily concerned with decongesting the prisons not having the slightest clue as to how long such a prisoner will be accommodated in a far off prison away from his family.

It can be well argued that the general comment on the Right to Life as provided under the United Nations Human Rights Committee puts a positive obligation on the part of the states to protect life against threat and we can very well conclude that releasing the prisoners in accordance to the vulnerability that they have in terms of contracting the virus should have been the primary consideration taken by the states. As argued by Sakshat and Shruti¹¹ the Indian judiciary missed an important opportunity that they had during the time of the pandemic to strengthen and transform the existing jurisprudence around bail.¹²

RESPONSE OF THE DIFFERENT COUNTRIES ACROSS THE COUNTRY TO COVID 19

In March 2020 Afghanistan declared that it would release at least 10,000 prisoners, and the category of age above which the prisoners were to be released was 55, this was so decided because of their vulnerability to contract the virus during the

Nov 2021).

10 *Id* at 9.

11 Sakshat Bansal, Shruti Sahni, "Bail, Prisons and Covid 19: A Indian Perspective" *Alternative Law Journal* (2021)

12 *Id* at 2.

spread of the pandemic.¹³ The President clarified that the category of prisoners excluded from this process would exclude prisoners who are members of terrorist groups. There was a lack of clarity as to what would be the procedure adopted to bring this decision into force. A special committee was appointed by the President in Sri Lanka, prisoners who were unable to pay the bail money and were imprisoned for minor offences, even those inmates suffering from illness and those who have not been granted bail were all considered under this scheme and a total of 2,961 prisoners were released during the course of March-April 2020.¹⁴ Interestingly in Philippines which has the highest number of crowded prisons in the world, the State was a little slow to act and it was the direction of the Human Rights Watch which compelled the state to consider decongestion as the threat of the spread of the virus in such overcrowded prisons was way too high.¹⁵ The news of the pandemic and the propensity of it to spread within congested spaces also created a sense of panic amongst the inmates and that even caused a riot like situation.¹⁶ It was only in July 2020 that 15,000 inmates those charged with minor offences and elderly were released.¹⁷

13 Abdul Qadir Sediqi, Hamid Shalizi, "Afghanistan to release 10,000 prisoners to slow spread of corona virus" *Reuters* March 26, 2020, available at <https://www.reuters.com/article/us-health-coronavirus-afghanistan-prison/afghanistan-to-release-10000-prisoners-to-slow-spread-of-coronavirus-idUSKBN21D334> (last visited on Sept 12, 2021).

14 President's Media Division, available at <https://www.presidentsoffice.gov.lk/index.php/2020/04/04/2961-prison-inmates-released-on-bail/>.

15 Philippine Prison and extreme vulnerability during covid 19, *Oxford University press Public Health Emergency Collection*, Jan 18, 2021 available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7928820/> (last visited on Sept 12, 2021).

16 "Prisoners escape in Buri Ram jail riot after Covid 19 rumor", *Bangkok post*, March 29, 2020 available at <https://www.bangkokpost.com/thailand/general/1888805/prisoners-escape-in-buri-ram-jail-riot-after-covid-19-rumour> (last visited Sept 10, 2021).

17 IANS, "Philippine Jails release over 15,000 inmates amid pandemic", *Arab News*, July 3, 2020 available at <https://www.arabnews.com/node/1699156/world> (last visited on Sept 9, 2021).

In Australia which has 112% of overcrowding in prisons, 32 percent of the inmates are awaiting trial while 66 percent of them are serving sentences for less than five years.¹⁸ Several reports have indicated that the prison inmates are at a high risk of complications and compromised health.¹⁹ Australia introduced a set of mixed restrictive practices as early as March 2020 in order to curb the spread of the virus which included suspension of social visits, restriction of non-essential inmate movement, suspension of work release, family video visitation.²⁰ The US Constitution guarantees health to people who are incarcerated but the available medical care varies greatly with regard to both access and quality. Often the medical expenses exceed disproportionately to what the inmates make inside the prison which prevents most of them from seeking medical care. Even though there were directions which required the release of those who were at greater risk, there was an initial apprehension in releasing such prisoners as such inmates once released were at a high risk of homelessness and even death which could be caused by drug over use and heart related diseases.²¹ The Justice Department in the US released close to 23, 800 prisoners for the purpose of decongesting the prisons and each of such prisoner released is bound by certain conditions that they are bound to follow such as wearing of the ankle monitor.²²

RESPONSE OF INDIA TO COVID-19

It was on 16th March 2020 that the Supreme Court of India considering the rate at which the virus had

a propensity to spread directed the States to take urgent steps in order to prevent the contagion of covid 19 in the prisons.²³ Some of the measures which were opined by the Court included quarantining of inmates who showed symptoms provide for medical treatment of the affected inmates. The Court also appreciated the efforts made by the Director General of Prisons Kerala who took an initiative and made facilities for isolation cells so that the new prisoners could be isolated before they were brought into the regular prisons. After seeking the response from the States the Supreme Court on 23rd May 2020 directed the States and the Union territories to constitute a High Powered Committee (HPC's) to determine the class of prisoners who can be released on parole or on an interim bail.²⁴ Following this direction of the Supreme Court several states sprang into action and came up with guidelines which determined the class of prisoners who would be released. While Maharashtra stepped up and made covid 19 tests mandatory for new inmates²⁵, other overcrowded prisons in the same state made arrangement for isolation cells for those inmates who were showing symptoms.²⁶ Similar arrangements were also made in the state of UP where the inmates showing symptoms were quarantined.²⁷ On 3rd April 2020 the Madras High Court issued notices on Writ Petition

18 Australian Institute of Health and Welfare <https://www.aihw.gov.au/reports/prisoners/health-australia-prisoners-2018/summary>.

19 *Ibid*.

20 Cameron Stewart, Scott Lamot, "Covid 19 and Australian Prisons: Human rights, risks and responses" *Journal of Bioethical Inquiry Pty Limited* (2020).

21 Ingrid A. Binswanger, "Release from prison- A high risk of death for former inmates" *The New England Journal of Medicine* (2007).

22 Sarah N Lynch, "Thousands of low-level US inmates released in pandemic could be headed back to prison", *Reuters*, April 11, 2021.

23 WP (C) No. 1/2020, In Re: Contagion of Covid 19 in prisons, 16/3/2020. https://main.sci.gov.in/supremecourt/2020/9761/9761_2020_1_1_21537_Order_16-Mar-2020.pdf.

24 W.P.(C) No. 466/2020 (PIL-W) https://main.sci.gov.in/supremecourt/2020/9761/9761_2020_1_8_21570_Order_23-Mar-2020.pdf

25 Sachin Gaad, "Covid test must for new jail inmates" *Free press Journal* (2020) also available at: <https://www.freepressjournal.in/mumbai/mumbai-covid-19-tests-must-for-new-jail-inmates> (last accessed 14th Sep 2021).

26 Mateen Hafeez, "20 Arthur Road cells for inmates with symptoms of coronavirus" *Times of India*, March 21, 2020 available at <https://timesofindia.indiatimes.com/city/mumbai/mumbai-20-arthur-road-cells-for-inmates-with-symptoms-of-coronavirus/articleshow/74741263.cms> (last visited Sept 18, 2021).

27 IANS, 20 Bhagpat jail inmates show covid 19 symptoms, Quarantined <https://timesofindia.indiatimes.com/city/meerut/20-bhagpat-jail-inmates-show-covid-19-symptoms-quarantined/articleshow/74786193.cms>.

seeking immediate constitution of a Committee to determine the class of prisoners that can be released on interim bail.²⁸ The HPC's recommended the release of prisoners who were incarcerated for offences the maximum punishment of which was less than seven years. Some states like Delhi, Punjab and Mizoram came up with special categories other than those mentioned by the SC and released prisoners who were from the home state, old age, under trial prisoners who have been incarcerated for more than three months, pregnant women, inmates who belonged to the same state were some such categories which were evolved.²⁹

The concern which now surfaced was with respect to those group of prisoners who were excluded from the categories developed by the HPC's. The court hence mentioned that the inmates could make bail applications for interim release and that they would be entitled to be released on merit in accordance to the provisions of interim bail. In several cases it was observed that the decisions given by the court in matters of granting interim relief was heavily influenced by the categories developed by the High Powered Committees.³⁰ In the case of *Suo motto v. State of Chhattisgarh and others (2021)* the direction given to the State Legal Service Authority, the court was very clear in mandating the release of only those prisoners who fell under the category developed by the HPC's.³¹ The courts constantly referred back to the categories before actually determining whether bail should be granted or not, this in turn also affected the right of fair trial of the prisoners and the right to health took a back seat. It was also found out that some of the applications made by the prisoners were either kept pending or even immediately rejected the moment court realized that the applicant does not fall under

the category so developed by the HPC's around different states.³²

Even in the cases decided by the courts post second wave of the pandemic, such an influence of the categories continues to exist and this can be observed in the case of *Manmeet Singh*³³ in this case the division bench suggested that the release of only those prisoners be facilitated who are falling under the category of the High Powered committee. It was only in exceptional cases that the court took a drastic view taking the health of the convict as the prime category before granting him bail. In the case of *Lal Singh Adivasi v. State of Madhya Pradesh*³⁴ the court emphasized on the need of granting bail to the accused and stated that unless there is a substantial reason, there is no need to keep him in custody. The Court also observed that since the accused was a person who posed no threat of absconding and was in no position to tamper with the witness, he must be released. A simple reading of the categories evolved by the different states would point to the fact that the approach taken by the states was not at all prisoner centric. While some states considered it important to include pregnant women as a vulnerable category the other states did not stick to it and while some states considered age and comorbidity as an important category the others did not.³⁵ It was in the case of *In re State of Assam and two others* that the court had to specifically direct the State Government to forward the list of women prisoners who were incarcerated and were mothers with children under six years of age to the HPC for release. This in itself is clearly indicative of the fact that that health and the vulnerability of the prisoners contracting virus was not the prime consideration. The flaw in the categories so evolved can be clearly seen in the case of eighty three year old Stan Swamy, a tribal rights activist who was arrested by the National Investigating Agency and was not granted bail despite his comorbidities he even passed away few days after contracting covid 19 within the prison premises³⁶. The only reason for

³² *Supra* at 8.

³³ *Manmeet Singh v. State of MP (2021)*.

³⁴ *Lal Singh Adivasi v. State of Madhya Pradesh (2021)*.

³⁵ *Ibid.*

³⁶ Sonal Saigal, "Father Stan Swamy Passes away in Custody" *The Hindu*, July 5, 2021.

28 *V Krishnamurthy v. State of Tamil Nadu and Others (2020)*.

29 Common Wealth Human Rights Initiative. Responding to the Pandemic: Prisons and overcrowding (2020) <https://humanrightsinitiative.org/download/Responding%20to%20the%20Pandemic%20Prisons%20&%20Overcrowding%20Vol%201.pdf>.

30 *National Alliance for People's Movement v. State of Maharashtra (2020)*.

31 *Suo Motto WP (PIL) v. State of Chhattisgarh (2021)*.

not granting him bail despite of his serious condition and age was the fact that he was charged under the draconian law Unlawful Activities Prevention Act. Also P Varavara Rao whose interim bail was rejected even though his medical condition deteriorated and he was unable to do anything on his own only because he continues to be charged under the draconian Unlawful Activities Prevention Act (1967).³⁷ The concern of the prison authorities was only to decongest the prisons and not to safeguard the health of the prisoners. Even after the process of decongestion was concluded by the different states, there is insufficient data to indicate as to what all measures were taken in order to safeguard the interest of those who were left behind because not all of them who were left behind were medically fit.

Even though the court was quick in decongesting the prisons, one of the aspects that the court did not take into consideration at all was to take the concerns and consent of the family members who were expected to welcome the inmates on such short notice. And this consent is very relevant and legitimate as prisons were already breeding grounds of covid virus, the public in general were encouraged to stay at home and there were multiple restrictions and lockdowns imposed by the different states. The concern that the author is emphasizing on can be seen in the case of *In re contagion of covid virus in prisons in the State of Andhra Pradesh v. The state of AP (2020)* where the court directed that the inmates who were to be released were to remain in home isolation under the surveillance of a doctor or a police.³⁸ The court did not really specify as to how these arrangements are to be made, who would bear the expenses and several other nuances that came along with this direction. Several of the inmates come from a specific socio economic background and it is a big possibility that they would not have the required space and other resources to separately accommodate an inmate and hence it was a necessary part of the process to include the family members which the states, the courts and the HPC's very conveniently forgot about.

37 K A Y Dodhiya, "Varavara fell from bed, unable to do anything on his own : allow us to help: family to State", *Hindustan Times* July 21, 2020.

38 *In Re v. The State Of Andhra Pradesh* on 20 May, 2021.

It goes without saying that in most of the cases online courts were not equally accessible to those who approached the courts. Internet, technical knowhow, making sure that all the interested parties were present online at the same time with good internet were some of the basic pre requisites which was not accessible to all equally. In cases like *Sopan Ramesh Lanjekar v State of Maharashtra (2020)* bail applications were not treated as an urgent matter during pandemic and hence were not heard.³⁹ A very similar case was also observed in the case of *Rowson v Department of Justice and Community Safety*⁴⁰ in Australia, in this case where a fifty two year old prisoner who had served time for more than five years for fraud in the prison claimed that given his existing health condition which made him more prone to contract the virus he should be released into home detention.

One of the requirements that was highlighted during the past one year in our country in general was not only the lack of preparedness to combat the spread of virus but also the lack of basic medical facilities in the different parts of the country especially prisons. This particular factor contributes greatly to the under preparedness in the prison facilities in our country as the number of posts for doctors and medical practitioners largely remain vacant. As per the PSI in the year 2019 a total of 1962 medical staff were actually posted against a required number of 3220 which is just over half of the sanctioned strength.⁴¹ Given the fact that most of the prisons are overcrowded the number of medical practitioners actually required will be even more than the strength projected. Uttar Pradesh, Bihar and Jharkhand are reportedly some of the few states which have the highest number of vacant medical staff posts. All of this data becomes relevant for our discussion as this clearly reflects the under preparedness of our country to meet the basic standards laid down under the Nelson Mandela Rules in normal circumstances lest the pandemic.

39 *Sopan Ramesh Lanjekar v State of Maharashtra 2020* SCC Online Bom 468.

40 *Rowson v Department of Justice and Community Safety [2020]* VSC 236.

41 Page XX, Prison Statistics India, 2019 <https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>.

The fact that the entire process of releasing the prisoners was not at all human rights and prisoner centric can be reiterated by the fact that the prisoners were called back as there was a relative ease in the spread of the pandemic in India. It was during February to March 2021 that all of the prisoners so released in accordance to the directions of the court were compelled to come back.⁴² The lack of preparation and preparedness was clearly reflected in the fact that there were no measures taken and no steps put in place to ensure that the prisoners were not carriers of the virus as they returned in large numbers and as space continued to be an important factor, the prisoners were again forced to be in such crowded premises as before. Hence in states like UP which has four time more prisoners than its capacity further called for decongesting the prisons again in May 2021 where several inmates for the second time were granted special parole.⁴³

CONCLUSION

Through the various conventions and Declarations that we looked at above we know that there is a duty on the part of the state to provide an environment conducive to survive and as Prof. Baxi puts it, 'The punishment should not be the conditions of the prison system, the punishment should merely be the fact of imprisonment'. And this is a truth which we often come to neglect and even forget that the punishment for the prisoners is incarceration and curtailment of their public life and should not be anything more than that.

By just looking at the response of the states we can conclude that the entire process taken up by the prison authorities and even the High Powered Committees was not prisoner centric and was simply aimed at decongesting the prisons. The categories so developed were not at all focused on extending the Human Rights which we otherwise claim to fiercely protect in every part of our country. The existing medical conditions and vulnerability of women such as those who were pregnant or

42 Kanwardeep Singh "Jails over crowded upto four times, Uttar Pradesh extends parole" *Times of India*, August 19 2021.

43 *Ibid.*

were incarcerated with small children were not considered as uniform categories across all states. The opportunity that the various courts across the country had in terms of developing a jurisprudence on bail was completely lost as most of the courts were guided by the directions given by the HPC's when it came to granting bail for those who did not qualify for release.

The state of confusion and panic that was created during the second wave is also a reflection of how unprepared the prisons were to call back the inmates after the first wave of the pandemic and also of how there was absolutely nothing done in terms of improving the conditions which existed before. This really calls for us as a country to introspect as to how we value the Human Rights of those who are incarcerated and if we really consider them as subjects who qualify to claim these human rights. Secondly this also gives us an opportunity to think as to how far we are willing to follow the guidelines given under several cases when it comes to granting of bail. The author very strongly suggests that it would take more than just political will to improve the existing conditions of our prison system and the states have to be very intentional in investing in filling up the vacancies and improving the conditions of the prison system in general. Through the various conventions and Declarations that we looked at above we know that there is a duty on the part of the state to provide an environment conducive to survive and as Prof. Baxi puts it, 'The punishment should not be the conditions of the prison system, the punishment should merely be the fact of imprisonment'. And this is a truth which we often come to neglect and even forget that the punishment for the prisoners is incarceration and curtailment of their public life and nothing more than that.

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