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THEORISING THE EFFECT OF STIGMATISATION ON THE CRIMINAL JUSTICE SYSTEM: Normalizing Prison Sentences

Mehreen Manzoor

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THEORISING THE EFFECT OF STIGMATISATION ON THE CRIMINAL JUSTICE SYSTEM: Normalizing Prison Sentences

*Mehreen Manzoor**

[Abstract: Classical criminologists argue that a person commits a crime as a rational choice. In the post-liberal world, this theory is proving feeble. Conflict theory proponents factor crimes as a complex economic social phenomenon which often resides outside the actor. Meanwhile, incarceration has become so popular a form of punishment that even parents often resort to 'grounding', a form of confinement, to discipline errant children.

Prisons are synonymous with images of dreadful living conditions, human rights violations, improper sanitation, and lack of basic healthcare. Profiling prisoners in India is indicative of the proliferation of marginalized groups in prisons. Recent Legislations have followed the trend in making incarceration more stringent. Changes in the definition of the Life Imprisonment, Juvenile, and the Criminal Amendment Act that are testament to such a trend. Paradoxically, there is a concurrent demand for making prisons into restorative and reformative institutions.

This paper seeks to analyze the effects of stigmatization of prisons and the prisoners on the functioning of the Criminal Justice System. It will also explore whether the current condition of prisons contributes towards lower conviction rates, unequal presence of weaker sections in prisons, in addition to creating a tendency to unlawfully tampering with the adjudicatory process to evade punishment. The paper seeks to understand whether 'normalizing' prison sentences by purging it of the stigma would lead to better outcomes.]

Keywords: *Crime, punishment, prison, juvenile, stigma, weaker section, criminal justice system.*

I

Introduction

*'A sullen, forlorn prisoner is a dangerous criminal in the making and
the prison is the factory'!*

-- Sheldon Krantz¹

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¹ Sheldon Krantz, THE LAW OF CORRECTIONS AND PRISONERS' RIGHTS IN A NUTSHELL 129 (1988).

The discipline of criminology has undergone severe academic scrutiny since its inception. Criminology has evolved from classicism, positivism, rational choice, biological, psychological, sociological and conflict theories and reasoning to understand the concept of crime. Apart from rigor within the confines of the discipline, the subject has also received interest from intellectual currents as well since the late 1960s.² Sociology, Marxism, feminism, postmodernism, post-structuralism, economics, psychology, spatial planning, cultural studies, literature, and media studies along with medical sociology, genetics, and neurobiology. With each having contributed to the growth of the other. The theories have also differed in their object and subject. The discipline has also been enriched with myriad methodologies, poignant critiques, state-funded policy inquiries, and consultancy crossovers.

With the ever-broadening horizons of the discipline, it still has to fulfill its 'core' components to stay relevant. Criminology, as a discipline, has had to satisfy three stands³ of discourse and social settings:

- a. academic discourse- in which scholars theorize about crime and its ancillary fields such as penology and victimology,
- b. bureaucratic discourse- State's policy in how criminal justice system must function, and
- c. politico-Cultural discourse- intersection of media, culture and political discourse. These three strands overlap at times and produce other unique results. Some theories have had greater impact than other. For instance, Rational Choice theory still finds favour with most criminal justice systems.⁴

World over criminal codes have been designed to carry out punishments which make the offender the sole actor of the crime committed. However, another question that disciplines of criminology, penology and the like have had to answer is about their contribution to the actual crime control and the gap that exists between theory and policies of the state. It can be said that research has found little to no ground when it comes to policy creation.⁵ There is little to no empirical evidence of benefits of extended punishments, in fact extended punishments are being seen as a burden on the existing machinery.⁶ The rhetoric of extended punishments still finds adherents in most of the democratic world; in United States of America, Brazil and

² Amit Thakre & K. Jaisankar, *Whither Indian Criminology?*, 13 IJCS, 247 (2018).

³ Chester L. Britt, *Criminology* in *ENCYCLOPEDIA OF SOCIAL MEASUREMENT* 557-563 (2005) available at: <https://www.sciencedirect.com/science/article/pii/B0123693985002723> (last visited on 01 Nov., 2022).

⁴ Ronald L. Akers, *Rational Choice, Deterrence, and Social Learning Theory in Criminology: The Path Not Taken*, 81 J. Crim. Law Criminol, 653 (1990).

⁵ Sir Leon Radzinowicz, *ADVENTURES IN CRIMINOLOGY* 469 (1991).

⁶ Anthony N. Doob & Cheryl M. Webster, *Sentence Severity and Crime: Accepting the Null Hypothesis*, 30 CRIME AND JUSTICE 143-195 (2003).

Thailand it was the war on drugs⁷ in England, India, it has been the 'Tough on Crime' sentiment.⁸ The patronizing, populist political attitude continues to persist, and is described as Penal Populism.⁹

The academic discipline of Criminology was introduced in India in the mid to late 20th Century at the behest of international influence.¹⁰ The idea also received encouragement from the police bureaucracy in India. Since then many universities have opened dedicated departments, master's programs are being offered or some institutes have started research centres on the same. However, there are fewer instances of these works influencing practice and policies framed which largely remain to be done on unscientific grounds.¹¹ In India, few rape cases have caught the attention of the media and thereafter the public; *Nirbhaya*¹², *Gudia*, *Kathua*¹³ and others being called the rape cases that 'Shocked India'. With so many other cases of similar atrocity often going unnoticed, the parliament has been selective in raising these issues and given the outcry, Members of Parliament raise demands for alternate punishments, such as lynching, chemical castration.¹⁴ In 2019, the Hyderabad rape case caught such attention and the alleged perpetrators of the crime were extra judicially killed with no legal trial.¹⁵ The state-made laws and punishments are being criticized as ineffective towards curbing instances of violence against women. However, at the same time, the issue is being trivialized (a

⁷ John F. Pfaff, *The War on Drugs and Prison Growth: Limited Importance, and Limited Legislative Options*, 52 HARV. J. LEGIS. 173 (2015) available at: https://ir.lawnet.fordham.edu/faculty_scholarship/651.

⁸ Jessica Jacobson et al, *Prison: Evidence of its Use and Over-Use from around the World*, Institute for CRIMINAL POLICY RESEARCH (2017) available at: https://www.prisonstudies.org/sites/default/files/resources/downloads/global_imprisonment_web2c.pdf.

⁹ John Pratt et. al., *Penal Populism: The End of Reason*, 9(13) NOVA CRIMINIS 71-105 (2017).

¹⁰ *Supra* note 2.

¹¹ See, R. Rochin Chandra, et. al., K, *Why Indian Criminology Struggles to Influence Public Policy*, 13(1), Int. J. Crim. Justice Sci., 3-9 (2018).

¹² Correspondent, *Unnao, Hathras, Kathua: 10 Rape Cases That Shocked India In The Last 10 Years*, NEWS18 (Jun. 18, 2021) available at: <https://www.news18.com/news/india/unnao-hathras-kathua-10-rape-cases-that-shocked-india-in-the-last-10-years-3863543.html>.

¹³ The Hindu Net Desk, *'After Nirbhaya: the rape cases that shook the nation'*, (May 07, 2017) available at: <https://www.thehindu.com/news/national/after-nirbhaya-the-rape-cases-that-shook-india/article18404268.ece>.

¹⁴ PTI, *Outrage Over Rape Cases: Death Penalty, Lynching, Castration of Rapists Demanded In Parliament*, TIMES OF INDIA (Dec. 02, 2021) available at: <https://timesofindia.indiatimes.com/india/death-penalty-lynching-castration-of-rapists-demanded-in-rajya-sabha/articleshow/72328826.cms>.

¹⁵ AFP, *Extrajudicial killing fears as Indian cheer Hyderabad 'shootout'*, ALJAZEERA, (Dec.09, 2019) available at: <https://www.aljazeera.com/news/2019/12/9/extrajudicial-killing-fears-as-indians-cheer-hyderabad-shootout>.

member of a state legislative assembly was recently criticized over his remark that ‘women should enjoy rape’.¹⁶ In India, government funded research on these issues is comparatively new, and has remained largely stagnant. Bureau of Police Research and Development, research wing under the Ministry of Home Affairs, Government of India, has been entrusted with the following objectives:

- a. to take direct and active interest in the issues,
- b. to promote a speedy and systematic study of the police problems,
- c. to apply science and technology in the methods and techniques used by police.

However, the website contains little information of the research done and methodologies employed. Many research projects are awaiting final approval since 2018.¹⁷ A loop is thus created when laws and policies are being altered on unscientific basis and researchers are seldom made part of the discussion; the laws are thereafter criticized or all together abandoned for the sake of ‘Justice’.

II

Trends in Penology

Incarceration is being perceived as the most effective form of punishment around the world instead of any other kind of punitive apparatus. This understanding has resulted in excessive use of Prisons for both criminal and civil wrongs; it has also been put in use for dealing with issues of social discord of regulating population behaviours. Around 11 million people are being held in penal institutions either as convicts, as under trial prisoners, or are being held under some preventive detention law.¹⁸

The Prison populations have increased steadily around the world however, this growth has not been constant or uniform. Large economies report higher numbers of the incarcerated; 2 million in USA, 1.69 million in China, 811, 000 in Brazil,

¹⁶ Tiasa Bhowal, *Congress MLA KR Ramesh Kumar’s ‘Enjoy Rape’ comment triggers massive backlash. Disgusting, says Internet*, INDIA TODAY (Dec. 17, 2021) available at: <https://www.indiatoday.in/trending-news/story/congress-mla-kr-ramesh-kumar-s-enjoy-rape-comment-triggers-massive-backlash-disgusting-says-internet-1888903-2021-12-17>.

¹⁷ Government of India, *Circular no. 32/18/2018-RD*, MINISTRY OF HOME AFFAIRS (2019) available at: <https://bprd.nic.in/WriteReadData/userfiles/file/201904220241580928985Shortlisted.pdf>.

¹⁸ Helen Fair & Roy Walmsley, *World Prison Population List: Thirteenth Edition*, Report: The World Prison Brief (Institute for Criminal Policy Research, 2021) available at: <http://prisonstudies.org/>, is hosted and maintained by the Institute for Criminal Policy Research. The data held on the brief (which is updated on a monthly basis) are largely derived from governmental or other official sources.

471,000 in Russian Federation.¹⁹ The numbers have gone up partially due to increase in populations and due to changes in policy. In the last two decades, the prison population around the globe has increased by 24%. Overall, the Americas have seen a rise by 43%, Asia by 38%, Africa by 32%, Oceania by 82%, Europe on the other hand has seen a decline by 27%. The fall in European prison population is largely due to fall in numbers in Russian Prison; in rest of the continent there has been a rise by 5%. The frontrunners in increase in population is South America with 200% rise and South-East Asia with 116%.²⁰

Prison populations are rising due to interlocked factors. The evolution of crime, global fears regarding drug-trafficking and other international syndicates, an increase in influence of public opinion on political policy and action resulting in punitive sentencing, geopolitical fears, and a building of penal codes on the foundation of large-scale incarceration of the poor and minority sections of the society has helped provide incarceration as a viable solution to societies' growing concern over the management of risk. Pre-trial detention, a common policy in most countries, is testament to this fact. Prison populations and their reasons often expose deficiencies and widespread malaise in the criminal justice system of a country and understanding of the roles and reasons for the growth of prison population in different cultures can allow for a more uniform approach to sentencing in general.

One of the primary functions performed by Prisons is the confinement of offenders. The society is made to feel safer with the idea that criminals have been put away and hence most prisons are also constructed away from residential areas. The experience of living in a prison, combined with the opportunity cost lost during the incarceration, diminish the allure of gains from a crime.²¹ The interplay of certainty of sanction and severity of punishment constitute the basis of calculating the gains from the crime.²² While imprisonment is perceived to be harsher than non-custodial sentences; longer sentences are harsher than shorter ones.²³ Literature also exists on the question of efficacy of prison as rehabilitative and corrective institutions as it is criminogenic²⁴ and de-humanising in experience and the coping mechanism are counterproductive due to the prison sub-cultures.²⁵

¹⁹ *Id.* at 2.

²⁰ *Id.* at 2.

²¹ Daniel S. Nagin. Et al, *Imprisonment and Reoffending*, 38(1) CRIME AND JUSTICE 115-200, (2009)

²² Gary. S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POLITICAL ECON. 169-217 (1968); Harold G. Grasmick & Robert J. Bursik, *Conscience, Significant Others, and Rational Choice: Extending the Deterrence Model*, 24 LAW SOC. REV. 837-61 (1990).

²³ *Supra* note at 11.

²⁴ Criminogenic term used to define systems or institutions that produced or lead to encouraging criminal behavior.

²⁵ *Supra* note at 18.

Some Ethnographic studies on prison environments have also problematized the breeding of hostile attitude towards state authority due to the harshness of the prison life. This gives rise to corresponding violence in the everyday life of a prisoner.²⁶ Some scholarship also contests that this sub culture of violence and hostility to legal authority is 'imported' into the prison and mimics the sub-cultural values already present in the certain lower socio-economic households.²⁷ The sub-culture later makes it difficult for inmates to adjust with post-incarcerated lives. Hence, some scholars have termed Prisons as 'Schools of crime' as they assimilate long-term convicts into the culture that encourages disruptive values and at the same time teach techniques that aid recidivism.²⁸

The Indian Penal Code, enacted in 1860, prescribes imprisonment as punishment for most crimes defined within it. Michel Foucault, while tracing the genealogy of prison system, states that incarceration has come to be understood as penalty *par excellence*.²⁹ The punishment is the seizure of liberty, a kind of property that all persons have, making the process egalitarian. The monopolized position gained by imprisonment as a form of punishment is not just through the removal of liberty, as death and torture could have been indiscriminate in their effect as well; it is due to the added function of correcting individuals.³⁰ Prisons were designed to attack the birth of crime itself by purging convicts of criminal tendencies. Convicts were meant to be inculcated with discipline and work ethic to facilitate a return to society as contributing members.³¹

Imprisonment: A Sine Qua Non

Foucault writes that it has become impossible to see beyond imprisonment, and thought is detestable, we cannot imagine a world without it.³² He adds, "we are aware of the inconveniences of prison, and that is dangerous when it is not useless."³³ Over the years, imprisonment has stayed constant while ancillary issues such as length of incarceration, and conditions of imprisonment have been debated by the legislature, judiciary, and other stakeholders proving its permanence at present. Imprisonment has succeeded in punishing individuals, not at reforming them. Numerous studies pointing towards the inefficacy of the modern incarceration

²⁶ G M. Sykes, *THE SOCIETY OF CAPTIVES* (Princeton University Press 1958).

²⁷ John Irwin & Donald Cressey, *Theives, Convicts, and the Inmate culture*, 10 *SOCIAL PROBLEMS* 142 (1962).

²⁸ P Gendreau, et. al., *The Effects of Prison Sentences on Recidivism*, Ottawa: Solicitor General Canada (1999).

²⁹ Michel Foucault, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* 232 (1977).

³⁰ *Id.*, at 233.

³¹ *Id.*, at 234.

³² *Id.*, at 235.

³³ *Id.*

system have been conducted around the globe.³⁴ Angela Davis in *Are Prisons Obsolete?* argues that prisons have become antiquated institutions in the United States as prison populations have increased manifold with an overwhelming population of minorities.³⁵ 1973 Walpole Prison uprising, in which prisoners organised themselves into a “complex society at work”, which functioned like a well-oiled machinery without prison guards and taking over the prison, albeit only for a short duration of a few months.³⁶ Alongside prison abolition, a less severe demand of abolishing the prison industrial complex’ is also underway, its advocates include Ruth Wilson Gilmore who co-founded Critical Resistance. Other groups such as the Prison Activist Resource Centre, Black & Pink, Human Rights Coalition etc. having advocating for similar agendas.³⁷ Questions regarding the suitability of imprisonment as a form of punishment have been raised and movements are underway in various countries for the abolishment of the institution itself.³⁸

While the efficacy of the prison system, and alternatives to imprisonment are being debated, it can be argued that prison systems have become stigmatized enough to be counterproductive to their purpose. It will take considerable effort to devise a new system of punishment or to decide whether punishments are required, and till that time prisons will continue to inefficiently grow into convoluted social engines. Inefficiency of prison systems can be attributed to their stigmatization. The origins of the stigma, by design or fallout, are not debated. The issue is the effect stigma has had on the overall working of the several organs that comprise the criminal justice dispensation system. This paper shall examine how stigma has hindered proper functioning of the Criminal Justice System and thereby explore reasons as to why reformatory efforts are not effecting change.

³⁴ M.J. M Brand Koolen, *STUDIES ON THE DUTCH PRISON SYSTEM*, DUTCH STUDIES ON CRIME AND JUSTICE (1987); Rui Marques Ad Pedro Simoes, *HOW FAR ARE PORTUGUESE PRISONS INEFFICIENT*, CENTRE OF URBAN AND REGIONAL SYSTEMS (2009); Seena Fazel & Jacques Baillargeon, *The Health Of Prisoners* 377 LANCET 956-965 (2011).

³⁵ Angela Davis, *ARE PRISONS OBSOLETE?* 10 (2003).

³⁶ Massachusetts Correctional Institution Walpole & Massachusetts (1974). *Disciplinary procedures: institution order 4310.1*. Commonwealth of Massachusetts Dept. of Correction M.C.I. Walpole.

³⁷ Keeanga-Yamahtta Taylor, *The Emerging Movement for police and prison abolition*, THE NEW YORKER (May 07, 2021) available at: <https://www.newyorker.com/news/our-columnists/the-emerging-movement-for-police-and-prison-abolition>.

³⁸ Ruth Wilson Gilmore & James Kilgore, *The Case for Abolition*, THE MARSHALL PROJECT (Jun. 19, 2019, 6:00 AM) available at: <https://www.themarshallproject.org/2019/06/19/the-case-for-abolition>.

III

Conceptualization of Stigma

Attachment of shame, guilt, and branding unique identification has been central to offenders. We can identify prisoners as a class of people who are subjected to stigma. Goffman explains that an identifiable group attached with stigma often experience specific common obstacles that hinder aspects in their private and public lives.³⁹ These obstacles often stem from stereotyping, prejudices and disregard. The subjection of stigma onto this group is questioned on various fronts; what kind of stigma is being attached, how it affects their lives during and after incarceration, the function stigma is performing- whether itsproving to be a deterrent or whether it is leading to slowing down of reformatory and restorative justice initiatives.

Erving Goffman's conception of 'Stigma' and 'Spoiled identity' can be delved into to answer these questions.⁴⁰ At the outset, stigma commonly is understood as 'undesired differentness' from what society collectively identifies as "normal".⁴¹ The stigma occurs at the schism from the 'normal' and brands the persons not exhibiting the 'desired' characteristics as 'undesirable' which furthers their discrediting. They no longer become fit to behave as equals in a society which is otherwise considered to be egalitarian. In case of incarceration, it goes a step ahead when the punishment is itself seen as equalizing above other things. Thus, seeing this group as beneath the normal, justifies the subordination of rights and concessions and second, the officious neglect that is designed into their environment. Understanding the stigmatization of prisoners, its ways, methods and impact needs to be questioned again knowing that they expected to be released post correction. However, by attacking their dignity, they are left with lesser or lower personhood than when they entered. On the other hand, we also desire shame/ guilt to have some deterrent effect on crime.

The stigma marks the person with disability that reduces their credibility and is also associates them with negative characteristics.⁴² former inmates carry the stigma long after leaving the prison. Sunil Gupta, a former Jailer at Tihar, said that if he would meet an ex-inmate in public spaces, he would not 'embarrass' them by acknowledging them.⁴³ The stigma encapsulates the aspects of status loss, discrimination, stereotype, labelling, and separation which becomes an added

³⁹ Erving Goffman, *STIGMA NOTES ON THE MANAGEMENT OF SPOILED IDENTITY* 57 (1963).

⁴⁰ *Id.*

⁴¹ *Id.*, at 53.

⁴² Bruce Link & Jo C. Phelan, *Conceptualizing Stigma*, 27 *ANN. REV. SOCIOLOGY* 363-85 (2001).

⁴³ Sunil Gupta & Sunetra Choudhury, *BLACK WARRANT: CONFESSIONS OF A TIHAR JAILER* (2019).

invisible punishment.⁴⁴ The incarcerated face numerous barriers in getting safe, affordable and stable places to live.⁴⁵ A National Longitudinal Survey of Youths in Prisons in United States, theorizing the negative effect of incarceration on the health of inmates, found that the effect was both direct and indirect. The effect was largely due to stigma and affected post incarceration.⁴⁶

Prison: Stigmatized House of the Stigmatized

Prisons use a regimen of exhaustive discipline to reform the individual. They are omni-disciplinary institutions which must intervene in every aspect of the inmates' physical existence, thereby seeking to reform their mental state of being.⁴⁷ The power of reformation in prisons is realized at the conscience of the individual. This paper argues that stigma attached to the institution of prisons hampers, if not completely overtake this essential function of prisons. Inmates suffer from a loss of liberty and face the prospect of an ignominious future once released. Mrs. Alva, a prominent spokeswoman for women's rights in India said, "The stigma of a jail term sometimes ruin a woman's life because her family would refuse to take her back even after her release."⁴⁸ Pushpa, daughter of an incarcerated couple, made headline when she topped the secondary examination and commented "I was a Child when I went to jail with my parents, I have lived through the trauma of staying behind bars. When I was admitted to a school and grew up, I decided to undo whatever stigma my parents had gathered."⁴⁹ The status of women post-incarceration is significantly worse than that of men. Holding women inside a compound that is generally made for men adds to the stigma. A convict is viewed as an outcast of the society to be kept separated from the masses as they constitute undesirable criminal elements. This stigma has led to various detrimental implications.

Labelling theory has thrown some light on the stigma borne by the incarcerated.⁵⁰ The theory theorises that once a person is identified as a convicted prisoner it causes the person to conform to stigmatising attitudes, buttressing the deviant identity. Some empirical studies also suggest that groups of offenders, who were formally

⁴⁴ T. N. Y. Henderson, *New Frontiers in Fair Lending Confronting lending discrimination against ex-offenders*, 80 N.Y.U. L. REV. 1240 (2005).

⁴⁵ Danya E. Keene, et. al., *Stigma: Housing and Identity after Prison*, 66(4) SOCIOLOGICAL REV. (2018).

⁴⁶ Kelly E. Moore, et. al., *The Effect of Stigma on Criminal Offenders Functioning: A Longitudinal Mediation Model*, 37(2) DEVIANT BEHAV, 196-218 (2016).

⁴⁷ *Supra* note 25 at 236.

⁴⁸ Sanjoy Hazarika, *For Women In India Prisons, A 'Grim Picture'*, N.Y. TIMES (Feb. 29, 1988).

⁴⁹ Somreet Bhattacharya, *Delhi: Jail inmates battle stigma with Vision*, TIMES OF INDIA (Sept. 01, 2019) available at: <https://timesofindia.indiatimes.com/city/delhi/jail-inmates-battle-stigma-with-vision/articleshow/70929839.cms>.

⁵⁰ Edwin M Lemert, *HUMAN DEVIANCE, SOCIAL PROBLEMS, AND SOCIAL CONTROL* (1972).

charged, and carried out jail sentences, were more prone to recidivism than the offender group who evaded jail sentence.⁵¹

Attachment of stigma often leads to a lack of concern and apathy for the condemned. The ill-treatment of prisoners is justifiable for many as prisoners deserve to be in prisons. The Mulla Committee, while recommending steps for reformation of prison system, observed that the status of prisoner is of less than that of a citizen and hence, a prisoner lacks even the basic rights.⁵² The public's apathetic concern for the prisoner has led to paltry media coverage of issues emanating from prisons. Every year around 100 deaths are classified as Unnatural and many of them being suicides and custodial deaths which largely go unnoticed. The system only makes the news when high profile cases such as the murder of *Manju Shetty* in Byculla Jail, Maharashtra, occur which was covered by the media because the jail housed a prominent person.⁵³

Apathy manifests itself at each procedural step of the criminal justice system. The police, who are first at the site of the crime, are heavily stigmatized themselves. Dramatic portrayals in popular media paint the police force in a negative light, as being tardy, in cahoots with villains, and using torture to elicit information from hapless prisoners.⁵⁴ Custodial deaths and unethical methods have been the focus of much outrage because of cases such as the *Hussainara Khatoon*⁵⁵, *Sunil Batra*⁵⁶, and *Bhagalpur blinding incident*⁵⁷ among others. Prison statistics suggest that 1544 people died due to natural causes, out of which 1430 died due to some illness and 165 died due to unnatural causes in Indian Prisons in the year 2019.⁵⁸ Public opinion varies, with some believing torture to be acceptable.⁵⁹ The Human Rights Watch in its report⁶⁰ quotes from the Illustrated Weekly of India which carried out an opinion poll on the Bhagalpur blinding case about whether the people felt that the blinding was justified. More than two thirds of the general sample agreed. This social inclination is reflected in instances of public beatings of accused individuals before

⁵¹ John L. Worrall & Morris G. Robert, *Inmate Custody Levels and Prison Rule Violation*, 91(2) THE PRISON JOURNAL 131-157 (2011).

⁵² Report of the All India Committee on Jail reforms, (Ministry of Home Affairs, 983).

⁵³ Express News Service, 'Assaulted', prisoner dies at Byculla Jail, THE INDIAN EXPRESS (Jun. 26, 2017) available at: <https://indianexpress.com/article/cities/mumbai/assaulted-prisoner-dies-at-byculla-jail-4720570/>.

⁵⁴ Beatrice Jauregui, *Beatings, Beacons, and Big Men: Police Disempowerment and Delegitimation in India* 38(3) LAW & SOCIAL INQUIRY 643-669 (2013).

⁵⁵ *Hussainara Khatoon v. Home Secretary, State of Bihar*, 1979 AIR 1369.

⁵⁶ *Sunil Batra v. Delhi Administration*, 1980 AIR 1579.

⁵⁷ *Khatri v. State of Bihar*, 1981 SCC (1) 627.

⁵⁸ Prison Statistics India, National Crime Records Bureau, Government of India (2019).

⁵⁹ Jinee Lokaneeta, *Defining an Absence: Torture 'Debate' in India*, 49(26/27) EPW, 69 (2014); Nirman Arora, *Custodial Torture In Police Stations In India: A Radical Assessment*, 41(3/4) JILI, 513 (1999).

⁶⁰ Prison Conditions in India, Human Rights Watch (1991).

the arrival of police prompting further caricaturing in films. Recently, a youth was beaten to death after alleged sacrilege bid at Golden Temple.⁶¹ The Human Rights Watch report also included an interview of a certain inspector Misra who said that police has a reputation for brutality and this creates a public expectation that police will be brutal, which in turn pressurizes them to live up to their image.⁶²

While it is natural for the guilty to wish prison away, the adjudicatory system has also been reluctant in sending some people to jail. Beyond the obvious influence that certain individuals possess, judges hesitate from sending such influential people to jails due to the subsequent and inevitable stigmatization they will receive. Many cases often result in delayed or no convictions, or lenient sentences. The 2G spectrum case, Lalu Prasad's conviction in the fodder scam, illegal mining in Bellary, and Salman Khan's drunk driving are only few such recent cases.⁶³ Instances of judges recusing themselves from hearing certain kind of cases could also point towards the same reluctance. Four judges of the Kerala High Court had recused themselves from sitting on the Lavalin case which involved Pinayari Vijayan, secretary of a prominent political party in Kerala.⁶⁴ Positive morality enforced through our laws emphasizes the stigma as well. The Representation of People Act, 1951 lays down that any person sentenced to imprisonment for over two years shall not only stand disqualified but shall be ineligible for running for Parliament or state legislature for another six years after his release.⁶⁵ These provisions reinforce stigmas as they imply that incarceration is not the end of the punishment with it tailing into the time after release.

Lack of concern, and general apathy is also prevalent in the legislature's attitudes towards prisons. Though there have been many committees and commissions, recommendations and suggestions have largely gone unnoticed. The Malimath Committee Report⁶⁶ starts with the quote "Everything has been said already, but as no one listens, we must always begin again." One such recommendation is regarding

⁶¹ Kamaldeep Singh Brar, *Youth beaten to death after alleged sacrilege bid at Golden Temple*, INDIAN EXPRESS (Dec. 19, 2021) available at: <https://indianexpress.com/article/cities/amritsar/man-beaten-to-death-over-alleged-sacrilege-attempt-at-golden-temple-7679496/>.

⁶² *Supra* note at 54.

⁶³ V Krishna Ananth, *Fodder Scam, Lalu, and the Conviction*, 48(43) EPW 12 (2013); Aamir Khan & Abhinav Garg, *2G Spectrum Verdict: No proof of scam, says Court*, THE TIMES OF INDIA (Dec. 22, 2017) available at: <https://timesofindia.indiatimes.com/india/2g-spectrum-verdict-no-proof-of-scam-says-court-a-scam-of-lies-says-congress/articleshow/62201212.cms>; Emma Graham, *Salman Khan's Acquittal Raises Questions About India's Justice System*, THE GUARDIAN (Dec. 10, 2015), available at: <https://www.theguardian.com/world/2015/dec/10/salman-khans-acquittal-raises-questions-about-indias-justice-system>.

⁶⁴ Justice M. R. Hariharan, *High Court of Kerala Under the Scanner on the issue of Recusal*, LIVELAW (Feb. 28, 2014), available at: <http://www.livelaw.in/high-court-kerala-scanner-issue-recusal/>.

⁶⁵ The Representation of The People Act, 1951, S. 8(3) (India).

⁶⁶ Committee on Reforms of Criminal Justice System, (Government of India, 2003).

sentencing guidelines which determine the operational element of punishment. Sentencing guidelines help ascertain the duration of imprisonment a person should undergo. Despite it being a standard practice in most countries and recommended by many committees, India still lacks sentencing guidelines. Courts have not laid down guidelines either, however, they have created a few principles as and when the need arose such as rarest of rare doctrine.⁶⁷ and the principle of mitigating and aggravating circumstances.⁶⁸ The malaise in the acts and omissions of the legislature, and vague language of the courts have led to unequal sentencing, and an unhealthy discretion of judges creeping in. Under trials prisoners remain another significant issue as they form 68% of the total prison population in India.⁶⁹ This is contrary to the expected result of bail being the rule and custody being the exception. An Amendment to the Criminal Procedure Code, enacted by Parliament in 2005, states that an under trial shall be released after he undergoes half of the maximum period of imprisonment specified for the offence for which he is accused⁷⁰. The accused being innocent until proven guilty is one of the hallmarks of our criminal justice system. This amendment along with the high percentage of under trial prisoners indicates a discrepancy in philosophy and application which is resultant of the suspicious attitude that is often cast upon persons going into prisons. There has been an erosion between defining under trials and convicts leading to anyone entering the penal system being doomed to a future of suspicion and apathy.

The most severe of impacts through stigmatization has been on the state of prisons. Poor living conditions, allied with existing stigmas, have created a vicious circle of self-strengthening denigration of living conditions. Apathetic administration and planning, and a feeling that prisoners deserve ill-treatment, has made the deprivation of basic amenities a common feature in prisons.⁷¹ The National Policy on Prison Reforms and Correctional Administration in its report mentions that "prisons had been neglected for far too long and there had been practically no improvement in their physical environments or in the method of handling inmates".⁷²

Incarceration has become the most preferred form of penalty due to the egalitarian nature of punishment and hence became the de-facto punishment of civilized societies. Stigma has crept into the institution, and has created discrimination within it. Unequal treatment which suits the status quo is now characteristic. The analysis of prison statistics show that there is over-representation of marginalized groups

⁶⁷ *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

⁶⁸ *Machhi Singh v. State of Punjab*, AIR 1983 SC 957.

⁶⁹ *Supra* note at 52

⁷⁰ S. 436 A, Criminal Procedure Code, 1973 (India).

⁷¹ *In Re: v. Inhuman Conditions in 1382 Prisons*, (2018) 16 SCC 636.

⁷² National Policy on Prison Reforms and Correctional Administration, Bureau of Police Research & Development, Ministry of Home Affairs, Government of India (2007).

such as Muslims, Scheduled Castes, and Scheduled Tribes in Indian prisons.⁷³ These marginalized groups are also socio-economically challenged. A study conducted in the Amritsar Central Jail revealed that only 8% of prisoners had income over 10,000 rupees per month. 80% of prisoners had incomes below 2000 rupees or no income at all.⁷⁴ Polarizing the spectrum, the Hindu, in its editorial *Privileged Prisoners* writes how influential offenders receive special treatment in prisons.⁷⁵ Irfan Khan and Zakaria Siddiqui in their paper titled “Democracy in Jail” argue that there is a need to investigate the relation between over-representation of minorities and the democracy of the state. Western democracies face similar trend which they label as ‘penal democracy’ or ‘punishing democracy’.⁷⁶ The status of under trials in our prisons is also an effect of the conversion of stigmas into inequality.

IV

Correction and Normalizations

Prisons are one of the many institutions which actualises the theoretical social contract that promised protection from the undesirable constituents in the community among other protections. However, when you hand this responsibility to the higher power, that is the state, you must assume that the state shall have the institutional statesmanship to uphold the cherished principles of equality, fairness and justice. However works by Michel Foucault, Lorna Rhodes, and the phenomenon of Penal Democracy, Penal populism, Prison Industrial Complex strike at the heart of this assumption. Black warrant by a former Tihar jailor and was also endorsed by renowned IPS Kiran Bedi, exposed the not so democratic placement of the institution in India. World over similar narratives are being heard. In India, the problems of poverty, caste and religion are still true.⁷⁷ While our constitutional courts have time and again tried to lift the status of prisoners from that of ‘animals’ (a term used to describe the status of prisoners in India). Colonially, the institution of prison was handed down as a repressive machinery, which the Indian state continued even after the British had left.

⁷³ Irfan Ahmad & Md Zakaria Siddiqui, *Democracy in Jail Over-representation of Minorities in Indian Prisons*, 52 EPW 44 (2017).

⁷⁴ Kunwar P Singh, *Human Rights of Prisoners: A case study of Central Jail Amritsar*, Thesis, GURU NANAK DEV UNIVERSITY (2010).

⁷⁵ Editorial, *Privileged Prisoners*, THE HINDU (Apr.07, 2012).

⁷⁶ *Supra* note 67.

⁷⁷ *Supra* note at 67.

The report by Frederic Mouat, in *On prison Discipline and statistics in lower Bengal*, in 1867 he writes:⁷⁸ "The first subject considered was the health of prisoners, among whom the heavy and persistent mortality was attributed to over-crowding, bad ventilation, bad conservancy, bad drainage, insufficient clothing, sleeping on the ground, dirtiness of person, impure water, exaction of labour from unfit persons, and insufficient medical inspection", The report continues that the Goal committee of 1864 attached no importance to education as an instrument of reformation. And previously Indian Prison committee 1838 were of the opinion that education 'Criminals' of India was not a worthy cause for where expenses should be made. This committee too agreed. According to the PSI report 2019, Indian jails have an occupancy at 118.5% and according to some newspaper reports the same rings true even today."⁷⁹

Mouat's report spoke of the divisions between the prisoners; some are still continued such as the gender, age, nature of punishment. Some segregations that should have been continued but aren't, such as offences against person and property and within that, according to the gravity of offence. However, the division which has not been continued, is the one on religion; prisoners were divided in Christians and Non-Christians. The division was founded on the basis that religious teaching should be a part of reformation, however of only the people who were seen of the right religion. This has been done away with after India became a constitutionally secular country. However, we can see in many accounts that some unofficial division on such lines: religion, caste, and region is clandestinely practised within the institution.⁸⁰ The division was meant to avoid complications of keeping large group of persons at one place to achieve discipline among them by hierarchisation, for which enough prison officials may not be present. The prison at no time has more than 10% of officials manning and as such most of the day to day work inside the prison is carried by the inmates themselves. Counting of prisoners is one such crucial activity carried out in the prisons by the inmates/ warders.⁸¹

'Black warrant' and 'Everyday life in prison' show how the institution has not changed much in its ways of administration, and large number of arrest of Journalists and activists indicates a repressive and anti-democratic inclination in the

⁷⁸ Frederic J. Mouat, *On Prison Discipline and Statistics in Lower Bengal*, 30(1) JOURNAL OF THE STATISTICAL SOCIETY OF LONDON 24 (1867).

⁷⁹ Bhavna Vij-Aurora, *Right to Justice Bill: Helplessness, Psychological Disorders Torture Indian Prisoners*, INDIA TODAY (Jun. 24, 2011).

⁸⁰ Sukanya Shantha, *From Segregation to Labour, Manu's Caste Law Governs the Indian Prison System*, THE WIRE (Dec. 10, 2020) available at: <https://thewire.in/caste/india-prisons-caste-labour-segregation>.

⁸¹ Mahuya Bandyopadhyay, *EVERYDAY LIFE IN A PRISON: CONFINEMENT, SURVEILLANCE, RESISTANCE* (2010).

indiscriminate use of the institution.⁸² The prison system was an important institution to British as a controlling institution in India and hence a law as early as 1894 (The Prisons Act, 1894, currently in force) was enacted and various reports⁸³ suggest that discipling of the errant Indian population was the India did not have much influence on the penal system even though many leaders of the independence movement were jailed/housed in many prisons; the same Prison Act of 1894 still continues to govern the institution.

It is an acceptable reality that human beings are placed differently and hence the same punishment would hit differently situated people differently. One such difference can be calculated by the cost of lost opportunity. The question is whether the egalitarianism of the punishment is what makes it different to different people and hence fair. Another reality that penology must take into consideration is the effect of personal wealth and influence on the life inside prison. The discourse often erupts that cases of tax evasion or corporate crimes should be dealt with higher monetary punishments and lower incarcerations as that would be better for the society in large.⁸⁴ Hobbes explains that in the war of all against all, which drives the basic nature of man are on the account of appetite, equality, diffidence, and vanity.⁸⁵ Mouat, while talking about the Indian prison administration comments as "That a prison should be rendered a terror to evil doers, by inflicting as much of pain as can be inflicted without injury to health of body or mind, and without resorting to punishments that err from excess of severity".⁸⁶ Centuries later, the state still is attempting to make the procedure as painless as possible however, the ethnographic accounts of people who have lived inside (either as prisoners or administrators) brings forth the pain that the institution exerts on its inmates that goes beyond the one decided in the social contract. At the same time, Goffman, also speaks about the world within worlds that the institutions are capable of becoming. *Black warrant* briefly sheds light on the politics of prisons, mirroring the ecology of hierarchy outside.⁸⁷

Reformation and rehabilitation of prisoners is being referred to as the 'Ultimate objective' of the Prison administration by the Indian State and reaffirmed in Prison Statistics yearly.⁸⁸ Every year, state administrations organise events and run schemes

⁸² Jayshree Bajoria, *Stifling Dissent: The Criminalization of Peaceful Expression in India*, Human Rights Watch (2016) available at: https://www.hrw.org/sites/default/files/report_pdf/india0516.pdf.

⁸³ Frederic J. Mouat, *On Prison Discipline and Statistics in Lower Bengal*, 30(1) JOURNAL OF THE STATISTICAL SOCIETY OF LONDON 24 (1867).

⁸⁴ Mark. A. Cohen, *Theories of Punishment and Empirical Trends in Corporate Criminal Sanctions*, 17(4) MANAG. DECIS. ECON 399 (1996).

⁸⁵ Thomas Hobbes, *LEVIATHAN* (2008).

⁸⁶ *Supra* note 80 at 7

⁸⁷ Sunil Gupta & Sunetra Choudhury, *BLACK WARRANT: CONFESSIONS OF A TIHAR JAILER* (2019).

⁸⁸ National Crime Records Bureau, *Prison Statistics of India*, Chapter 10 (2019) available at: <https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>.

to inculcate the same. The yearly Prison Statistics in their chapter on the matter writes in their chapter, little is changed apart from figures in it. The rehabilitation has been divided in three segments Education, Health and Vocation. The figures mention the number of inmates who received education (elementary, adult or computer), legal aid, library facility, vocational training in different skills, wages received and the value of the goods produced by the inmates. The information lacks qualitative information on what quality of education, legal aid, vocational training was received by the inmates. The research also lacks information on how many prisoners are able to utilise these skills upon being released. One of the rehabilitation schemes is Cheyutha Nidhi, which helps indigent prisoners get out of prison after completion of their prison sentences but are in prison due to non-repayment of fines.⁸⁹ Chapter 10 of the Prison Statistics of India, on Rehabilitation and Welfare of Prisoners also boasts of Legal aid being provided to prisoners which already has been identified as part of the Fundamental right to life. However, the quality and access has been inadequate.⁹⁰

Some advanced economies are attempting to normalise prison sentences. Germany and Netherlands are two such pioneers of the normalising exercises.⁹¹ In both economies, prisoners are not made to give up their places in the society upon entering the prison; they retain their right to take part in the democratic processes such as voting and also continue to receive social welfare benefits. Social and familial rights such as living with their families, freedom to cook some meals, more freedom about the restriction imposed within the prisons are relaxed to give them more sense of autonomy in their lives⁹². In Netherlands, inmates get the conditioned privilege of spending time with their families, learn new skills that will result in meaningful employments upon release.⁹³ On the other hand, in India, most rehabilitation programs offered are basic and result in little to no addition to their skill sets. Vocational training in India is limited to weaving, tailoring, carpentry, handloom, canning and the likes and get paid less than the average minimum wage.⁹⁴

In a recent case, the Supreme Court commented that “Prisoners are peculiarly and doubly handicapped. For one thing, most prisoners belong to the weaker segment, in poverty, literacy, social station and the like. Secondly, the prison house is a

⁸⁹ National Crime Records Bureau, *Prison Statistics of India*, Chapter 10 (2019) 216

⁹⁰ Hrishikesh Jaiswal, *Good Quality Free Legal Aid in India a Distant Dream*, 7(2) IJRAR (2020).

⁹¹ Ram Subramanian & Alison Shames, *Sentencing and Prison Practices in Germany and the Netherlands*, VERA INSTITUTE OF JUSTICE (2013) available at: <https://www.vera.org/downloads/publications/european-american-prison-report-v3.pdf>.

⁹² H. De Vos, & E. Gilbert, *Freedom, so close but yet so far: The impact of the ongoing confrontation with freedom on the perceived severity of punishment*, 9(2) EUROPEAN JOURNAL OF PROBATION 132 (2017).

⁹³ S. Boztas, *Why are there so few prisoners in the Netherlands?* THE GUARDIAN (Dec.12, 2019) available at: <http://www.theguardian.com/world/2019/dec/12/why-are-there-so-few-prisoners-in-the-netherlands>.

⁹⁴ *Supra* note at 80.

walled-off world which is incommunicado for the human world, with the result that the bonded inmates are invisible, their voices inaudible, their injustices unheeded. So it is imperative, as implicit in Article 21, that life or liberty, shall not be kept in suspended animation or congealed into animal existence without the freshening flow of fair procedure".⁹⁵ Here one of the most crucial organs of the state recognises that most prisoners belong to weaker section of society, however, the court have stopped short of theorising this relationship between crime and conviction, a relationship that is keenly followed in the Marxist criminology circles.⁹⁶

This paper, so far, has attempted to explain the effect of stigma as on the components of criminal justice system and the imprisoned. Sunil Gupta also comments on his inability to secure a match due the stigma surrounding a jailor as well.⁹⁷ The picture that emerges is that of a system that closely resembles untouchability that India is yet to get rid of even after institutional mechanism being underway for almost 80 years. It resembles the organisation of power structure and the effect it has on the quality of life inside and after incarceration in similar fashion. The matters are complicated to observe that SC, ST and Muslims are over represented in Indian Prisons⁹⁸. The quality of life in prison has often been compared to that of animal existence. PSI 2019 state that 86% of deaths in prisons was Natural however only 78 out of these 1544 deaths were due to ageing and all others were on account of illnesses. To corroborate, India has a total of 1962 medical staff against the sanctioned 3320.⁹⁹

Open prisons are hailed as one such solution to mitigate the ill effects of incarceration. According to the Model Prison Manual, 2016, "All Open and Semi-open institutions are intended to put into practice the contemporary ideology of reformation, correction and rehabilitation of convicted prisoners so that they may lead a self-disciplined and cultured life after release".¹⁰⁰ Their administration still lacks a legislation in most states and their numbers are way below than the number of prisoners who qualify for them. As such categorisations have been provided for who can make it to open prisons, thus making a further distinction and not providing most an opportunity to avail this benefit. However, even this small accommodation has been barely utilised (10 per cent in TamilNadu, 15 per cent in Chattisgarh and 20 per cent in Punjab) in some states.¹⁰¹ The wages given to these inmates in not covered by the labour codes Studies report on negative consequences

⁹⁵ *Surendra Singh Sandhu v. State of Uttarakhand and Others*, 2017 (2) N.C.C. 17.

⁹⁶ Pat O' Malley, *Marxist Theory and Marxist Criminology*, 29 CRIME AND JUSTICE 70 (1987).

⁹⁷ *Supra* note at 37.

⁹⁸ Deeptiman Tiwary, *NCRB data: Higher share of Dalits, Tribals, Muslims in Prison than Numbers Outside*, THE INDIAN EXPRESS (Aug. 13, 2020) <https://indianexpress.com/article/india/ncrb-data-higher-share-of-dalits-tribals-muslims-in-prison-than-numbers-outside-6575446/>.

⁹⁹ *Supra* note at 52.

¹⁰⁰ Model Prison Manual, (Ministry of Home Affairs, 2016).

¹⁰¹ *Supra* note at 84 S. 9.

of incarceration, in the form of both psychological harm and consequent physiological harm.¹⁰² Foucault speaks about the soul of the person being the object of punishment under the garb of humanising the punishment.¹⁰³ Corporal punishments had to be replaced by 'humane' ones which were meant to reform the individual however, we see that psychological harm is substantial even with short term confinement in any jail, borstal school or juvenile homes. Donald Clemmer in the *Prison Community* and Goffman in *Asylum* describe how in institutions such as Prisons, inmates undergo 'prisonisation' where the inmate subconsciously adapts to the prison culture.⁹⁰ This culture is removed from the normal which often leads to the feeling of degraded self and experiences. Researches have also revealed that many inmates suffer from various forms of post-traumatic stress disorders such as panic attacks, paranoia, depression; which further impedes their social integration and adaption upon release. Other researches have also shown that inmates due to having little autonomy over their day-to-day functioning feel greater dependence, sense of helplessness, introversion and diminished decision making capacity. This psychological harm is often accompanied and exacerbated with violence, whether it is experienced, inflicted or just the knowledge of it is enough. Often this violence is inflicted with design rather than inadvertently.

Gresham Sykes, describes these psychologically damaging experiences as 'Deprivations or frustrations, which are perilous to the personality and a threat to the life goals of the individual, which affect the self-esteem and feelings of insecurity.'⁹¹ PSI 2019 states that 7394 suffer from mental illnesses and 116 people died due to suicide.¹⁰⁴ Imprisonment was advocated merely on the basis of deprivation of liberty as an appropriately retributive effect however it also inflicts latent intangible emotional and psychological burdens. Many reasons have been attributed to this condition, such as loss of liberty, loss of social interaction with family and friends, loss of autonomy, loss of sense of security etc. Sykes writes that this added form of psychological and emotional strain is an infliction by design as being commensurate with the physical punishment. Stanford Prison experiment is noteworthy in this regard.¹⁰⁵ This experiment was conducted with college students who were randomly assigned the roles of inmates and guards and were placed in a prison like setting. The experiment had to be abandoned after six days as students complained of 'acute psychological trauma and breakdowns'.¹⁰⁶

¹⁰² S. Baidawi, C. Trotter, & C. Flynn, *Prison experiences and psychological distress among older inmates*, 59(3) JOURNAL OF GERONTOLOGICAL SOCIAL WORK 252 (2016).

¹⁰³ Michel Foucault, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* 232 (1977).

¹⁰⁴ National Crime Records Bureau, *Prison Statistics of India*, Chapter 10 (2019).

¹⁰⁵ Philip Zimbardo, *THE LUCIFER EFFECT: UNDERSTANDING HOW GOOD PEOPLE TURN EVIL* (2008).

¹⁰⁶ *Id.*

V

Conclusion

While there are several theories on crime causation none explain criminal behaviour in entirety. Theories vary from classical criminology where a person commits crime out of free will to positivist criminology and conflict theories which differentiate between causes controllable for a person and those beyond individual control whereas post-liberal theories posit criminal behaviour as an inevitable part of human life.¹⁰⁷ Definitions and nature of offences and crimes have changed over time. Homosexuality, Marijuana use, Adultery and Blasphemy were considered serious offences but have been wholly removed from this category in several countries. However, despite the many changes in the zeitgeist of societies, their preference for incarceration as the mode of punishment remains. The agonizing manner in which incarceration affects people along with the stigma that has derailed the objectives of the institution calls for strong reformatory measures to be taken. Through this paper, I have attempted to put forth arguments which delineate how the stigma perpetuates due to belief that its purview is limited to prisoners and convicts; I have hypothesized how such stigma and failure of correctional institutions affects the entire judicial machinery behind it, and by extension, the insidious impacts it has on society. Reform is required not just within prison walls but also in positive morality and how it is epistemologically handled. The Juvenile Justice Act is a good example for one of the major objectives behind it has been distancing children from the stigma attached to the criminal justice system. It was felt that they should be given an earnest chance to not let a single error or incident define their entire lives. It was also realised that young offenders, given their age, are bound to be released earlier and have higher chances of being drawn back towards a life in crime. The act lays down procedure for rehabilitation and counselling to ensure young offenders have higher chances of reformation. A similar attempt was made in Kashmir where amnesty is given to first offenders in stone pelting.¹⁰⁸ An analogous understanding of prisons is needed.

Normalization and De-stigmatization of prison sentences has become the need of the hour as the effects of the institution do not remain confined within its walls. The affected can be divided into two groups; those who are affected directly, such as the inmates, families of inmates, prison officials and the second group being the state and the society. A cost-benefit analysis of the benefits and repercussions of

¹⁰⁷ Chad Lavin, *THE POLITICS OF RESPONSIBILITY* 132 (2008).

¹⁰⁸ Sheikh Iqbal, *Centre's Amnesty to Free 4,500 Caught in Kashmir's Stone-Pelting Protests*, NDTV (Nov. 23, 2017) available at: <https://www.ndtv.com/india-news/centres-amnesty-to-free-4-500-caught-in-kashmir-stone-pelting-protests-1778775>.

the institution keeping in mind the socio-economic reality have to be done. Meanwhile, it has been argued that incarcerated individuals constitute an 'underclass' of citizens who live with long lasting psychological issues, face health, employment and housing issues; and social stigmatisation and isolation. These direct impacts erode the justification with which the state machinery imposes punishment thereby raising questions of its legitimacy as the convict is expected to take his place in the society upon release. Incarceration is expected to incapacitate, deter and rehabilitate the offender all at once, however the system has become a house of the stigmatised that the intended outcomes have not been without costs. The incapacitation extends beyond prisons in intangible forms, deterrence gets replaced with learning new crime skills and aversion to authority; and rehabilitation is not taken seriously by the state to be of consequence.

This underclass of persons becomes doubly stigmatised as the Scheduled caste, scheduled tribes, minorities and the poor constitute the bulk of prison population. Within the prison, inmates with higher socio-economic standing find more meaningful positions such as warders inside the prisons. Systems of parole, furlough, and open prisons creates another difference in classes within the prison. Lower quality of medical facilities, living arrangements, recreational and vocational training ensures that inmates have resulted in an eroded sense of self.

Prisons in India continue to be governed under the Prisons Act of 1894 and it is proof of the vain and futile attempts made at modernizing and reforming the system. The paper has been an attempt to theorize the relationships between stigma attached to prisons and prisoners and the resultant inefficacy of the criminal justice system. The paper argues that the time is right to carry out the impression management of prisons. A taxonomic exercise is already underway in changing the nomenclature of the Prison Department to "Department of Correctional Services".¹⁰⁹ The calls for modernising prisons are gathering into a strong chorus.¹¹⁰ According to Antonio Gramsci, "no society sets itself the task for whose accomplishment the conditions do not already exist or are not at least beginning to emerge and develop."¹¹¹ I believe Indian society is ready for this exercise.

¹⁰⁹ Resolutions adopted by 5th National Conference of Heads of Prisons, Bureau of Police Research & Development, Ministry of Home Affairs, Government of India (2016).

¹¹⁰ Press Information Bureau, *Second Phase of Scheme of Modernization of Prisons*, Ministry of Home Affairs, Government of India (2015).

¹¹¹ Antonio Gramsci & David Forgacs, *AN ANTONIO GRAMSCI READER: SELECTED WRITINGS* (1988).