

‘No political will for prison reforms’

Interview with [Sanjoy Hazarika](#) and [Madhurima Dhanuka](#), editors of *Hope Behind Bars: Notes from Indian Prisons*. BY **ZIYA US SALAM**

ALMOST with the regularity of weather despatches, newspapers in India carry reports of persons who have been acquitted after spending years in jail. While many survivors relate accounts of torture inside jail, others lament the loss of precious years of their lives. Invariably, they have been let down by a system which regards them guilty until proven innocent.

Sanjoy Hazarika, author-filmmaker and international director, Commonwealth Human Rights Initiative (CHRI), and Madhurima Dhanuka, legal expert and head of CHRI's prison team, have co-edited a book titled *Hope Behind Bars: Notes from Indian Prisons* which exposes much that is wrong with the criminal justice dispensation system in India. The contributors to this

book, published by Pan Macmillan, include legal expert Vrinda Grover, academic Chaman Lal and journalist Sangeeta Barooah Pisharoty. The book, the editors tell us, talks of bias among police personnel against minorities, tribal people and Dalits, and also highlights the issue of overcrowding in jails, where occupancy often exceeds 200 per cent. Expressing their solidarity with refugees, the



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editors state, "They should not be penalised for irregular entry or overstay. The country of asylum should consider regularising their stay."

Sanjoy Hazarika and Madhurima Dhanuka spoke to *Frontline*. Excerpts from the interview:

In India, a prisoner can contest elections but cannot vote. How does one explain this anomaly?

There is no political will for prison reforms. And it is an anomaly despite the fact that from the early part of the last century, right up to the present, many political leaders from all parties have faced incarceration of various periods in different conditions, although political prisoners usually get better treatment.

Prisoners pay heavily for not being a constituency. Had they been a voting constituency, prison conditions in this country would have been much better. There has been little consideration on voting rights for prisoners. While several countries across the world permit prisoners to vote, there are policy differences on this issue with regard to unsentenced/undertrial and convicted prisoners. A Parliamentary Committee should be set up to look into this aspect so that the right to contest elections is equally balanced with the right to vote.

It is often said that inside jails, the population of the minorities in general, and Muslims and Dalits in particular, far exceeds their actual percentage of population in the country. What does it say about our criminal justice system?

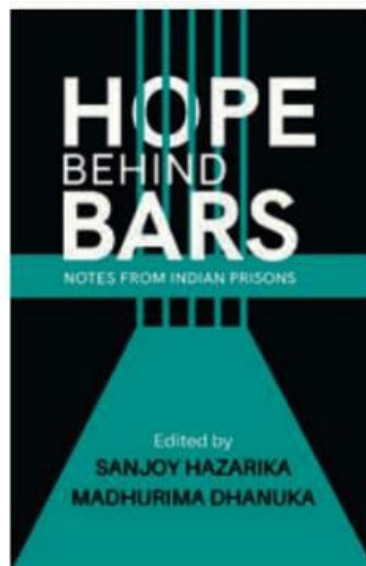
It certainly points to the further marginalisation of minorities—not just Muslims but also tribals, women and Dalits. It indicates institutional bias that results in arbitrary arrests of minority populations. Further, such persons are often poor, illiterate and unable to afford effective legal representation. This leads to higher instances of detention.

A former Supreme Court judge remarked at our book launch that undertrial prisoners constituted 76 per cent of the total number of those incarcerated. Studies have shown

that such bias exists not only in the police but also in the judiciary and prosecution.

Undertrials suffer owing to the absence of speedy dispensation of justice. What is the way out? We saw in Umar Khalid's case how local policemen produced him before the court in handcuffs despite two court orders.

The key is active, engaged citizenship, where people are aware of their rights and remedies and are able to secure their rights. Often, people lack knowledge of their rights when navigating the criminal justice system. Even the media, which is a great source of information for the general public, misrepresents arrest procedures, court hearings and information on rights at that stage because the media and journalists are often unaware or uninformed of such rights. The legal education of citizens is important, especially media professionals who are covering the criminal justice system, including prisons and detainees.



While one expects the system to function in a manner that protects the rights of persons, it is equally important for the individual to be aware of her/his rights and the remedies to undertake when rights are violated. There are several mechanisms that address violation of prisoners' rights, but rarely does one know what they are.

Our prisons are an opaque world. Does this embolden the police to use the third degree on prisoners? There is almost zero accountability.

There are growing numbers/incidences of custodial violence in police stations and in prisons. One could attribute this largely to the opacity and closed nature of these institutions. Even where oversight and monitoring mechanisms exist, they are rarely functional, leading to zero accountability.

For instance, every arrested person is required to be produced physically before the Magistrate within 24 hours of his/her arrest. This is primarily to prevent abuse/violence by police or detaining authorities. The reality, however, is different; either the 24-hour mandate is not fulfilled, or the judicial officer/Magistrate does not physically interact with the person. All this leads to lack of accountability of custodial violence. Numerous examples can be cited of torture or custodial violence, which have been highlighted by the National Human Rights Commission (NHRC) as well as by different courts of the land.

The case of Abdul Wahid Shaikh, who spent nine years behind bars before he was finally acquitted of the terror charges "falsely" imposed on him, points to systemic flaws. Can you elaborate?

Abdul Wahid Shaikh's story not only affirms the institutional bias against minority groups but also underlines the lack of sensitivity and training of interrogation officers. Better forensic science labs would effectively solve more cases. This in turn could lead to higher conviction rates. It's a step-by-step approach. If systems are built on rewards for higher rates of arrests and speedy investigations, there is always a danger of arbitrariness creeping in. What we need to be cognisant of are issues of life and liberty, not just meeting targets.

In the well-known Hashimpura case, the Delhi Sessions Court acknowledged in March 2015: "The present case relates to a horrific

“In 2020, unsentenced/undertrial prisoners comprised 76 per cent of the total population. Overcrowding levels remain high.”

incident of targeted abduction and killing of around 42 persons by the officers of the PAC, a reserve police force of the State of Uttar Pradesh, on the night of 22.5.1987.” Then the court acquitted all the PAC men.

Does it not amount to a mockery of justice?

The key lawyer in the case, Vrinda Grover, who has also written a chapter on this case, remarked at the book launch that instead of calling it a criminal ‘justice’ system it should be seen as the criminal ‘legal’ system, because the more one looks into the system, one finds that there is less justice and more process.

OVERCROWDED PRISONS

In his essay, Chaman Lal talks of the basic right to well-lit, ventilated accommodations, according to the United Nations Standard Minimum Rules for the Treatment of Prisoners, also recommended by the Justice A.N. Mulla Committee, as being violated in most prisons in India.

The primary reason is overcrowding. Prisons were built for the confinement of convicted persons. But over the decades, a large number of prisoners who have not been sentenced are still incarcerated. In 2020, unsentenced/undertrial prisoners comprised 76 per cent of the total population.

Overcrowding levels remain high, with States like Uttar Pradesh and Uttarakhand having occupancy levels of 177 per cent and 168.6 per cent respectively. Some prisons sometimes have occupancy levels of more than 200 per cent. This creates a huge infrastructure crunch on basic prison amenities. Thus, bathrooms meant for five prisoners may

be shared by 20; hygiene then becomes an impossible task.

CORRUPTION IN DETENTION CENTRES

In her essay on detention centres, Sangeeta Barooah Pisharoty talks of people having to bribe their way through for basic facilities, even to meet family members. Dr Kafeel Khan said the same thing about his prison experience. How different are detention centres from prison?

Detention centres and prisons are usually administered by different departments of government: one is run by the Social Welfare Department and the other by Prisons Department. Ideally the daily regime/routine of those in detention centres is supposed to be better than those confined in prison.

Unfortunately, the reality is different; those in detention centres are not paid daily wages like prisoners who can work in various prison facilities. There is little or no oversight/monitoring; conditions are shabby. Many States do not have separate detention centres, but designate areas within the jail premises or annexed to the jail as detention centres.

Corruption among jail staff is rampant. When there are issues of life and liberty at stake, prisoners or their families may agree to pay bribes just for their own safety and security. Family visits, accessing lawyers, accessing the canteen, getting work, avoiding strip search—for nearly every aspect of prison life, we have heard accounts alleging corruption by those in jail.

Will a system of compensation for arbitrary detention of the innocent help in rehabilitation of

those at the receiving end?

Accountability has several benefits, and the grant of compensation provides some relief to victims of such arbitrary detention. However, who gives the compensation is important here.

The Prisons Department need not be the authority to be penalised because arbitrary detention occurs only where the judicial system malfunctions, and many agencies are a part of that. It is important to identify the specific person in authority. This will help ensure that compensatory measures also act as deterrents for future cases of arbitrariness. Each person in the criminal justice system should know that there is a price to be paid for flouting or breaking laws.

What role can /should be played by the United Nations High Commissioner for Refugees (UNHCR) in case of imprisonment of illegal immigrants or refugees, as in the case of the Rohingya?

Given the circumstances in which asylum seekers and refugees have to flee from their country to seek asylum in other countries, they should not be penalised for their irregular entry or stay. The country of asylum should consider regularising their stay, which will allow it to have a robust data on refugees, mitigate risk of arrest and enable access to basic services for refugees, mitigating risks of exploitation.

Detention should be used only as a last resort. Those detained should have access to asylum, which will also mean access to the UNHCR. The UNHCR could register and conduct Refugee Status determination for the detainees. If recognised as a refugee, the UNHCR documents could be accepted by the authorities as a document sufficient for the release of those in detention.

Thus, the authorities and the UNHCR can work together to ensure that no asylum seeker or refugee is in detention for immigration-related issues. This would be a true reflection of India’s generosity over decades in hosting varied groups of refugees. □