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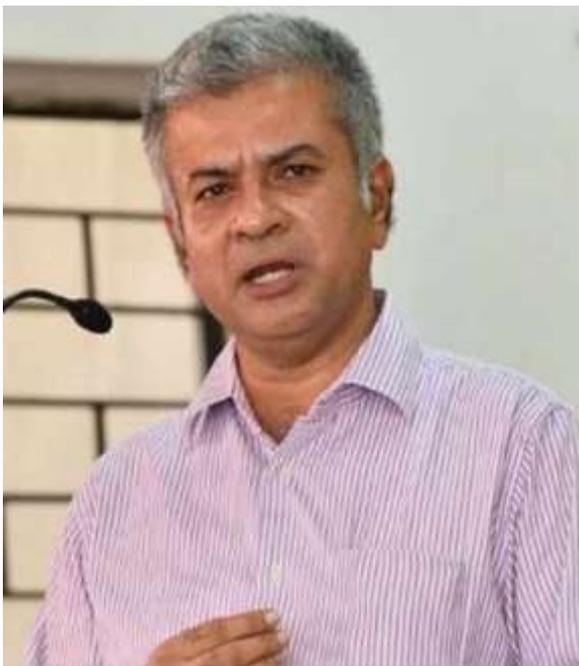
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

“AFTERCARE REHABILITATION OF CRIMINALS: BALANCING MEDIA INFLUENCE AND FUNDAMENTAL RIGHTS”

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Abstract:

This paper critically explores the complicated relationship between media reporting and rehabilitation of offenders. In particular, it highlights the need to balance the public's right to know and the fundamental rights of rehabilitated criminals. Further, introspection of how the media portrays someone who has completed their punishment violates their rights to normally live their life, including their right to privacy, to dignity and their double jeopardy right particularly in high-profile cases like that of Aruna Shanbaug's assailant. Therefore, the paper also draws from constitutional protections including the right to life, and the right to be forgotten (as the Delhi High Court decided in *Jorawar Singh Mundy v. Union of India*), in examining the implications of media liability and its clear responsibilities. The presentation argues that unregulated media reporting does not just undermine that reformatory purpose of punishment, but leads to the development of stigma in society that ultimately affects how former convicts readjust and rehabilitate to post-prison life. Drawing parallels with the Law Commission's recommendations on media trials, the paper advocates for extending protections to rehabilitated offenders, aligning with international human rights standards. The paper concludes with a note to underscore legal and social cultural evolutions that must take place to ensure former offenders are allowed the opportunity of rehabilitation free from permanent social condemnation. The paper concludes by emphasizing the need for legal and social reforms to ensure that former offenders are given a fair chance at rehabilitation without being perpetually punished through public censure.

INTRODUCTION: THE LARGER QUESTION

The rehabilitation of offenders after serving their sentence is a complex and multifaceted issue, especially in the context of media involvement and the digital age. The case of Aruna Shanbaug¹, who died after a prolonged period of suffering in 2015², serves as a poignant example. Aruna's case attracted widespread attention due to the brutal assault she endured and the subsequent euthanasia petition that sparked significant legal debate. Upon her death, the media revisited her case, stirring a renewed discussion on whether the assailant, who had already served his sentence, should face new charges. Legal experts unanimously agreed that retrying him would violate the constitutional protection against double jeopardy³ in India, prohibiting someone from being tried twice for the same offence.

Despite this legal clarity, the media's investigative zeal led to the convict's identification, publication of his photographs, and exposure of his current life, resulting in severe personal and professional consequences for him. This media action raises critical questions about the balance between public interest and the right to life and personal liberty of a rehabilitated convict. After serving his punishment and living a reformed life for decades, the convict was thrust back into the public eye, losing his job and being ostracized from his community⁴. This situation mirrors cases in other sectors, such as the entertainment industry, where actors lose contracts due to past convictions or accusations, highlighting a broader societal issue.

Parallely, the Delhi High Court's recent judicial order in *Jorawar Singh Mundy v. Union of India* W.P. (C) No. 3918 of 2021 underscores the emerging recognition of the 'Right to be Forgotten.' Jorawar Singh Mundy, an American citizen of Indian descent, faced significant professional setbacks due to online availability of his exoneration in a narcotics case. Despite his acquittal, Mundy struggled with employment as potential employers accessed his case details through online searches. The court acknowledged the irreversible damage to his social and career prospects and granted him interim protection by ordering the removal of the judgment from search engine results.

¹ Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454.

² Tabassum Barnagarwala, *Between Life and Death for 42 Long Years, Aruna Shanbaug Passes Away*, *THE INDIAN EXPRESS* (Lucknow, May 19, 2015), at 1.

³ India Const. art. 20(2).

⁴ Peter Ronald Desouza, *The Incomplete Case of Aruna Shanbaug*, *THE HINDU* (Delhi, June 10, 2015), <http://www.thehindu.com/opinion/lead/the-incomplete-case-of-aruna-shanbaug/article7298902.ece>.

These examples underscore a critical issue: should the media and online platforms have the power to impact a person's life and liberty long after they have served their sentence or been acquitted? This paper explores this question, examining the tension between public interest and individual rights in the context of post-conviction rehabilitation and the digital dissemination of legal records.

CONCEPTUALISATION 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.⁵ 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 its proving to be a deterrent or whether it is leading to slowing down of reformatory and restorative justice initiatives.

The stigma marks the person with a disability, which, reduces their credibility, and also associates them with negative characteristics.⁶ 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.⁷ The stigma encapsulates the aspects of status loss, discrimination, stereotype, labelling and separation which becomes an added invisible punishment.⁸ The incarcerated face numerous barriers in getting safe, affordable and stable places to live.⁹ A National Longitudinal Survey of Youths in Prisons in the United States, theorising 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.¹⁰

⁵ ERVING GOFFMAN, *STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY* 57 (Simon & Schuster 1963).

⁶ Bruce Link & Jo C. Phelan, *Conceptualizing Stigma*, 27 ANN. REV. SOCIOL. 363-85 (2001).

⁷ SUNIL GUPTA & SUNETRA CHOUDHURY, *BLACK WARRANT: CONFESSIONS OF A TIHAR JAILER* (1st ed., Roli Books 2019).

⁸ T.N.Y. Henderson, *New Frontiers in Fair Lending Confronting lending discrimination against ex-offenders*, 80 N.Y.U.L. REV. 1240 (2005).

⁹ Danya E. Keene, et.al., *Stigma : Housing and Identity after Prison*, 66(4) SOCIOL. REV. (2018).

¹⁰ Kelly E. Moore, et.al., *The Effect of Stigma on Criminal Offenders Functioning: A Longitudinal Mediatonal Model*, 37(2) DEVIANT BEHAV, 196-218 (2016).

Prison: stigmatised house of the stigmatised

Prisons use a regimen of exhaustive discipline to reform the individual. They are omnidisciplinary institutions that must intervene in every aspect of the inmates' physical existence, thereby seeking to reform their mental state of being.¹¹ The power of reformation in prisons is realised at the individual's conscience.

This paper argues that the stigma attached to the institution of prisons hampers, if not completely, overtakes 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 ruins a woman's life because her family would refuse to take her back even after her release.*"¹² 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.*"¹³ 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 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.¹⁴ 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 were more formal than the offender group who evaded jail sentences.¹⁵

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 prison. The *Mulla Committee*, while recommending steps for reforming the prison system, observed that the status

¹¹ 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/>.

¹² Sanjoy Hazarika, *For Women in India Prisons, A 'Grim Picture'*, N.Y. TIMES (Feb. 29, 1988).

¹³ Somreet Bhattacharya, *Delhi: Jail inmates battle stigma with Vision*, TIMES OF INDIA (Sept. 01, 2019), <https://timesofindia.indiatimes.com/city/delhi/jail-inmates-battlestigma-with-vision/articleshow/70929839.cms>.

¹⁴ EDWIN M. LEMERT, *HUMAN DEVIANCE, SOCIAL PROBLEMS, AND SOCIAL CONTROL* (1st ed., Prentice-Hall 1972).

¹⁵ John L. Worrall & Morris G. Robert, *Inmate Custody Levels and Prison Rule Violation*, 91(2) THE PRISON JOURNAL 131-157 (2011).

of the prisoner is less than that of a citizen and hence, a prisoner lacks even the basic rights.¹⁶ 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, 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.¹⁷

The police, who are first at the site of the crime, are heavily stigmatised themselves. Dramatic portrayals in popular media paint the police force in a negative light, such as being tardy, in cahoots with villains and using torture to elicit information from hapless prisoners.¹⁸

Custodial deaths and unethical methods have been the focus of much outrage because of cases such as the *Hussainara Khatoon*¹⁹, *Sunil Batra*²⁰ and *Bhagalpur blinding incident*²¹, 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 2019²². Public opinion varies, with some believing torture to be acceptable.²³ The Human Rights Watch, in its report²⁴, 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 the arrival of police, prompting further caricaturing in films. Recently, a youth was beaten to death after an alleged sacrilege bid at Golden Temple.²⁵

¹⁶ *Report of the All India Committee on Jail reforms*, (Ministry of Home Affairs 1983).

¹⁷ Express News Service, *Assaulted, prisoner dies at Byculla Jail*, THE INDIAN EXPRESS (Jun. 26, 2017) <https://indianexpress.com/article/cities/mumbai/assaulted-prisoner-diesat-byculla-jail-4720570/>.

¹⁸ Beatrice Jauregui, *Beatings, Beacons and Big Men: Police Disempowerment and Delegation in India*, 38(3) LAW & SOCIAL INQUIRY 643-669 (2013).

¹⁹ *Hussainara Khatoon v. Home Sec'y, State of Bihar*, (1980) 1 SCC 98.

²⁰ *Sunil Batra v. Delhi Administration*, (1980) 3 SCC 488.

²¹ *Khatri v. State of Bihar*, (1981) 1 SCC 627.

²² *Prison Statistics India*, Nat'l Crime Records Bureau, Gov't of India (2019).

²³ Jinee Lokaneeta, *Defining an Absence: Torture 'Debate' in India*, 49(26/27) ECON. & POL. WKLY. 69 (2014); Nirman Arora, *Custodial Torture in Police Stations in India: A Radical Assessment*, 41(3/4) J. INDIAN L. INST. 513 (1999).

²⁴ *Supra note 18 at 4*.

²⁵ Kamaldeep Singh Brar, *Youth beaten to death after alleged sacrilege bid at Golden Temple*, INDIAN EXPRESS (Dec. 19, 2021) <https://indianexpress.com/article/cities/amritsar/man-beaten-to-death-over-allegedsacrilege-attempt-at-golden-temple-7679496/>.

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.²⁶ 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 Report*²⁷ starts with the quote “*Everything has been said already, but as no one listens, we must always begin again.*” One such recommendation regards 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 the rarest of rare doctrine²⁸ and the principle of mitigating and aggravating circumstances.²⁹

NORMALISATION AND ITS CHALLENGES

World over, similar narratives are being heard. In India, the problems of poverty, caste and religion are still true.³⁰ 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.

Reformation and rehabilitation of prisoners are referred to as the ‘Ultimate objective’ of the prison administration by the Indian state and are reaffirmed in prison statistics yearly.³¹ Every year, state administrations organise events and run schemes to inculcate the same. The yearly

²⁶ The Representation of the People Act, 1951, No. 43, § 8(3).

²⁷ *Committee on Reforms of Criminal Justice System*, Gov't of India (2003).

²⁸ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

²⁹ *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470.

³⁰ *Id.*

³¹ National Crime Records Bureau, *Prison Statistics of India*, ch. 10 (2019), <https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>.

Prison Statistics chapter on the matter is written like a rote chapter; little is changed apart from the figures in it. The rehabilitation has been divided into 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, and 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.

This paper, attempts to explain the effect of stigma on the components of the criminal justice system and the imprisoned. Sunil Gupta also comments on his inability to secure a match due to the stigma surrounding a jailor as well.³²

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*”.³³

Foucault speaks about the soul of the person being the object of punishment under the garb of humanising the punishment.³⁴ Corporal punishments had to be replaced by ‘humane’ ones, who 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 home.

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. This culture is removed from the normal, which often leads to the feeling of degraded self and experiences. Research has also revealed that many inmates suffer from various forms of post-traumatic stress disorders, such as panic attacks, paranoia, and depression, which further impede their social integration and adaption upon release. Other

³² Keeanga-Yamahtta Taylor, *The Emerging Movement for police and prison abolition*, THE NEW YORKER (May 07, 2021), <https://www.newyorker.com/news/ourcolumnists/the-emerging-movement-for-police-and-prison-abolition>.

³³ Model Prison Manual, Ministry of Home Affairs (2016).

³⁴ MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* 232 (Alan Sheridan trans., 2d ed., Vintage Books 1995).

research have also shown that inmates, due to having little autonomy over their day-to-day functioning, feel greater dependence, a sense of helplessness, introversion and diminished decision-making capacity. This psychological harm is often accompanied and exacerbated by 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. PSI 2019 states that 7394 suffer from mental illnesses, and 116 people died due to suicide.’³⁵

Imprisonment was advocated merely based on 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 physical punishment. Stanford Prison experiment is noteworthy in this regard.³⁶ 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’.³⁷

PROTECTING REHABILITATED OFFENDERS: THE MANDATE IN CONSTITUTIONAL AND INTERNATIONAL HUMAN RIGHTS LAW

Before exploring the legal intricacies of an action against the kind of journalism that may deprive a convict of his means of livelihood and residence, it is important to understand whether our legal framework provides for the protection of a convicted person who has served his entire sentence and has been rehabilitated.

The answer to the aforesaid question, which will be argued below, is in the Affirmative. There are a maximum of four lines of arguments that justify this stand.

³⁵ National Crime Records Bureau, Prison Statistics of India, Chapter 10 (2019).

³⁶ PHILIP ZIMBARDO, *THE LUCIFER EFFECT: UNDERSTANDING HOW GOOD PEOPLE TURN EVIL* (1st ed., Random House 2008).

³⁷ *Id.*

(i) First Ground: The Right to Privacy

Our Constitution guarantees everyone the right to life and personal liberty³⁸. And such a right cannot be meaningfully exercised and realised if an individual's privacy is not preserved. The Supreme Court of India has repeatedly reiterated the aforesaid. It has upheld that the right to privacy is integral to the broader right to life and personal liberty. In 1994, the then Supreme Court Judge, Jeevan Reddy, summed up the concept of the right to privacy in the following words³⁹:

“The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a “right to be let alone”. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent — whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages.”

Our Constitution also empowers the Parliament to enact laws that are in compliance with international laws and treaties⁴⁰. As the right to privacy has also been heralded as a human right in several international conventions and treaties (including those to which India is a signatory), there is a strong reason and legal basis for enacting a law that would protect an individual's privacy. The Universal Declaration of Human Rights (“UDHR”) recognizes the right to privacy expressly, as follows:

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”⁴¹

In the International Covenant on Civil and Political Rights (“ICCPR”), the same right is enshrined in the following words⁴²:

- “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor unlawful attacks on his honour and reputation.*
- 2. Everyone has the right to the protection of the law against such interference or attacks.”*

Similarly, the Council of Europe's Convention for the Protection of Human Rights and

³⁸ India Const. art. 21.

³⁹ R. Rajagopal v. State of T.N., (1994) 6 SCC 632, 649.

⁴⁰ India Const. art. 253.

⁴¹ Universal Declaration of Human Rights, art. 12, G.A. Res. 217A (III), U.N. Doc. A/810 (1948), available at <http://www.un.org/en/documents/udhr/index.shtml#a12> (accessed November 7, 2024).

⁴² International Covenant on Civil and Political Rights, art. 17, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966), available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (accessed November 13, 2024).

Fundamental Freedoms provides for the protection of the right to privacy in the following Article:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”⁴³

Similarly, the Organization of American States provides for the inviolability of the privacy of a person in the American Declaration of the Rights and Duties of Man, as follows:

“Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.”⁴⁴

The aforementioned shows that the right to privacy is now recognised as a fundamental legal norm in international law. In the case of convicts, their right to privacy would encompass their identification as a convict. It may be argued that the public has a legitimate interest in knowing about any convict, particularly one who has been convicted of an assault. However, this right to be informed should be so balanced against the right to privacy of the convict that it should not hamper the possibility of his rehabilitation. In this regard, there is an imminent need to curb the right to freedom of the press.

(ii) Second Ground: Right to livelihood

More than the right to privacy, the most obvious implication of the right to life is the right to means of livelihood, and the State is responsible for ensuring that no one is unreasonably deprived of adequate means of livelihood. Again, this principle is enshrined in our Constitution, not only as a fundamental right⁴⁵ but also as a Directive Principle of State Policy, which reads as follows:

“The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of

⁴³ Convention for the Protection of Human Rights and Fundamental Freedoms, art. 8, Europ. T.S. No. 5 (1950), available at <http://conventions.coe.int/Treaty/en/Treaties/html/005.htm> (accessed December 23, 2024).

⁴⁴ OAS Declaration of the Rights and Duties of Man, art. 5, O.A.S. Res. XXX, Inter-Am. T.S. No. 2 (1948), available at http://www.hrcr.org/docs/OAS_Declaration/oasrights3.html (accessed December 17, 2024).

⁴⁵ *Supra note 38 at 8.*

livelihood;"⁴⁶

The Supreme Court of India has unequivocally ruled that the right to an adequate means of livelihood is an integral part of the right to life⁴⁷:

"The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but also make life impossible to live."

Even a convict, when he is sentenced to imprisonment, is only deprived of his right to liberty, as per a just, reasonable, and fair procedure established by law. Also, he is not thereby deprived of his right to adequate means of livelihood as he is duly compensated for his prison labour⁴⁸. However, as has been observed in the case of the convict of Aruna Shanbaug assault, the media reporting caused public censure, which not only deprived the convict of his right to personal liberty but also caused his unemployment. His personal liberty was curbed in so far he was forced to leave his erstwhile residence, and the fact of his induced unemployment points towards the loss of his means of livelihood. It is obvious that public censure, induced by media reporting, doesn't amount to "just, fair and reasonable procedure established by law", and therefore, there is no way in which such deprivation, as pointed out above, could be justified.

(iii) Third ground: Right to be forgotten

The Delhi High Court's latest Judicial order in *Jorawar Singh Mundy vs Union of India*⁴⁹ acknowledged the Right to be forgotten; the court was considering a plea made by one Jorawar Singh Mundy, an American citizen by birth but of Indian descent, who was charged in a narcotics case in 2009 while visiting India but was cleared by both the trial and the Delhi High Court. Mundy later returned to the United States and studied law, informing the Delhi High Court that every time a potential employer ran a background check on him using Google, it led

⁴⁶ India Const. art. 39(a).

⁴⁷ *Olga Tellis v. Bombay Municipal Corpn*, (1985) 3 SCC 545, 571.

⁴⁸ *Mohd. Giasuddin v. State of A.P.*, (1977) 3 SCC 287, 295-96.

⁴⁹ W.P. (C) No. 3918 of 2021

them to his judgement, which he blames for his lack of employment thus far. As a result, he requested that three websites, Google, Indian Kanoon, and vLex, remove the judgments. vLex pulled it down while the case was in court while the Delhi High Court noted the irreparable harm that it may have done to Mundy's social life and career prospects, even though he was ultimately acquitted, and gave him interim protection. The judgement was ordered to be removed from Google's search results, and India Kanoon was ordered to block the judgement from being accessed through using search engines such as Google and Yahoo.

(iv) Fourth Ground: Protection from double jeopardy

Our Constitution specifically provides that no person shall be punished twice for the same offence⁵⁰. This is an important aspect of the right to life, which is the hallmark of all fundamental and human rights recognised worldwide.⁵¹

In the case of the convict of Aruna Shanbaug assault, public censure and the subsequent deprivation of job and residence amount to “punishment” for the convict.

This is because a penalty entails deprivation of liberty, and the media reporting has caused this directly through public criticism by imposing social stigma. Moreover, since the convict has already suffered for the entire period of his punishment for the offence which he had committed, it is unfair to so “punish” him again through the imposition of social stigma.

Our Constitution also prescribes that no person shall be subjected to a penalty greater than that to which he would have been subjected at the time of committing the offence.⁵² Now, subsequent to the commission of the offence, the convict was punished for the period that was then prescribed in the law. But deprivation of his liberty after the expiration of more than thirty years from the date when he has fully served his sentence would amount to imposition of a penalty greater than the one prescribed in the law and one to which he could have been subjected as per the law.

Thus, in respect of this right, the media reporting can be seen as depriving the convict of the human rights that he is entitled to by being a human being and thereafter, being an Indian citizen.

⁵⁰ *Supra note 3 at 2.*

⁵¹ International Covenant on Civil and Political Rights, art. 14(7), G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966), available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (accessed December 19, 2024).

⁵² India Const. art. 20(1).

(v) Fifth Ground: The reformatory goal of punishment

There has been a long and extensive debate on the issue of the abolition of the death penalty. Even international human rights law prescribes the objective of punishment to be reformation and rehabilitation. Our Supreme Court has repeatedly reiterated that the objective of punishment is to reform and rehabilitate the offender. In one of the cases, it was observed⁵³:

“It is thus plain that crime is a pathological aberration, that the criminal can ordinarily be redeemed, that the State has to rehabilitate rather than avenge. The sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturization. Therefore, the focus of interest in penology is the individual, and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. Today, humans view sentencing as a process of reshaping a person who has deteriorated into criminality, and the modern community has a primary stake in rehabilitating the offender as a means of social defence.”

It is significant to observe, in the case pertaining to the assault on Aruna Shanbaug, that the convict had been released way back in 1980 when he had served his entire sentence. It had been more than thirty long years during which he was absent from the media glare. There are no reports, even in the investigative journalism of which the present study is so critical, that he had committed any other offence. This raises a presumption of his rehabilitation after his punishment. Perhaps this is a perfect case, where one could see the triumph of law in perhaps reforming a criminal. The natural consequence should have been his assimilation into society and not contempt for him.

However, the media reporting has defeated the object of the law by creating unnecessary hurdles and impediments in the process of the assimilation of the convict. Though the death of Aruna Shanbaug and her endless suffering were unfortunate, it is also unfortunate for civil society to deprive an offender who has served his sentence and is attempting to mend the ways of his right to the legitimate opportunity to be rehabilitated.

AN ANALOGY WITH LAW COMMISSION'S RECOMMENDATIONS **ON MEDIA TRIAL**

There is another justification for the argument that the State must protect the right to life and liberty of rehabilitated convicts. This justification flows from the recommendations of the Law

⁵³ Mohd. Giasuddin v. State of A.P., (1977) 3 SCC 287, 290.

Commission on media trials.⁵⁴ Although it must be conceded at the very outset that the Law Commission's report is in respect of the protection of the accused, and not convicts, it can be seen that the Law Commission did observe that during a subsequent trial, the publication of the fact of a previous conviction of the suspect or accused could amount to contempt.⁵⁵

The rationale is simple: such publication is restrained because the fact of previous conviction must not be so represented to unfairly influence the Judge trying the accused. Otherwise, the accused would be placed in a disadvantaged situation. In effect, his conviction at the subsequent trial would then be seen as a result of the conviction for his previous offence, which, in fact, would be double jeopardy, albeit latent and indirect. Similarly, publication of the whereabouts of a rehabilitated offender would subject him to public censure and deprive him of his right to life (as seen in Aruna Shanbaug case⁵⁶), in a way punishing him for his previously committed offence yet again. Hence, the analogy drawn here warrants the use of the Law Commission's recommendations in justifying the need for constitutional and State protection of rehabilitated offenders from media reporting exactly on the lines of the protection that are extended to an accused who had been previously convicted in a case.

CONCLUSION

“Media trial” has been associated with media publishing reports about a suspect or an accused before his trial has ended. However, as this paper demonstrates, irresponsible media reporting could adversely affect a person even after he has served his sentence, a long time after his trial has already ended. The paper analyses the adverse effects in terms of the deprivation of the fundamental rights of a convict, who has perhaps rehabilitated.

From the analysis above, it can be concluded that there is an urgent need to restrain the media in its unusual zeal to provide information about such convicts. This conclusion is reinforced in view of the fact that today, media reports have a far greater influence than they had in the past advent of social media-Facebook, Twitter, and Google made proliferation of information easier and faster, coupled with the fact that the information, once put into motion, cannot be withheld over the internet later.

⁵⁴ **Law Commission, 200th Report on Trial by Media: Free Speech v. Fair Trial Under Criminal Procedure (Amendments to the Contempt of Court Act, 1971), LAW COM. No. 17 (2006).**

⁵⁵ *Id.*

⁵⁶ Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454.

It must be realised that the freedom of speech and expression, enshrined as a fundamental right in our Constitution, is not an absolute right, and it must be restrained in favour of the right to privacy of others, in this case, a rehabilitated offender. This standard must be enforced because a failure in the rehabilitation process could disrupt public order (public order is a ground on which freedom of speech and expression can be reasonably restricted). This is obviously in addition to the law's concern to prevent defamation of the rehabilitated convict.

While there are several theories on crime causation, none entirely explain criminal behaviour. Theories vary from classical criminology, where a person commits a 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.⁵⁷ 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 agonising 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 the belief that its purview is limited to prisoners and convicts; I have hypothesised 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 terms of 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 not to 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 procedures 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

⁵⁷ CHAD LAVIN, THE POLITICS OF RESPONSIBILITY 132 (David Held & Henrietta L. L. Houghton eds., 1st ed. 2008).

in stone pelting.⁵⁸ An analogous understanding of prisons is needed.

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 society upon release. Incarceration is expected to incapacitate, deter and rehabilitate the offender simultaneously. 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.

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”.⁵⁹ The calls for modernising prisons are gathering into a strong chorus.⁶⁰ 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.”⁶¹ I believe Indian society is ready for this exercise.

⁵⁸ Sheikh Iqbal, *Centre's Amnesty to Free 4,500 Caught in Kashmir's Stone-Pelting Protests*, NDTV (Nov. 23, 2017), <https://www.ndtv.com/india-news/centres-amnesty-to-free-4-500-caught-in-kashmirs-stone-pelting-protests-1778775>.

⁵⁹ Resolutions Adopted by the 5th National Conference of Heads of Prisons, Bureau of Police Research & Development, Ministry of Home Affairs, Government of India (2016).

⁶⁰ Press Information Bureau, Second Phase of Scheme of Modernization of Prisons, Ministry of Home Affairs, Government of India (2015).

⁶¹ ANTONIO GRAMSCI & DAVID FORGACS, *AN ANTONIO GRAMSCI READER: SELECTED WRITINGS* (David Forgacs ed., 1988).