The Crime of Cruel and Unusual Punishment in the US

BINDU DESAI

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted — viiiith Amendment of the Constitution of the United States 1791.

“Time is very long within these four walls”. A prisoner in solitary confinement at the Eastern Penitentiary, Philadelphia to Charles Dickens “American Notes” 1842.

Zubayda’s ‘hard time’ began when he was locked in the ‘tiny coffin’ for hours on end, which he described as excruciatingly painful. It was too small for him to stand or stretch out, so small he said he had to double up his limbs in a foetal position….He described the box as black both inside and out…While locked in the dark interior, he had no way of knowing when, if ever, he would be let out…. (Mayer 2008: 165).

The modern use of solitary confinement in the US began in 1829 at the Eastern State Penitentiary in Philadelphia. The word “penitentiary”, derived from “penitence”, was based on the Quaker belief that isolation with only a Bible for solace in a cold stone cell would lead prisoners to repent, pray and reform. These hopes were belied as prisoners committed suicide, lost their minds and were later never able to function normally. By the end of the 19th century the US Supreme Court condemned the use of solitary confinement (us Supreme Court 1890). In 1971, the Eastern State Penitentiary was closed down. But the practice of solitary confinement, never totally abandoned, got a massive rebirth in the “control units” that were first instituted in the Marion Federal Prison in Marion, Il in 1983 and have since mushroomed all over the US prison system at state and federal levels. Presently the “new and improved” versions of control units lock 80,000 individuals some for decades, some forever.

Confronting the System

Nancy Kurshan’s Out of Control: A Fifteen Year Battle against Control Unit Prisons recounts the decade and a half efforts of a small, highly dedicated and creative group in the Chicago area – the Committee to End the Marion Lockdown (CEML) – to shut down this unit. She describes organising in the years before emails, the internet or cell phones. Marion was subjected to a “lockdown”, a confinement of prisoners to their cells, following the killing of two guards by prisoners. For two years all 350 prisoners at Marion were “subjected to brutal, dehumanising conditions” (Kurshan 2013: 6). In the initial stage of the lockdown 60 guards equipped with riot gear systematically beat nearly 100 handcuffed prisoners and subjected some of them to forced finger probes of the rectum. Who were the prisoners at Marion, a “level 6” (maximum security) federal prison? A disproportionate number were political prisoners – black radicals, native American activists, Puerto Rican Nationalists. Prisoners who could influence and lead other prisoners like Sundiata Acoli, a former Black Panther, and Rafael Cancel Miranda, a Puerto Rican Nationalist, were considered a particular threat by the prison authorities.

The CEML was run by volunteers, all of whom also had to earn their living with full-time jobs. Perennially short of money, for instance, raising $400 when they needed $10,000 to host a conference, they somehow laboured on, often spending out-of-pocket from their modest incomes. The Puerto Rican community in Chicago was a solid base of support with some in it having relatives imprisoned in Marion. The CEML was determined to bring the plight of the Marion prisoners to public attention. No other group had taken on this important task. Never more than 24 individuals at one time, the CEML still managed over 15 years to sponsor about a 100 demonstrations throughout the US, held 200 major educational events and conferences, organised rallies at the prison itself, gave radio and television interviews, published newsletters, and made video documentaries. Though a Congressional Committee had held hearings on Marion...
in 1985 and a 754-page book was published with no changes resulted.

Kurshan provides a vivid and honest account of the joys and defeats of struggle, especially one largely ignored by the media in a country steadily moving rightward. Brave and committed attorneys assisted them, but the brunt of the work was done by the ceml. Their families too were involved no matter how young, coming to protests and demonstrations. There is an uncanny resemblance in their valiant efforts and those of similar groups in India seeking justice for victims of the notorious riots of 1984 and 2002. No matter how severe the criticism, the lockdown did not end for 23 years when Marion was converted into a medium security prison. In 1987 Amnesty International issued a report on Marion where it found that the prison violated every part of the UN’s Standard Minimum Rules for the Treatment of Prisoners (Freedom Archives 2013).

The “ideological brainchild” of a professor at MIT’s Sloan School of Management, Edgar Schein, control units were meant to break prisoners, isolate them physically and psychologically. The ceml wanted to end these units because it believed the unit at Marion would:

- Create conditions of long-term solitary confinement that amounted to torture.
- Incarcerate all those most despised by the US including many political leaders and dedicated activists who had become political prisoners.
- Serve as the capstone to a racist prison system which we saw serving as a capstone of a racist society.
- Proliferate across the country, replicating its horrors wherever it went (Kurshan 2013: 1).

**Horrifying Statistics**

Each of these fears has come true, as control units have multiplied under various semi-Orwellian names like supermax prisons, administrative maximum facility (ADX), communication management unit (CMU), administrative segregation (Ad-Seg) and special housing units (SHU). While Kurshan’s moving account chronicles a grass-roots effort to confront the US prison system (a shorter online version with multiple audio and video links is available: Freedom Archives 2013), Jones and Mauer’s Race to Incarcerate: A Graphic Retelling is a “comic book” version of an earlier scholarly and highly respected work by Marc Mauer: Race to Incarcerate, first published in 1999. It provides horrifying statistics showing how the number of prisoners skyrocketed from about 110 per 1,00,000 in the early 1970s to nearly 750 per 1,00,000 in 2011, an increase in total from 3,30,000 in 1975 to 22,66,800 in 2011. Another four million are under “correctional supervision” (parole, probation). Ninety-three per cent of prisoners are male, 38% black, 34% white, 23% latino while they form 13%, 72% and 12% of the population respectively. Forty-seven per cent are incarcerated for nonviolent drug related or property crimes. One in every 13 black males between the ages of 30 and 34 is in prison, as is one of every 36 hispanic and 1 in 90 white males. A black man has a 32% chance of serving time in prison at some point in his life, compared to a 17% chance for a hispanic and 6% for a white man. How and why did this prison popu-
law enforcement budgets, with the Drug Enforcement Administration’s allocation alone increasing from $86 million in 1981 to $1,026 million in 1991. A masterly politician, Reagan appealed to white voters in race-neutral terms using words such as welfare, state rights and crime, creating the “frightening reality of...the human predator” (Alexander 2012: 30). He succeeded in highlighting the war on drugs, announcing it in 1982 at a time when less than 2% of the American public thought it a major problem.

**Racial Bias**

Michelle Alexander’s *The New Jim Crow*: *Mass Incarceration in the Age of Colorblindness* is a passionate, detailed and magisterial account of the systematic “warehousing” of poor minorities in prisons. She lays bare how US administrations from Nixon to Obama have expanded prison construction, constructed prisoner rights and continued to wage the ineffectual but lethal war on drugs. Clinton signed the Prison Litigation Reform Act (Perkinson 2010: 325), a more ironic use of the word “reform” is difficult to imagine. The Act made a lawsuit against the federal prison system impossible. In the eight years Clinton was in office the total number of prisoners increased by 6,45,135 (ibid: 339). Clinton reallocated funds for “managing the urban poor”, decreasing moneys for public housing by $17 billion while increasing them for prison construction by $19 billion (Alexander: 57).

Alexander provides data that exposes how racial bias has morphed from segregation to “profiling” (Alexander 2012: 133). For example, though 15% of all car drivers on the New Jersey Turnpike was black, they formed 42% of those stopped by the police and 73% of all arrests. The pattern is repeated from state to state. While use of drugs like cocaine and heroin is similar in all races the criminal justice system but also those larger web of laws, policies, and customs that control those labeled criminals both in and out of prison. Once released, former prisoners enter a hidden underworld of legalised discrimination and permanent exclusion. They are members of America’s new undercaste (emphasis added).

Furthermore “like Jim Crow (and slavery) mass incarceration operates as a tightly networked system of laws, policies, customs and institutions that operate collectively to ensure the subordinate status of a group defined largely by race” (Alexander 2012: 13). Though black values, culture and behaviour have been blamed for their high imprisonment rates, Alexander demonstrates how unemployment rates that were similar among the races in 1954 quadrupled among blacks as manufacturing jobs disappeared, trapping African-Americans in “jobless ghettos, desperate for work” (Alexander 2012: 218). As black and latino men became “unnecessary” to the American economy, the war on drugs was conveniently applied to haul them off to prison. Certainly the increase in New York city’s police “stop and frisk” actions, which rose from 97,296 in 2002 to 6,85,724 in 2011, 87% of whom were black or Latino, 53% aged 19-24, makes it hard to refute that “drug policy in the US is about social control” (Cockburn and St Clair 2013).

**Powerful Prison Lobby**

The struggle of individuals released from prison is lifelong. Only Maine and Vermont among the us’ 50 states allow prisoners to vote. If living in the us, it comes as a shock to know that in most European countries prisoners can and do vote. Ex-prisoners in the us find it extremely difficult to find employment or housing and have to pay back for pre- and post-conviction service fees.

The huge prison complex has created its own powerful lobby which makes large contributions to those seeking electoral
office. Besides, if imprisonment rates were to decline to the already quite high levels of the 1970s, 75% of prisoners would have to be released affecting 7,00,000 guards, administrator and service workers. It would “inspire panic in rural communities that have become dependent” on them for jobs (Alexander 2012: 230). Business interests have not been slow to see gain from prison labour. Several prisons are run by private corporations. Some like the Corrections Corporation of America, which boosted net income by 14% in 2008, trades on the New York Stock Exchange (Alexander 2012: 231). They pay 14% in 2008, trades on the New York Stock Exchange (Alexander 2012: 231). They pay

Mass Incarceration

The unkept promise of emancipation, the enduring legacy of slavery, the virtually seamless transition from being slaves to being re-enslaved, trafficked and sold to work in mines, lumber camps, quarries, farms and factories under ghastly conditions, is superbly told in two books published earlier (Blackmon 2008; Perkinson 2010). The books complement each other and permit a deeper understanding of the phenomenon of mass incarceration. They make for agonising reading. Arrests were often on trumped up on charges such as “vagrancy”, riding freight cars without a ticket, or changing employers without permission. The number of arrests varied with the need for labour by farmers, mine owners and industry such as steel and coal in Birmingham, Al. Appalling working conditions, brutal punishments sometimes twice daily whipings, was unsurprisingly accompanied by a high mortality rate.

Douglas Blackmon’s book Slavery by Another Name traces the story of Green Cottenham, a 22-year-old man, arrested in Shelby County, Alabama, on 30 March 1908 for vagrancy. Sentenced to 30 days hard labour and unable to pay the fees for the sheriff, the deputy, the county clerk, and the witnesses, his sentence was extended to about a year. He was sold the next day to Tennessee Coal, Iron and Railroad Company (tci) for $12. Sent to work in tci’s mines, now owned by us steel, and expected to remove eight tonnes of coal a day, Green Cottenham perished in four months. The hell on earth that was the lightless mine claimed hundreds of lives. Blackmon sketches a much larger canvas by which southern states maintained for over 80 years a “forced labour system of monotonous enormity” (Blackmon 2008: 7).

In Texas Tough, Robert Perkinson remarks how “Texas reigns supreme in the punishment business” just as New York dominates finance and California the film industry. With an imprisonment rate three times higher than Iran’s, the state ranks “first in prison growth, first in for-profit imprisonment, first in supermax lockdown, first in total number of adults under criminal justice supervision, and a resounding first in executions” (Perkinson 2010: 4). Whereas the us prison population grew by 600% from 1965 to 2000 in Texas it swelled by 1,200%. He uncovers how the growth of

Higher Education in India

In Search of Equality, Quality and Quantity

Edited by

JANDHYALA B G TILAK

India has a large network of universities and colleges with a massive geographical reach and the facilities for higher education have been expanding rapidly in recent years. The story of higher education in India has seen many challenges over the decades and has not been without its share of problems, the most serious being a very high degree of inequity.

Drawn from writings spanning almost four decades in the EPW, the articles in this volume discuss, among other things, issues of inclusiveness, the impact of reservation, problems of mediocrity, shortage of funds, dwindling numbers of faculty, and unemployment of the educated young.

Authors: André Bételie • Shiv Visvanathan • Suma Chitnis • Satish Deshpande • K Sundaram • Rakesh Basant, Gitanjali Sen • Jayati Ghosh • Thomas E Weisskopf • Lloyd I Rudolph, Susanne Hoeber Rudolph • A M Shah • Errol D’Souza • G D Sharma, M D Apte • Glynn L Wood • D P Chaudhri, Potluri Rao • R Gopinathan Nair, D Ajit • D T Lakdawala, K R Shah • Chitra Sivakumar • Amrik Singh • Jandhyala B G Tilak • Anindita Chakrabarti, Rama Joglekar • Karuna Chanaara • Saumen Chattopadhyay • Samuel Paul • Deepak Nayyar • V M Dandekar • M Anandakrishnan • Thomas Joseph

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the state’s cotton and sugar industry, the building of its railroads depended on convict labour. Heartbreaking stories of prisoners mutilating themselves to avoid 15-hour work days, innumerable brutal beatings, being “attacked by dogs, dangled from building rafters”, and “whipped until they couldn’t walk no more” (Perkinson 2010: 155) abound. It makes it hard to read the book without stopping after a few pages. Later the images haunt...What begins at home spreads abroad. The US exported its prison method globally after the attacks on 11 September 2001. Jane Mayer’s The Dark Side familiarises us with programmes like Survival, Evasion, Resistance, Escape (SERE) which subjected us soldiers to “the worst treatment the world could mete out, but ...in a limited and carefully controlled setting” (Mayer 2008: 157). Developed after the Korean war, the prisoners remained temporally disoriented (Mayer 2008: 276). More intensely focused on psychological torment...The prisoners had no exposure to natural light making it impossible for them to tell if it was night or day. They interacted only with masked; silent guards....Meals were delivered sporadically, to ensure that the prisoners remained temporally disoriented (Mayer 2008: 276).

Unbelievable Suffering

Currently (July 2013) there are hunger strikes by prisoners in California State Prisons which has 10,000 individuals in solitary confinement and at the prison in Guantanamo Bay, Cuba, and in prisons in Afghanistan and Iraq. New terms like “enhanced interrogation”, “extraordinary rendition” became part of the vocabulary of torture. Waterboarding, using pounding music, bright strobe lights, and extremely painful temperatures were some of the practices employed to “break” prisoners. The CIA helped build hi-tech prisons in east European countries which more intensely focused on psychological torment...The prisoners had no exposure to natural light making it impossible for them to tell if it was night or day. They interacted only with masked; silent guards....Meals were delivered sporadically, to ensure that the prisoners remained temporally disoriented (Mayer 2008: 276).

A few architects have advocated that their profession refuse to design control units and execution chambers (Carroll 2013). But solitary confinement and the war on drugs show no signs of abating. They cast a dark shadow leaving a long-lasting legacy of unbelievable suffering. The havoc caused by them involves continents. India may well witness the US export private prisons and control units to it, just as it has for-profit hospitals. Meanwhile in the US the criminalisation and demonisation of black men persists leading to verdicts as perverse as the one of not guilty in the recently concluded trial of George Zimmerman for the murder of Trayvon Martin, a 17-year-old African-American (for a trenchant criticism of President Obama’s comments on the case, see West 2013).

Michelle Alexander rightly concludes that racial justice will require “the complete transformation of social institutions and a dramatic restructuring of our (the US) economy, not superficial changes that can be purchased on the cheap” (Alexander 2012: 249). Only a national movement that challenges and dismantles racial inequality will suffice. She argues that crime policy cannot be seen as purely about crime. Without an acknowledgement of the racial bias that tolerates the warehousing of poor blacks and latinos, the focus on incarceration alone will solve little. Her heartfelt cry for an assault on the structures of racism should have been heeded decades ago. Piecemeal efforts result in no change, for instance black child poverty rates are higher than in 1968 and their unemployment rates rival those in poor nations.

As she fervently declares “Last, but definitely not the least, I am writing this book for all those trapped within America’s latest caste system. You may be locked up or locked out of mainstream society but you are not forgotten.” It is up to us to alter this situation.

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BOOK REVIEW

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Notes
1 Jim Crow is a term used to describe racial segregation and discrimination against African-Americans in housing, employment, use of public facilities, etc.