

## Welfare Actions for the Incarcerated

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Since its inception, the Vision of the Tata Institute of Social Sciences (TISS) has been to be an institution of excellence in higher education that continually respond to changing social realities through the development and application of knowledge, towards creating a people-centered, ecologically sustainable and just society that promotes and protects dignity, equality, social justice and human rights for all.

Through the grant of fellowships the institute encourages students to work with marginalized and vulnerable sections of society and tread on unexplored paths. Experience with fellowships has shown that they are an effective way to nurture talent and explore challenging issues. Documentation and analysis of the work done by the fellows help build indigenous knowledge. The criminal justice fellowship programme is one of the several fellowship programmes of TISS. It was started in 2015 and is offered for a period of two years. There are 25 fellows working in different states in India i.e. Delhi, Karnataka, Kerala, Maharashtra, Odisha, Tamil Nadu, Uttarakhand and UttarPradesh. They are working on different issues within the broad theme of criminal justice i.e. mob justice, legal aid in prison, observation home, custodial death, sexual violence and issues of women workers in unorganized sector.

Miss Sabika Abbas, an alumna of TISS was awarded Criminal Justice fellowship to work with undertrial prisoners of Aligarh District Jail. As part of the fellowship programme and also to extend and sustain the work, a collaborative process was initiated between the Department of Sociology, Aligarh Muslim University and the Centre for Criminology and Justice, Tata Institute of Social Sciences, Mumbai. The collaboration aims at providing socio – legal aid and guidance to prison inmates of Aligarh District Jail and later expand its scope to the jails of western Uttar Pradesh which has a very limited presence of external agencies working on this issue. The programme is aimed at reaching out to the prison population and bridging the gap between the courts and jails.

In order to deliberate further and to move in positive direction discussions were held with the students of various Departments such as Psychology, Sociology, and Law etc. on the work done by TISS in Mumbai and in Aligarh Prison. This helped to get an understanding of the interest of students and how willing they are to participate. The positive response of the students led to the

organization of a Symposium on the Need and Scope of Working in Prison and Criminal Justice Settings wherein all stakeholders were present at Aligarh Muslim University, Aligarh to interact with students on the title of the symposium.

Prof Vijay Raghavan, Dean, Social Protection Office, TISS, Mumbai, Ms Sugandha Shankar and Raja Bagga, CHRI, New Delhi, Dr S Kulshrestha, DIG (Prisons), Dr V Sharma, Superintendent, Aligarh Jail, LT Gen Zameer Uddin Shah (Veteran), Vice Chancellor, Aligarh Muslim University, Prof S Zainuddin, Chairperson, Department of Sociology, graced the occasion by their presence and interacted with the audience on the significance of working in Prison and Criminal Justice Setting. Ex-prisoners and members of their family were invited to sensitize the students through their experience, the problems of undertrial prisoners, difficulties experienced by their family, post-release disadvantages and the losses incurred in fighting legal battle.

After the event, students from the university volunteered to join the project which was named as **‘Welfare Actions for Incarcerated’ (WAFI)**. In order to address the social and legal constraints of the undertrial prisoners of Aligarh District Jail, it was decided to place the student volunteers into three teams i.e. the Home Visit Team, Court Visit Team, and the Prison Visit Team.

#### **Purpose of Home Visit Team (Family Visit)**

The family is not merely a concept, it is an emotional experience. It provides the foundation that helps maintain the physical and psychological integrity of individual members. Contact with the family members provides the inmates the strength to sustain prison life. Family members are also helpful in fighting the legal battle. However, visit by the family members is not very common. There are several reasons for it. Very often, the family is too poor to afford the expense of travelling to prison, visit to the prison also means loss of daily wage, jails are located far away from the main area of residence and visiting consumes a lot of time and money and demands physical exertion, visiting is also emotionally straining for the children and elderly family members. Home visit by external agencies (in case of absence of visits by the family members) prevents the inmates from the losses incurred because of lack of visitation.

## Purpose of Court Visit Team

In the administration of justice, there are two major systems for the dispensation of justice. The adversarial and the inquisitorial system. India follows the adversarial system. Under such a system, two advocates represent their party's position before an impartial jury/judge who attempts to determine the truth of the case. Justice is done when the most effective adversary is able to convince the judge /jury that his/her perspective on the case is the correct one. Thus, the prosecution and the defense under such a system stand opposed to each other.

As such in this system, lawyers play a vital role in deciding the fate and destiny of undertrial prisoners, who though presumed to be innocent, languish in prison for several years.

The laws are complicated and have many loopholes; the legal process is costly, lengthy and tiring. Although there is the provision of free legal aid, the lawyers on the panel of free Legal Aid are more interested in private cases. As such, the poor and the illiterate prisoners hardly have even workable access to the justice system. They cannot afford a private lawyer and if by any means they manage to do so, the cases are dragged on which makes the affair very expensive. The court visit refers to meeting the private as well as the Legal Aid lawyers and enquiring about the status of the case. The follow up by the court visit sensitize the councils towards the plight of undertrial prisoners and ensures an empathetic consideration.

## Purpose of Prison Visit Team

Prison is the only institution where a convict as well as an undertrial is lodged. Undertrials are those prisoners who, in the eyes of law, are yet to be convicted by the absolute final judgment. Most of the undertrials are poor and illiterate, waiting anxiously and uncertainly to see what fate holds for them. The percentage of undertrial prisoners often exceeds that of convicts. Many of the undertrial prisoners are without a lawyer; they are unaware of the legal proceedings, first time offenders and charged for petty offence. Many a times, there family is unaware of their imprisonment. Visits by external agencies enable to highlight the inmates who are in need of social and legal assistance. Helping the inmates overcome the socio-legal constraints which eventually results in reducing overcrowding and the repel effects of imprisonment.

The WAFI team during the first three months (April-June 2017) addressed the following cases-

#### DHARAM'S CASE

Dharam is a forty-five years old undertrial prisoner. He is in prison since the last five years and suffers from hearing and speech impairment. He is unable to move and is confined to a wheel chair as left part of his body is paralyzed. Dumb, deaf and paralyzed, Dharam is in prison because the justice system considers him to be a threat for the society.

When the WAFI prison visit team met Dharam, he only stared at the team members. His co-inmates informed that since the time he has been in prison, he has not met any of his family members. They do not visit him. The prison staff submitted a detailed medical report, requesting the court to release him on bail. However, since there was no contact with his family members and the fact that Dharam was paralyzed, releasing him on bail would place him in a worse situation. Anticipating the hardships which he was likely to experience after release, it was eventually decided to let things remain unchanged.

Home visit team took up the arduous task of locating Dharam's residence. After several days of vigorous effort, it was found that his parents, wife, children and brothers lived in a village near Aligarh. His family members, specially his mother and wife, were very happy to hear about Dharam. When asked why they never went to visit him in jail during the last five years, the team members were informed that they had come to know that visiting a prisoner is punishable. The team members explained the provision of visiting in jail, the significance of family visits and the loss incurred because of the lack of family visits. Dharam's mother and wife readily agreed to visit him with the help of WAFI team. However, they expressed their ignorance regarding the transportation to Aligarh District Jail.

The very next day, the two female members of Dharam's family reached Aligarh and contacted the WAFI team members with the help of strangers (as they did not have a mobile phone). The team members reached the spot where the ladies were waiting. They took them to Aligarh District Jail and helped them in carrying out the visiting procedure. The Jail Superintendent granted special permission and they did not had to wait. Immediately, they were allowed inside the jail and Dharam was brought in a wheel chair to meet his mother and wife after five years. It was emotionally very straining for all three of them. During Dharam's five

years stay in jail, they had lost all hope of ever meeting each other. The family members were very thankful to the prison staff and the members of the WAFI team.

Then onwards, visit by family members became a regular feature. Meanwhile, application for release of Dharam on bail was submitted by Tapan Vahal, Criminal Justice Fellow, TISS. Dharam was granted bail, but his family is too poor to pay the surety. WAFI team members are tried to contact Dharam's relatives in order to arrange for the surety. With great difficulty, WAFI team succeeded in convincing one of Dharam's relative to arrange for one of the two sureties. Simultaneously, the team was also trying to persuade the judge to release Dharam on personal bond as the family was too impoverished to pay for the surety. Fortunately, the judge was kind enough to agree to WAFI's request and Dharam was released on bail.

#### BARKAT'S CASE

Barkat is a 55-year-old undertrial prisoner alleged for spousal murder. He is in prison since the last four years. Prison staffs are worried about him because of his repeated attempt of self harm and suicide and they do their very best in order to prevent him from the tragedy. He experiences anxiety and a feeling of worthlessness. His three sons and a daughter live by themselves in a rented house.

He is in prison since the last four years. There is not much legal advancement in his case as there is no adult family member to look into the legal matter. His three sons and daughter stayed with his sister after his arrest. She visited her brother often along with the children. After her death the children live all alone in a rented room. The eldest son is without any regular earning and the two younger minor sons dropped out of school to work in a Dhaba. Working from morning till 11.00 at night enables them to arrange two meals a day for their siblings. With no education the girl is confined to the house. Visiting their father means loss of a day's wage and chances of being removed from work. So after their aunt's death they stopped visiting their father.

Lack of contact with the children made Barkat worried about their whereabouts. He was also unaware of the legal progress in his case and was apprehensive of it being neglected. All this eventually made him resort to self harm and suicide. Barkat attempted suicide but was fortunately saved because of the attentiveness of the co-inmates and the prison staffs. The Superintendent and other prison staffs were sympathetic and humane towards him and attempted

to help him resolve the problem. The Jail Superintendent out of great concern shared Barkat's ordeal with the Prison Visit Team of WAFI. Members of the Prison team met Barkat and listened to all that he wanted to share attentively and patiently. This proved to be a source of catharsis for him and instilled hope in him. The Home Visit Team of WAFI visited Barkat's children, learnt about them and requested the eldest son to visit his father. The team members accompanied the eldest son to prison and Barkat met his son after a long interval. WAFI team members met the dhaba owner and requested him to relax the working hours for the minor sons so that they could reach home early. The owner heeded to the request. The team members also took Barkat's daughter to the Jawaharlal Nehru Medical College and Hospital and got her treated as she was not well. The prison staff and the members of the WAFI team met Barkat personally and tried to fulfill as much of his legitimate requests as was possible within the limited resources. His son also met the lawyer and apprised Barkat of the progress made in the case so far. With all this Barkat no longer feels dejected and is hopeful of being out of prison and living along with his children.

### AKBAR'S CASE

Akbar an undertrial prisoner is lodged in Aligarh District Jail since the last five years. He was arrested on charges of drug trafficking.

Akbar is a young man in his 20s. He originally hails from Jharkhand, but has been living in Aligarh for some time now. He belongs to a poor family and had shifted to Aligarh in order to ease the financial burden of his family and also to save money for his mother's treatment, who is suffering from cancer. His sister and brother-in-law live in Aligarh and Akbar shared the same roof with them. Ever since, he has been moving in and out of Aligarh in search of livelihood. This search for livelihood abruptly ended when he was arrested on charges of drug trafficking. Since then, he is confined to prison and seldom gets any visitor.

His brother-in-law rarely visits him. Since nobody in their family is literate, he attempted to arrange a lawyer for Akbar through his friends and acquaintance. One of his acquaintances, who happened to be educated and rich, decided to help him by arranging a lawyer. However, Akbar was unaware of this development.

The lawyer never met Akbar and neither did he arrange for the court hearing. Akbar waited for several months and eventually thought of submitting an application to the Jail Superintendent, requesting him to arrange a lawyer for him.

When WAFI team visited the prison, the application was forwarded to the team.

WAFI team tried to contact Akbar's brother-in-law telephonically but he did not respond. With great difficulty the team reached Akbar's residence in Aligarh. They met Akbar's brother-in-law and learnt the details of the case. They contacted the lawyer and requested him to explain the progress made in the case. The lawyer was impolite towards the team members and did not share the details. Akbar was never presented in the court and the WAFI team requested the lawyer to arrange for his hearing. The lawyer refused the same saying that it was not his task.

Disappointed with the lawyer, the team members took up the task of presenting Akbar for the trial. The members met the Judge of the court where Akbar's case was processed and explained WAFI's objectives. The Judge assured of all possible co-operation. Subsequently, Akbar's case proceeded regularly and concluded with the remark that Akbar would be acquitted after a fortnight. Akbar thanked the team members and wished to meet them once he is out of prison.

### RACHNA'S CASE

Rachna, aged 35 is an undertrial prisoner. She is alleged for attempt to murder and is in prison since the last four years. Her mother Vinita is a co-accused in the same offence and is also in prison. Rachna has two children. Daughter, Sonam, seven years old and son, four years old. Her son was born in prison. She brought her daughter to prison and she stayed along with her till she was six years of age. Later, she was placed under the care of her maternal grandfather i.e. Rachna's father. He is a rickshaw puller and lives in a rented single room. His minor daughter (Rachna's sister) is his only companion who does all the cooking and cleaning. She is enrolled in a school but hardly has the time to visit it. Immediately, after Rachna's arrest, her husband remarried and moved out of the town. Since then, Rachna has no contact with him. Her in-laws have severed all ties with her. With great difficulty, Vinita's aged parents (Rachna's grandparents) arranged a lawyer for them. However, because of their ill health, they visited Rachna and Vinita very infrequently. Sonam had also not visited Rachna since she left prison.

Rachna was worried about her and requested the WAFI team to find out about Sonam's well being.

Team members visited Rachna's daughter and found that Rachna's sister is the sole caregiver of her daughter as Rachna's father stayed out most of the time. Sonam is not enrolled in school and stays inside throughout the day. She does not play and remains quiet and inactive. As there was no adult female to look after Sonam, she was not in good health. On the request of the team members, she was brought to meet Rachna. On seeing her, Rachna was very disappointed and wanted to bring her back to the prison. Rachna said "She was much better in prison. I wish she stayed here." But as this was not permissible, Sonam returned to her grandfather.

Then onwards, team members visited Sonam frequently and kept an eye on her well being. They also met the lawyer and kept track of the case proceedings. A socio-economic profile of Rachna's family was prepared and submitted to the judge for sympathetic consideration.

### **Members of the 3 Teams:**

#### **Prison Visit Team**

1. Showkat Wani (Law)
2. Pooja Varshney (Sociology)
3. Iram Khan Afridi (Sociology)

#### **Court Visit Team**

1. Yusuf Akhtar (Law)
2. Ammar Ahmed (Law)

#### **Home Visit Team**

1. Saif Wahab (Sociology)
2. Shubhoneet Chatterjee  
(Psychology)
3. Zoya Javed (Sociology)
4. Chakit (Sociology)
5. Bhavesh Pant (Sociology)
6. Buddh Prakash Dhamma  
Piya Asoka (Sociology)