



STUDIO
নীলিমা

COLLABORATIVE NETWORK FOR
RESEARCH AND CAPACITY BUILDING

PARKED IN LOT

A Consolidated Report on the Correctional Homes
Assam, 2018 INDIA

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Volume 1

Report

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This work is dedicated to

Our Parents
For their support, patience and love

Lalita
For nourishing us with food, coffee and humour

To the parking lot that once housed the Central Jail, Guwahati
From where this journey began.

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1. INTRODUCTION

Studio Nilima: Collaborative Network of Research and Capacity Building (hereinafter referred to as Studio Nilima), founded after Smt. Nilima Dutta, is a registered organization based in Guwahati, Assam working in the areas of law, society, governance and culture.¹ The society is the collective effort of researchers, academicians, legal practitioners and law students of the region. The society aims at strengthening public policy through initiating dialogues, community engagement and action oriented research addressing contemporary concerns of Northeast India, particularly Assam.

The organization draws its strength from its Governing Council, which comprises of Justice (Retd.) Dhires Narayan Choudhury, Former Judge, Gauhati High Court, Justice (Retd.) Brojendra Prasad Katakey, Former Judge, Gauhati High Court, Mr. Nilay Dutta, Advocate General, Government of Arunachal Pradesh and Senior Advocate, Gauhati High Court, Ms. Millie Hazarika, Senior Advocate, Gauhati High Court, Mr. Apurba Sharma, Chairman (Executive Committee), Bar Council of India, Mr. Pradip Bhuyan, Industrialist, Guwahati and Ms. Mahfuza Rehman, Academic, Former Head of Department (Geography), Cotton College, Gauhati.

Pratidhwani (the Echo) is one of the initiatives of Studio Nilima designed with an objective of facilitating and increasing access to justice for the marginalized and vulnerable communities of the region. As part of its mission, Studio Nilima has been conducting regular visits to the correctional homes of Assam in collaboration with the Assam State Legal Services Authority (hereinafter referred to as ASLSA) and the District Legal Services Authority (hereinafter referred to as DLSA). In doing so, it has been providing both advice and assistance along with providing effective legal services for persons in custody. The initiative has also facilitated two legal awareness camps; one at Kukirikota Village, Krishnai Block in the district of Goalpara and another at Joybhadra Hagjer Bodo High School, Village: Chaitanguri in the district of Baksa. Both these camps were conducted with legal experts such as Justice (Retd.) Brojendra Prasad Katakey, Justice (Retd.) Biplab Kumar Sharma, Mr. Nilay Dutta, Advocate General, Government of Arunachal Pradesh and Senior Advocate and Dr. R.C. Borpatragohain, Advocate General, Government of Assam and Senior

¹ Nilima Dutta was a novelist, poet and philosopher of Assam. Her novels and poems address ordinary life and realistic concerns. Notable works include *Dhumuhar Pasot* (1992), an incisive examination of the student led political agitation in Assam in 1980, the formation of a Government by former students and the effects of the movement on ordinary lives. Her collection of poems include *Sesh Nai* (1967), *Andhakup* (1970), *Prabhakar* (1977) and *Surar Chhabi Aru Pranar Sur* (1988). Her poems eloquently speak of the inner angst of modern minds. A feisty woman with a penchant for Rabindra Xongeet, her magnanimous ways were an inspiration for many.

Advocate, Gauhati High Court. Since December 2017, the members of Studio Nilima have visited and interacted intensively with eight correctional homes of Assam including the Central Jails of Guwahati, Tezpur and Jorhat and the District Jails of Morigaon, Mangaldoi, Goalpara, Dhubri and Kokrajhar.² A list of our visits to correctional homes from 22.10.2018 to 24.12.2018 and the work done by the team is appended in Volume II as **Document 1** at page 1.

Reports on correctional homes unanimously concur, at the risk of generalization, the myriad problems that beset the existing system; issue relating to overcrowding, under staffing, lack of adequate medical care, inadequate living conditions for inmates, poor administration and infrastructure, and access to justice. While we encountered most of these issues during our visits to the correctional homes, we also noticed that “conditions” of each correctional home are varied and uniquely distinct. Therefore, to present a mere description of such “conditions” alone would represent an inaccurate account of the correctional homes of Assam and how it is experienced by its inmates. The Report therefore adopts a different structure in presenting its observations and findings. We focus attention on two pivotal aspects of the prison context that we encountered, namely the population (constituency of inmates) and the capacity (inmate and stakeholder) and reflect on the interconnectedness of population, capacity and conditions of the correctional homes to unveil the issues of the reform quagmire. We also highlight the best practices that we came across that may be replicated in other similar contexts.

This report is a culmination of our efforts over the last year. The Report is presented in 6 sections. The section that follows the Introduction presents our methodology in engaging with the correctional homes. Sections 3, 4 & 5 sets out the inmate population and their unique concerns, the capacity of the stakeholders entrusted with the care of the inmate population and the conditions in which the everyday life of the prison unfolds. Section 6 outlines the predominantly rural, harmonious and community based environment of the correctional homes of Assam as opposed to the popularly perceived dehumanizing label, experienced by our team and presents some of the best practices that we witnessed. It needs to be reiterated that the observations and findings of this report are not aimed at any single individual or a specific correctional home. Nor are they being offered as

² There are 31 jails in Assam including 6 Central Jails (Guwahati, Tezpur, Silchar, Dibrugarh, Jorhar, Nagaon), 22 District Jails (Nalbari, Barpeta, Kokrajhar, Dhubri, Goalpara, Mangaldoi, Hailakandi, Karinganj, North Lakhimpur, Sivasagar, Golaghat, Majuli, Abhayapuri, Diphu, Hamren, Biswanath Chariali, Dhemaji, Morigaon, Sonari, Tinsukia, Sadiya and Udalguri), 1 Special Jail (Nagaon), 1 Open Jail (Jorhat) and 1 Sub Jail (Haflong).

a means to antagonize any of the stakeholders. It is more of a humble attempt to provide a starting point for each of the stakeholders in the correctional home ecosystem to reflect collectively on the lapses and identify factors, which often are more structural, that perpetuate and reproduce such patterns of “violence” within the correctional home system.

We are aware and conscious of the hard work and perseverance of each and every officer working in these rather in-human working conditions, striving their best and securing everything within their means to perform their duties to the best of their abilities. We are inspired and salute the efforts of each of such officers and staff members, specifically Mr. Sanjeev Kumar Chetia, presently Superintendent, Central Jail, Dibrugarh; Mr. Mrinmoy Kumar Dawka, Superintendent, Central Jail, Tezpur; Ms. Nayema Ahmed, Assistant Jailor, Central Jail, Jorhat and Mr. Ranjit Singh, Para Legal Volunteer in District Jail, Goalpara whom we had interacted with over the last year. We would like to record our immense gratitude specifically to the District Jail, Morigaon, from where we started out the Pratidhwani journey. The administration at the District Jail, Morigaon particularly Mr. Tapash Bhuyan, Assistant Jailor; Mr. Mintu Rajbongshi, Assistant Jailor (now at Central Jail, Jorhat) and Mr. Dulal Nath, Para Legal Volunteer and their colleagues nurtured the team, patiently taught us the grammar of correctional administration, informing and guiding our practice with valuable insights into the prison context. Our team would like to specifically record our gratitude to Ms. Ranjita Agarwalla, presently Chief Judicial Magistrate, Goalpara for her guidance and unqualified support to our team while serving as Member Secretary, DLSA, Morigaon by mentoring us, facilitating our interactions with the jail administration and the inmates and believing in our work. We hope that this report marks a beginning of a homegrown effort to reform our prison system, one that enjoys our collective responsibility and ownership.

2. ENGAGING WITH THE CORRECTIONAL HOMES OF ASSAM

METHODOLOGY

There are thirty-one correctional homes spread across the districts of Assam.³ Of these, we have had substantive interactions with about nine correctional homes namely the Central Jails of Guwahati, Tezpur and Jorhat and the District Jails of Morigaon, Mangaldai, Dhubri, Kokrajhar and Goalpara. The criteria for engagement with these correctional homes were guided by multiple factors. Notwithstanding the obvious reasons of accessibility (geographic and sustainability/financial), our objective was to have a diverse representation (spatially) which would enable us to arrive at a holistic and nuanced understanding of the prison ecosystem across Assam, informed by a composite set of inmates namely the convicts particularly the “lifers”, the under trial prisoners, the declared foreign nationals (a phenomena unique to Assam), women, children and the third gender.

The existing governance and institutional framework underpinning the correctional home administration consists of a close interaction and at times overlapping mandate between the executive and the judiciary. At the apex level, prison governance and reforms comes within the ambit of the Ministry of Home Affairs, Government of India, which plays an advisory role to the respective State Governments.⁴ Additionally, the Hon’ble Supreme Court of India (hereinafter referred to as the Hon’ble Supreme Court) has been instrumental in furthering and causing paradigm shifts in prison reforms and policy, more recently in *Re-Inhuman Conditions in 1382 Prisons* being W.P(C) No. 406/2013 (hereinafter referred to as *Re-Inhuman Conditions*).⁵ At the state level, the primary stakeholder is the Government of Assam (Home and Political Department); with the Inspector General of Prisons, Assam being the principal executive authority. The local

³ Note that although there are 33 districts in Assam, not all districts have a correctional home within its jurisdiction.

⁴ Prison being a State subject under Entry 4 of List II of the Seventh Schedule of the Constitution of India, the State Governments have the primary responsibility with regard to correctional administration and policy.

⁵ *Re-Inhuman Conditions* was instituted by the Court on the basis of a letter written by Chief Justice R.C Lahoti, former Chief Justice, Supreme Court of India which highlighted the dismal conditions of the prisons in the country. *Re-Inhuman Conditions* can be seen as an example of the Court’s utilisation of the tool of ‘continuing mandamus’ which is essentially a form of adjudication by which the Court keeps the litigation open and passes targeted orders and monitors their compliance over a period of time. For a more detailed discussion on continuing mandamus, see Muralidhar, S. “The Expectations and Challenges of Judicial Enforcement of Social Rights” http://www.delhidistrictcourts.nic.in/ejournals/Social_Rights_Jurisprudence.pdf Accessed 8 Jan. 2018 ;also see Poddar, Mihika et al. “Continuing Mandamus-A Judicial Innovation to breach the Right-Remedy Gap”, *NUJS Law Review*, Vol. 10, 2017, pp 2-41. <http://nujslawreview.org/wp-content/uploads/2017/08/Continuing-Mandamus-Mihika-Bhavya.pdf> Accessed 8 Jan. 2018.

governance of the correctional homes is operationalized under the Superintendent of Jail along with his officers who are responsible for the day-to-day management of the prisons. Effective prison administration at the local/ district level also requires close interaction with various other authorities; the District and Session Judge, the Deputy Commissioner, the Superintendent of Police to name a few.⁶ Each of these stakeholders have clearly defined roles, responsibilities and duties related to prison administration and its management.

Additionally, the rights of incarcerated inmate population, specifically their constitutional entitlement to effective legal services, is operationalized through the Legal Services Authorities Act, 1987 (hereinafter referred to as LSA Act) which creates a three tier mechanism for providing legal services to the vulnerable sections of society including the inmate population. This structure provides for the constitution of the National State Legal Services Authority (NALSA), the Supreme Court Legal Services Authority (SCLSA), the Assam State Legal Services Authority (ASLSA) and the respective District Legal Services Authorities (DLSA). Within this framework, we identified ourselves as facilitators, seeking to support and strengthen the efficiency of the existing system.

The Pratidhwani initiative into the correctional homes started in August 2017. The months between August to December 2017 were spent in training and building capacity within the team. This included acquainting ourselves with the existing literature on correctional homes including statutes, reports, the evolving jurisprudence and reform initiatives in India and elsewhere. We spent substantial time gaining fluency on the statutory framework which included a comprehensive reading of the Assam Jail Manual, the Assam Prison Act, 2013, the Model Prison Manual, 2005 and 2016, collating and consolidating the notifications and circulars passed by the various other stakeholders, particularly the Government of Assam and Inspector General of Prisons. We also referred to international conventions such as the International Covenant on Civil and Political Rights, standards, guidelines and protocols such as the Nelson Mandela Rules. During this time and throughout the project, we have closely studied the legal precedents and judicial opinions concerning prison reforms, rights of prisoners, more recently in Re-Inhuman Conditions. Such

⁶ The Assam Jail Manual also contains provisions which involve district functionaries whether in active or passive roles. The role of district functionaries like the District Magistrate (hereinafter referred to as DM) apart from being crystallised in the Manual has also been emphasised by the Hon'ble Supreme Court for example in *Sunil Batra II v. Delhi Administration* as reported in (1980) 3 SCC 488 where it held that the DM in his ex-officio capacity as member of the Board of Visitors functions as a judicial officer and not in his executive role. In addition, he must conduct regular visits to the correctional home.

reading of the law helped us gain both theoretical and practical perspective and prepared us for our visits to the correctional homes. Another area of training focused on interacting with a diverse set of resource persons for either their experience of working in the correctional homes or their expertise in constitutional and criminal jurisprudence. The team immensely benefited from their various exchanges with Dr. Justice (Retd.) Aftab Hussain Saikia, Chairperson, Meghalaya Human Rights Commission; Justice (Retd.) Brojendra Prasad Katakey, Mr. Angshuman Bora, Senior Advocate; Mr. Ziaul Kamar, Senior Advocate; Mr. Anan Bhuyan, Advocate; Mr. N.N.B Choudhury, Advocate and Ms. Amrita Paul from Commonwealth Human Rights Initiative.

In retrospect, preparation was key. However, the journey that awaited us; a year of learning, unlearning and re-learning in the correctional homes challenged our understanding, provoked our received notions of the criminal justice system *vis a vis* human dignity and made us reflect deeply on freedom, what it means to be free and be grateful for the same. Our visits to the correctional homes started from December 2017. Regular visits and engagements with the correctional homes entailed a process of building an effective working relationship based on trust, both with the administration and the inmates of these institutions. Our work has spanned from making small interventions such as facilitating communication between inmates and their family members, assisting the Jail administration and the DLSAs and Legal Aid Counsel (LAC) in sharing knowledge and information related to prison reforms, developments in criminal jurisprudence etc. and enabling effective legal representation to inmates in forums such as the Hon'ble Supreme Court and the Hon'ble Gauhati High Court. It taught us the values of perseverance, persistence and patience. Surprisingly, some of our interventions also took on characteristics which are *per se* "non legal" but proved effective and meaningful in the context of the correctional homes- interventions stemming from pure human needs which at times meant being an empathetic listener and/or facilitating a long overdue meeting of a mother inmate with her daughter. Such experiences have been transformative and powerful. It has humbled us, made us aware of our responsibilities as lawyers and also taught us that not all redresses are legal.

The following sections (3, 4 & 5) places emphasis on two pivotal aspects of the prison context that we encountered, namely the population (constituency of inmates) and the capacity (stakeholder) and reflect on the interconnectedness of population, capacity and conditions of the correctional homes to unveil the issues of the reform quagmire.

3. INMATE POPULATION

The population of inmates that we engaged with in the nine correctional homes comprised of a diverse set of people namely convicts, under trial prisoners, women, children, the declared foreign nationals (a phenomena unique to Assam), the mentally ill inmates and quite surprisingly juvenile inmates apart from members of the third gender. This constituency of inmates is largely representative of the present correctional home population in Assam. The following segment presents the unique experiences of each of these inmate constituencies and documents some of the legal concerns that arise out of such experiences.

3.1. Juveniles in Conflict with Law

The legal framework developed for the care and protection of juveniles in conflict with law (hereinafter referred to as the JCL) is well defined. Aligning with the reformative and rehabilitative theories of juvenile reprimanding, the Juvenile Justice (Care and Protection) Act, 2015 (hereinafter referred to as JJ 2015 Act) contemplates that juveniles be kept in “observation homes” or “places of safety” as the situation requires, thus placing a statutory guarantee to avoid exposure of any such JCL to the prison environment.⁷ Such guarantees ensure regular inspection of jails/prisons/correctional homes by the Juvenile Justice Board to ensure effective and immediate transfer of any child to the observation home, if found in the prisons.⁸ Further, Section 9 of the JJ 2015 Act prescribes the procedure for raising a claim of juvenility before a Magistrate (either empowered under the JJ 2015 Act and/ or otherwise). The Code of Criminal Procedure, 1973 also contains several procedures, which act as checks for detecting juveniles. Section 56 and Section 76 of the Code of Criminal Procedure, 1973 provides for production of arrested person before the Magistrate. Under Section 54, a medical officer in the service of the Central or State Government or a registered medical practitioner is supposed to undertake a medical examination of the arrested person soon after arrest.

In spite of such statutory safeguards, during our initial visits, we came across a number of probable JCL who were lodged in the correctional homes. In Morigaon, we approached the concerned courts in collaboration with the DLSA, Morigaon for an inquiry and bone ossification tests of three JCLs. Of these, two tests results were positive and accordingly the JCLs were referred to the

⁷ Section 10(1) of JJ 2015 Act.

⁸ Section 8(3)(m) of JJ 2015 Act.

Juvenile Justice Board. Copies of two separate orders of the Judicial Magistrate First Class, Morigaon dated 20.11.2017 referring JCLs in custody in Morigaon Jail to the Juvenile Justice Board are appended in Volume II as **Document 2** at page 3.

It is pertinent to note that on entry into the correctional home, a history ticket as defined in Section 3(b) of the Prisons Act, 1984 (that contains the particulars including the age of the inmate) is generated. Rule 223 of the Rules for Management and Superintendence of Jails in Assam which is a constituent of the Assam Jail Manual, casts a specific mandate upon the Jailor to ascertain the name and other particulars that require entry in the warrant or order before admitting an inmate in the jail. Perusal of the history tickets of all such probable JCLs indicates their age between 18-20. Our interaction with such probable JCL reveal that such entries are mechanically recorded without any proper verification in accordance with law, either at the time of their production before the Magistrate and/or at the time of their admittance into the jail. Infact, some such JCLs informed our team members that they are often not produced before the Magistrate. Even on a chance encounter with the Magistrate, such interactions on age verification are not encouraged, mostly due to the chaotic environment in the courtrooms. Such systemic lapses often lead to JCLs being incarcerated in the correctional homes of Assam, where they are exposed to the harsh prison conditions, creating opportunities for interaction with hardened criminals and convicts.

During our subsequent visits to the District Jail, Morigaon and other correctional homes, we have continued to come across probable JCLs. In all such cases, we have informed the relevant stakeholders, particularly the DLSAs to initiate action. For instance, seven such probable JCLs were identified during our visit to Central Jail, Guwahati on 02.01.2018. A list containing the names of these inmates were forwarded to the District Legal Services Authority, Kamrup along with references to the previous interventions in Morigaon. A copy of the letter dated 03.02.2018 to DLSA, Kamrup is appended in Volume II as **Document 3** at page 5. However, no affirmative response and/or acknowledgment to the letter have been received even after follow up reminders vide letter dated 14.03.2018. A copy of the letter dated 14.03.2018 to DLSA, Kamrup is appended in Volume II as **Document 4** at page 7.

Another such case of a probable JCL was intimated to the Member Secretary, District Legal Services Authority, Morigaon vide letter dated 27.02.2018. A copy of the letter dated 27.02.2018 to DLSA, Morigaon is appended in Volume II as **Document 5** at page 9.

Inspection of records of some of the legal aid clinics in the correctional homes indicate the existence of a routine practice of referring such cases to the respective DLSAs which then raise the plea of juvenility in the concerned court. It seems to be received understanding in the correctional homes that the illegal incarceration of a juvenile in a correctional home is not patently illegal. This is compounded by the fact that Chapter L ‘Juvenile Prisoners’ of the Rules for Management and Superintendence of Jails in Assam along with the Assam Borstal Institution Act, 1968; the Assam Children Act, 1970 and Assam Children Rules, 1976 continue to be part of the Assam Jail Manual.⁹

These instances of juveniles being incarcerated in correctional homes points to an alarming systemic lapse in several points in the criminal justice system whether at the time of arrest, production before the Magistrates or admission into the jail. This warrants close monitoring. Such lapses fail to achieve the rehabilitative agendas set forth by the legislative and child welfare bodies. The situation calls for strict monitoring by stakeholders such as the Hon’ble Gauhati High Court with active assistance from local NGOs, specifically those working with children like Utsah and other agencies such as UNICEF, who have a local presence and have been effective in championing the rights of the child in Assam.

3.2. Mentally Ill Inmates

Another vulnerable community that we encountered during our visits was the section of mentally ill inmates, both under trial and convicts, male and female alike. Such inmates have been diagnosed as suffering from serious multiple conditions such as schizophrenia, senile dementia, depression etc., many of whom may have developed such conditions either prior or subsequent to their incarceration. Our field visits revealed that most of such inmates are given medical care, however,

⁹ It is pertinent to note that vide Affidavit-in-opposition dated 20.04.2018 in PIL 55/2017 before the Hon’ble Gauhati High Court filed on behalf of the Inspector General of Prisons by the Deputy Inspector General of Prisons (Range), it was stated that while the Model Prison Manual, 2016 has not been adopted, the State Government has recently constituted a Committee for revision of the Assam Jail Manual on the basis of the newly enacted Assam Prisons Act, 2013. According to the affidavit, it would also adopt the provisions of the Model Prison Manual, 2016 with such modifications as are relevant to the State of Assam. However, even after a lapse of more than 8 months, the results of the Committee’s deliberations are awaited.

they are not commensurate with the actual norms and guidelines and/or statutory compliance required under the various laws.¹⁰ For instance, the law requires that the mentally ill inmate who have become as such after conviction are supposed to be removed to a mental hospital or any other place of safe custody within the State.

Inspection of records at some of the correctional homes indicates that in some instances such inmates are taken once a month to the Lokapriya Gopinath Bordoloi Regional Institute of Mental Health, Tezpur (hereinafter referred to as LGBRIMH, Tezpur) for check up. However, such practices are not uniform across all the correctional homes that we visited. Even otherwise, most of the correctional homes lack the basic medical infrastructure and in-house expertise to treat conditions of mental illness. Some of the correctional homes that we visited did not have an in house doctor let alone a psychiatrist or a counselor to treat the day-to-day medical needs of the inmates. Such exclusions place the mentally ill inmates at great risk and compromise their general welfare.

After our initial visit to the District Jail, Morigaon, we preferred a public interest litigation being *Studio Nilima: Collaborative Network for Research & Capacity Building v. State of Assam*, PIL 55/2017 (hereinafter referred to as *Studio Nilima PIL*) before the Hon'ble Gauhati High Court espousing the precarious condition of the mentally ill inmates in the correctional homes of Assam. The Government of Assam, in their affidavit dated 09.02.2018 filed by the Secretary, Home & Political Department, in the instant case provided the staggering number of 259 mentally ill inmates who are presently lodged in the various correctional homes of Assam. It was stated that of the 259 inmates, 154 are convicts, 56 are under trial inmates and rest 49 are declared foreign nationals. Further, the State of Assam stated that 68 of these inmates were transferred to LGBRIMH, Tezpur or treated at the Psychiatry department of Medical Colleges across Assam as indoor patients and were brought back to the correctional homes upon discharge. However, the rest of the 191 inmates are being given necessary medication for their psychiatric conditions under the care, supervision and advice of the Jail Doctors and periodic consultation with the specialists at LGBRIMH, Tezpur and/ or the Psychiatric department of Medical colleges and/or the local civil hospitals. The PIL is pending adjudication before the Hon'ble Gauhati High Court and is likely to be heard in January 2019.

¹⁰ These include the Mental Healthcare Act, 2017 and the Assam Jail Manual.

It needs mention here that pursuant to the Order dated 15.09.2017 passed by the Hon'ble Supreme Court in *Re-Inhuman Conditions*, a committee was established by the Government of Assam to review matters pertaining to the medical facilities available inside the jails in Assam.¹¹ The Government of Assam in its Affidavit in opposition dated 09.02.2018 filed through the Secretary, Home & Political Department has also confirmed this fact. However, the conditions on the ground continue to remain the same with most of the districts managing without an effective arrangement of providing mental care within the correctional homes with a team of psychiatrist, psychologists and trained nurses. The adverse effect of the prison environment and its debilitating impact on the psychology of inmates incarcerated for a substantial period of time is well documented. Such conditions get exacerbated with the lack of trained medical/ clinical expertise.

The State of Assam has an affirmative responsibility to provide adequate medical care and support to such mentally ill inmates. Such continuing lapses and flagrant violations of the guaranteed provisions of law places the mentally ill inmates at risk and denies them of their fundamental and basic human rights guaranteed under the Constitution of India. The present status quo in the correctional homes of Assam *vis a vis* medical support also lies in direct contravention of the directions passed by the Hon'ble Supreme Court and the State of Assam.

3.3. Women and Children¹²

Noted philosopher, Judith Butler, posed a question when she asked, "What makes for a grievable life?"¹³ In the context of our experiences in the correctional homes, this question recurred time and again while thinking specifically of the women and children whose lives seems to be less valuable and therefore less grievable. Societal inequalities manifests curiously within the correctional home context in seemingly subtle ways- whether it be the design of their housing facilities within the correctional homes, access to open spaces and other policies that impact their living conditions within the correctional homes. Women and children therefore are exposed to a double jeopardy, where their lives don't really count, not simply because they are incarcerated from society as

¹¹ Order dated 15.09.2017 passed by Hon'ble Supreme Court in *Re-Inhuman Conditions* available at https://www.sci.gov.in/supremecourt/2013/18545/18545_2013_Order_15-Sep-2017.pdf.

¹² Please also refer to the discussion on Women Wards under sub-section 5.1 C, Hygiene and Sanitation under sub-section 5.1G, education under sub-section 5.1 I, medical infrastructure under sub-section 5.2.

¹³ Butler, Judith. *Frames of War: When is life grievable?*. Verso, 2009.

“prisoners” or “children of prisoners” but also because they are “women” and children of such inglorious mothers.

The law guarantees equal protection to all categories of inmates, male and female included. However, our experience in the correctional homes exposed the precarious living conditions of the women inmates and their children and question the implementation of the statutory guarantees into actual rights, which are made available to such women inmates. The concerns and issues that have been highlighted in the comprehensive reports on the conditions of women in Assam, Punjab and Eastern U.P. largely resonate with our findings on the ground.¹⁴ The same are being relied upon in the discussion on the concerns of women and children and are not being repeated for the sake of brevity. The paragraphs that follow, however, seek to emphasise certain key aspects that are alarming and need urgent attention.

It is to be noted here that the number of prisons in India remains at 1,401 of which only 18 are prisons which function exclusively for women prisoners, only 1.2% of the total. In Assam, there are no correctional homes, specifically designed for women inmates.¹⁵ The capacity of jails in Assam stands at 8888 inmates of which only 7.7% is available for women prisoners, and the space that is actually fulfilled by these inmates is at a meagre 4.5%.¹⁶ Therefore, since they constitute a ‘negligible’ section of the prison population, the policies that are taken up for prison reformation, mostly well intentioned, often elude a gender sensitive perspective.

A. Constraints in Space

In our visits to the correctional homes, we noticed with concern that in the layout of the correctional area, the majority of the area is designed for the male wards. Women inmates are

¹⁴ The reports relied upon are *A Study of condition of Women Prisoners and their Children in Eastern U.P Jails*. M.G.K.V.P Varanasi and National Commission for Women; *A Life Behind Bars: An Exploratory Study of female prisoners in Central Jails of Assam*. North East Network, 2010, <http://www.northeastnetwork.org/wp-content/uploads/2016/06/26.A-life-behind-bars.pdf>. Accessed 8 January 2019; *Report on Conditions of Women in Detention in the State of Punjab*. National Commission for Women, [http://ncw.nic.in/sites/default/files/Report On Conditions of Women in Detention in The State Of Punjab.pdf](http://ncw.nic.in/sites/default/files/Report%20On%20Conditions%20of%20Women%20in%20Detention%20in%20The%20State%20Of%20Punjab.pdf). Accessed 8 January 2019.

¹⁵ As in 2015, *Prison Statistics: India*. National Crime Records Bureau, Ministry of Home Affairs, Government of India, 2016, <http://ncrb.gov.in/statpublications/psi/Prison2015/Full/PSI-2015-%2018-11-2016.pdf>. Accessed 7 January 2019.

¹⁶As on 15.05.2018, *Fortnightly Prisons Population Report*. Assam Prison Headquarters, <https://prisons.assam.gov.in/frontimpotentdata/prison-population>. Accessed 7 January 2019.

confined to a small area, almost as an afterthought. Such design lapses can be attributed as being “outdated architecture” and is perhaps reminiscent of a time when the proportions of women inmates were nil. Be that as it may, the consequences of having restricted enclosures reserved for women, within the larger prison design are manifold. Such enclosures are visibly very small, cramped spaces which restrict mobility severely, rendering a situation of where they are confined in a “jail within a jail.” This area is often a corner, distinctly separate from where the male inmates are lodged. Women inmates are allowed to move out of these enclosures only for specific purposes (to meet their relatives, court production etc.) and always escorted by female matrons. The gates of such enclosure are locked at all times, with entry restricted at all times and eased only with the permission of the Jail Superintendent. The implications of such confinement practically translates to women inmates having no access to other open spaces as available for their male counterparts such as the library, the kitchen and/or the cultivable farms.

The relative increase in the volume of women inmates have not seen a proportionate increase in space. Such oversights and lack of alternative arrangements have led to significant overcrowding within these cramped enclosures. Our visit to the District Jail, Dhubri revealed a disconcerting reality where where a space sanctioned for three inmates was cramped with the presence of twenty seven inmates. The small walled room with a very small verandah in front, appeared forlorn and bare, with no grass or trees or cultivable space. Such conditions are even more appalling in the correctional homes which function as detention centres, especially in the cases of Jorhat, where overcrowding has come at significant costs on infrastructure, health and hygiene concerns of the women inmates and most particularly their children.

Ironically, the alternative reality of having only one women inmate confined to a small space for long durations of time, without any human companion amounts to a default solitary confinement which has severe ramifications on the mental health of such inmates. Discrimination manifests in subtle treatments and behaviour of the jail administration, even when not consciously intended. The needs of the women inmate are often overlooked and fade in relative comparison to the mass concerns of the male inmates. In one instance, the single female convict who was housed at the correctional home was not extended the educational opportunities available to the male inmates or even given access to the library facilities, even though she expressed an intent to read.

B. Medical Concerns

In our experience, one of the most alarming and significant areas where the needs of the women inmates and their children suffer relate to their specific medical and health concerns. Almost all the correctional homes that we visited reported the presence of no female doctors, gynaecologists, female nurses etc. The medical and health facility within the correctional homes had no wards reserved for the women inmates, as a consequence of which they had to be treated in the confines of their own enclosure and/or taken to the civil hospital within the neighbourhood. Of all the correctional homes that we visited, only the Central Jail, Guwahati had a female nurse to cater to the specific needs of the female inmates.

There is an urgent need to engage specially trained lady doctors, gynaecologists and paediatricians etc. in our correctional homes.¹⁷ There are specific gynaecological needs of the female inmates that needs to be treated with priority. In one of our visits, our team came across an inmate who was a new mother with an infant aged only five days. For such women some specific standards needs to be maintained with regards to the care of not only the child but also the new mother who is in necessary need of postnatal care. However, in the case of this inmate, while the jail authorities had tried to provide for her in the limited resources that they access to, it was still inadequate proving that the prison administration system in itself is laden with inequalities in the way that it approaches treatment of inmates. Other gynaecological needs of women inmates go unaddressed. Needs such as providing sanitary napkins regularly to the female inmates are treated casually and not regarded as “important.” We were appalled to hear in one instance of sanitary napkins being stored in the storage and not distributed amongst the female inmates as routine practice. Arguably such practices are encouraged by the system that has been built in a way that remains silent to the specific needs of the woman inmates. For instance, even though, the women inmates are looked after by the female warders,¹⁸ the lack of women officers in the hierarchy of jail administrative staff often leads to a gendered power structure which ensures that these specific concerns of the female inmates are often unvoiced and therefore, go unheard.

¹⁷ *Women in Prisons India*. Ministry of Women and Child Development, Government of India, June 2018, http://wcd.nic.in/sites/default/files/Prison%20Report%20Compiled_0.pdf. Accessed 9 January 2019.

¹⁸ Rule 81(1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners, better known as the Nelson Mandela Rules, which India is a signatory to, provides that, “*In a prison for both men and women, the part of the prison set aside for women shall be under the authority of a responsible woman staff member who shall have the custody of the keys of all that part of the prison.*”

It is noted with deep concern that even the Model Prison Manual, 2016 fails to address some significant concerns of women. For instance, in its prescribed list of medical staff is conspicuous in its absence of an inhouse gynaecologist. Guideline prescribed in judicial precedents such as R.D. Upadhyay v. State of Andhra Pradesh as reported in (2007) 15 SCC 337 are instructive and need to be urgently consulted by the review committee constituted by the Government of Assam to incorporate changes into the existing regulatory framework.

Further, mental health needs of individuals are rarely understood and cared for in society. This aspect assumes significant proportions when inmates are incarcerated for indefinitely long periods of time. In our visits, we came across multiple instances where women inmates had developed serious mental conditions of depression etc. due to their prolonged confinement with limited or no access to sunlight, alternative means of engagement such as farming and/or company. The instances of the older female DFNs in the Central Jail, Tezpur and the Central Jail, Jorhat were shattering. Their conditions were reported to have developed and deteriorated significantly since the time of her incarceration, having found themselves in the company of others distinct and separate in their ways of language and age. In our visits, we did not meet any in house counsellor or psychiatrist to cater to such specific needs of women inmates and found the medical infrastructure alarmingly lacking to address these concerns. As a result, most of the inmates are languishing in isolation confined indefinitely to their misery, unloved and uncared for.

C. Children in the Correctional Home Environment

The Hon'ble Supreme Court in the case of Vikram Deo Singh Tomar v. State of Bihar reported in 1988 (Supp.) SCC 734 has mandated that constitutional standards and safeguards are to be abided by institutions where women and children are accommodated, to provide at least the minimum conditions ensuring human dignity. The prison environment is ideally not a space for a child to be provided with optimum care and protection for the child to have a chance at a normal life. But younger children up to six years of age are allowed to live with their mothers in prison, as laid down in R.D. Upadhyay v. State of Andhra Pradesh as reported in (2007) 15 SCC 337. The court further provided that upon reaching six they are to be transferred to the care of a suitable surrogate as per the wishes of the mother or to a Social Welfare Department run facility which must not be located outside the town or city where the prison is located so as to minimise hardships caused due to physical distance.

However, the practical application of these guidelines is not seen in the correctional homes of Assam. The state run facilities for children are usually not available near the correctional homes and therefore, the children are stranded in the jail. Especially the children of DFN detainees are in a worse situation. Most of them do not have any family members outside the correctional homes to care for them and therefore, their mothers do not wish to part with them by sending them to a facility which are outside the correctional homes. Some children in these detention centres have been living with their mothers for long durations of time, past the threshold age of six, some of them attaining adulthood in the next few years. The correctional home staff in these centres, have expressed this as one of the major concerns as these children are not only losing out on their vital developing years but also after attaining adulthood, their needs will be different, some of which the staff will not be able to provide for due to the lack of resources.

Furthermore, the correctional homes also need to provide resources for the special care of the children. The correctional homes, even if they do provide baby food for the children, other necessary dietary supplements are not available. The medical staff does not include a paediatrician to look after the needs of these children. A paediatrician would visit the Guwahati Central Jail every day, but that was on account of a Gauhati High Court order to provide care to the infant of one inmate and this practice was not seen in any other correctional home.

Another important aspect that is necessary to look into concerns the education of the children. Even if the children are living up till the age of six with their mothers, they are losing out on vital years of preparatory primary education which will hamper their future. In case of DFN children, it was only in Kokrajhar that these children were sent to a primary school outside the jail premises. However, once they children are older, they will be needing facilities for higher education which are unavailable within the jails. Therefore, there is a dire need to provide a regularised school system in the correctional homes for the children so that they are not being deprived of their fundamental right.

3.4. Convicts

The convicted prison population in Assam is remarkably small as compared to the under trail inmates (65.17%). According to the Fortnightly Prisons Population Report dated 31.05.2018, the convict population in the correctional homes of Assam is 3197 of the registered capacity of 8888

inmates. A copy of the Fortnightly Prisons Population Report dated 31.05.2018 is appended in Volume II as **Document 6** at page 11.

Of these, we have interacted with about five hundred such convicts in the correctional homes that we have visited. The concerns of such inmates were mostly administrative, issues pertaining to wages, bureaucratic delays in granting leave, parole and remission. There was also a discernible apathy, a general mistrust and a resignation to avail the services of the DLSAs and/or to prefer appeals in the superior courts, particularly in the Hon'ble Supreme Court. The following paragraphs dwell on some of these key observations.

A. Wages

During our visits to a specific correctional home, we were informed by a group of inmates that they have been deprived of their entitled wages for the work rendered in the correctional home. It was further alleged that the authorities of the correctional home had not released the wages payable to them for the year of 2014-2015. Some specific allegations of misappropriation of funds were made against specific Jail officials who were in the day-to-day management of the correctional home concerned. The alleged misappropriation of funds concerned the rightful wages of twenty seven inmates and ranged between 600 INR to 80900 INR. Given the serious nature of allegations, we made a representation seeking an inquiry to the Office of the Inspector General of Prisons. In our subsequent visits to the concerned correctional home, the inmates informed us that although a commission had inquired into the allegations of misappropriation of funds, the allegations were summarily dismissed based on the statements of certain inmates, taken under duress and obvious intimidation. Be that as it may, in spite of a lapse of almost twelve months since their initial complaint to members of Studio Nilima, the wages have not been disbursed to the concerned inmates till date. This instance also reflects a larger systemic imbalance in the correctional home context. The existing grievance redress mechanism within the correctional homes exposes the power structures embedded and entrenched within the correctional home environment, where, in most instances, inmates feel intimidated and fear consequences for voicing their legitimate concerns and issues with the "authorities." The Supreme Court in its Order dated 15.09.2018 in Re-

Inhuman Conditions had taken notice of the issue related to grievance redressal mechanism.¹⁹ However, such directives continue to be ignored or have not been implemented at the ground level.

B. Conduct Reports

Another significant aspect that was brought to our notice concerned the conduct reports required as standard procedure for remission of sentence for life convicts. The legal basis for the release of inmates can be traced to Chapter XXX 'Releases' of the Rules for Superintendence and Management of Jails in Assam, which must be read with the present remission policy of the State Government. A copy of the present remission policy of the Government of Assam which is outlined in Office Memorandum No. HMB.143/2010/PT-II/194 dated 06.10.2015 of the Government of Assam is appended in Volume II as **Document 7** at page 12.

In cases of life imprisonment, a conduct report is needed from the Deputy Commissioner (DC) and Superintendent of Police (SP) of the district before the person can be released.²⁰ A bare reading of the remission policy issued by the Government does not give the impression that the conduct report from the DC and the SP are substantive elements of the process. However, most of the correctional homes that we visited presented cases where conduct reports had been delayed, thereby choking the whole remission process.²¹ There have been two cases where the jail authorities themselves have written to the DC and SP for a second time reminding them to send the conduct reports but to no avail.²²

To ascertain the reason as to the delay in the conduct reports, we filed applications under S.6 (i) (a) of the Right to Information Act, 2005 addressed to the DCs and SPs of all districts. Among other queries, we sought to know the number of conduct reports received by their respective offices in the time frame from 01.04.2017 to 01.04.2018 and the number of such reports completed and sent back to the respective correctional homes. The Office of DC, Darrang in letter dated 21.06.2018 replied that it had five pending reports. The Office of DC, Kamrup in letter dated 02.06.2018

¹⁹ Order dated 15.09.2017 passed by Hon'ble Supreme Court in Re-Inhuman Conditions available at https://www.sci.gov.in/supremecourt/2013/18545/18545_2013_Order_15-Sep-2017.pdf.

²⁰ Point 1 of the above-mentioned Office Memorandum.

²¹ Central Jail, Jorhat; District Jail, Morigaon and District Jail, Mangaldai reported cases where conduct reports had been delayed for several months on end.

²² Both these cases were reported in District Jail, Morigaon.

replied that of the five conduct reports it received it had forwarded two back to the Jail Superintendent. While the Office of DC, Jorhat informed through letter dated 26.06.2018 that it had cleared all thirteen conduct reports it had received which had been forwarded to the Jail Superintendents of District Jail, Jorhat and Mahendra Nagar Open Air Jail, Jorhat. In a reply-dated 31.05.2018, Office of SP, Morigaon replied that of the twenty two conduct reports received, twenty had been forwarded to the Jail Superintendent.

While these numbers may not seem very impactful at first glance, it must be kept in mind that conduct reports determine a question of personal liberty as envisaged under Article 21 of the Constitution of India. For every delayed conduct report, a convict spends several extra days or months in jail. A delay in this process essentially means that the inmate's stay in the prison is prolonged for a substantial number of days. Time being relative, it is only an insider's perspective, which can vouch for the fact that time does travel slower in captivity. More practically, these bureaucratic bottlenecks may have serious effect on the impetus for reformation that an inmate may have gathered during his years of incarceration. These bottlenecks have been noted in UTRC minutes of the District Jail, Tinsukia which have been accessed by RTI, where one of the members have noted that there is no set procedure for evaluation which makes the process cumbersome and causing delay. A copy of the minutes of the UTRC meeting at District Jail, Tinsukia held on 30.03.2016 (obtained through RTI application) is appended in Volume II as **Document 8** at page 20.

C. Apathy to Appeal

Another striking revelation was the sheer apathy discernable amongst most of the convicts in preferring appeals before the Superior Courts particularly the Hon'ble Supreme Court. There was a perceptible distrust in the services offered by the ASLSA and efforts of preferring appeals to the Hon'ble Supreme Court were seen as tedious and futile. This was largely due to the delays in communication between the Jail Administration and the SCLSC in providing necessary documents such as trial court records, custody certificates etc. for preferring appeals and subsequent status updates. We have encountered numerous instances where the process of filing appeals have been abandoned due to a dysfunctional and unaccountable communication channel between the jail

administration and SCLSC.²³ In some such cases, our team has sought to follow up on cases and provide the necessary documents and status updates to inmates. However, such efforts have not been sustainable mostly due to limited resources available with our team. It is curious to note that although the LSA Act provides for a three tiered structured framework to assist in legal services of inmates, each of these units are autonomous without any effective co-operation amongst and between them. As such effective assistance for individual cases of appeals get lost in communication and efforts are often duplicated.²⁴ The resignation felt by the inmates was palpable in almost all our interactions with convicts across the correctional homes and one which was disheartening to witness, as each deserved to present an appeal as a matter of guaranteed right and presented a fair chance at acquittal based on our preliminary reading and assessment of the evidence and judgments.²⁵

3.5. Under Trial Inmates

Under trial inmates constitute 5793 (65.17%) of the total population in the correctional homes of Assam.²⁶ A substantial percentage of such inmates come from marginally poor, economic backgrounds and form one of the most vulnerable sections of the prison population.

A. Lack of Legal Representation

Although this set of inmates have been guaranteed legal aid services through the DLSA operationalized on the ground by the panel of LAC, our interactions reveal that most of such under trial inmates are unaware of their rights and entitlements, particularly to free legal aid and services. We encountered a substantial number of inmates who had no legal representation. A copy of the representations addressed to DLSA Kamrup dated 03.02.2018 and DLSA Morigaon dated 27.02.2018 is appended in Volume II as **Document 9** at page 27.

²³ There have been instances where the checklists for documents needed for preferring appeals before the Hon'ble Supreme Court and the Hon'ble High Court is not available even with LACs or the correctional administration. It is worth noting that such checklists are available online on the website of the Supreme Court Legal Services Committee.

²⁴ Also refer to discussion on effective legal assistance in sub-section 4.2 C under Legal Service Authorities.

²⁵ See discussion on Legal Service Authorities in sub-section 4.2 C.

²⁶ Fortnightly Prison Report dated 31.05.2018 submitted by the Inspector General of Prisons, Assam in W.P (C) (Suo Moto) No. 8 of 2018 before the Hon'ble Gauhati High Court.

Others, who had been appointed LACs, complained of never having met their counsels, either in the correctional homes and/or in Court. The ramifications of such omissions are grave as the same denies the under trial inmate to a fair and effective defense, thereby rendering their constitutional guarantees a nullity.²⁷

Enquiries further revealed a disturbing reality where legal services are being offered in the districts, sporadically and at the subjective will of the jail administration, individual initiatives of members of the DLSAs and/or the commitment of specific LACs. The institutional framework of legal services in Assam, however, viewed as a whole, indicates a disrupted and broken system, where rights guaranteed remain unrealized and unaccounted for. There are no effective systems of accountability built into the existing framework, which ensure transparency, either of the DLSA and/or the LACs. Services offered are often piecemeal with no monitoring mechanisms to evaluate the effectiveness of such services.²⁸ In some instances, inmates have made serious allegations of corruptions against jail administration and specific LACs where money is being routinely demanded for the services rendered. A true typed and translated copy of one such complaint received from District Jail, Dhubri is appended in Volume II as **Document 10** at page 30.

B. Onerous Bail Conditions

Apart from the issue related to LACs, we have noted the presence of forced and continued incarceration of inmates in the correctional homes of Assam due to the inability to pay surety amounts, which have been imposed by the lower courts. In our work across the correctional homes of Assam we have come across several such cases where surety amounts not concordant with socio-economic status have been imposed. Taking note of this, we have corresponded with several stakeholders informing them of the situation in specific correctional homes.

In the representation dated 03.02.2018 addressed to the Secretary, DLSA, Kamrup; Studio Nilima noted that during the visit of the Pratidhwani team on 20.01.2018 it had come across sixteen cases of inmates who had been granted bail but could not be released because they were not in a financial position to furnish the surety amount. It annexed the list of cases with their reference numbers for the intervention of the DLSA. It also provided a compendium of the precedents laid down by the

²⁷ Supra (n 23).

²⁸ Ibid.

Hon'ble Supreme Court and the Hon'ble Gauhati High Court. A copy of the representation dated 03.02.2018 addressed to Secretary, DLSA, Kamrup is appended in Volume II as **Document 11** at page 34.

Similarly, in representation dated 13.03.2018 addressed to the Secretary, DLSA, Mangaldai; Studio Nilima noted that during the visit of the Pratidhwani team on 25.02.2018 it had come across eight cases of inmates who had been granted bail but could not be released because they were not in a financial position to furnish the surety amount. It annexed the list of cases with their reference numbers for the intervention of the DLSA. It also provided details of the cases in which Pratidhwani had intervened in Morigaon. A copy of the representation dated 13.03.2018 addressed to Secretary, DLSA Mangaldai is appended in Volume II as **Document 12** at page 37.

There have been many such instances where members of our team have been actively reaching out to the respective DLSAs. Such representations have been shared with DLSAs throughout this year, drawing their attention to instances of such forced incarceration and sharing information and precedents regarding the same. However, such representations have not been acknowledged and no affirmative steps have been initiated by the DLSA for assessing the feasibility of releasing such UTPs on personal bonds.

Simultaneous to our engagement with the DLSA, the team of Studio Nilima has intervened in eight specific cases of such incarceration from District Jail, Morigaon and District Jail, Mangaldai by preferring applications under S.482 of the Code of Criminal procedure, 1973 before the Hon'ble Gauhati High Court. In some of these cases, the Hon'ble Gauhati High Court has been pleased to decrease the surety amounts. The following cases have been intervened in as provided in Table 1 below:

Table 1: List of cases filed by Studio Nilima before the Hon'ble Gauhati High Court under Section 482 of the Code of Criminal Procedure, 1973 for deduction of surety amount

Name	Case No.	Surety Amount and Bail Conditions	High Court Case No	Surety Amount and Bail Conditions post intervention
Raju Deka	Mikirbheta P.S Case No 288/17	Bail granted with amount of 30000 INR and one surety	CrI. Pet 184/2018	Bond modified to 10000 INR with one surety
Sonabanu and Haijan Ali	Morigaon P.S. 152/2017	Bail granted with amount of 15000 INR and one surety each	CrI. Pet 170/2018	Bond modified to 5000 INR each with one surety
Lakheswar Deka	Morigaon P.S. Case No 49/17	Bail granted with amount of 20000 INR and one surety	CrI. Pet 184/2018	Bond modified to 5000 INR with one surety
Nabin Boro	Mayong P.S. Case No 77/17	Bail granted with amount of 20000 INR and one surety	CrI. Pet 183/2018	Bond modified to 7000 INR with one surety
Jiten Baruah	G.R. Case No 201/2018	Bail granted with amount of 30000 INR and one surety	CrI. Pet 592/2018	Bond modified to 15000 INR with one surety
Babul Das	G.R. Case No 4059/2017	Bail granted with amount of 20000 INR and one surety	CrI. Pet 596/2018	Bond modified to 10000 INR with one surety
Lohit Saikia	G.R. Case no 1875/2017	Bail granted with amount of 40000 INR and one surety	CrI. Pet 595/2018	Bond modified to 15000 INR with one surety
Niranjan Mallick	Mayong P.S. Case No 300/17	Bail granted with amount of 30000 INR and one surety	CrI. Pet 616/2018	Bond modified to 5000 INR with one surety

Source: Records of Pratidhwani, Studio Nilima 2017-18.

While the Hon'ble Gauhati High Court has deemed fit to decrease the bail amounts by substantial margins, the effect on the ground level has been that many of these inmates being landless and without family support find it extremely difficult to pay even the reduced amounts. For many of them, the effect of a surety amount of 5000 INR is the same as a surety amount of 20000 INR.

The binding directives of the Hon'ble Supreme Court in *Moti Ram & Ors. v. State of Madhya Pradesh* reported at (1978) 4 SCC 47 serves as a reminder here where the Hon'ble Supreme Court observed that there is unreasonableness in the monetary amount of the surety bond as well as the requirement imposed by the trial court for a surety from his own district. The aspect of under-trial prisoners being lodged in Indian prisons who have been unable to secure their release before trial because of their inability to produce sufficient financial guarantee for their appearance has been noted in the landmark case of *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna*

reported in (1980) 1 SCC 81 at para 11. A significant development of law in this context which needs to be highlighted is the decision in *Ajay Verma v. Government of NCT of Delhi*, W.P(C) 10689/2017, where the Hon'ble Delhi High Court taking note of this situation of forced incarceration passed several directions to the subordinate judiciary stating *inter alia*:

1. That all District Judges must undertake verification of pending cases of UTPs who had been unable to secure release from prison despite an order of bail in his/her favour.
2. The trial courts were also directed to undertake the risk exercise assessment exercise of such cases within four weeks.
3. The prison authorities were to promptly bring to the notice of the trial court as well as the concerned Secretary of the District Legal Services Authority about any incidence of a prisoner being unable to secure release from prison despite an order of bail.

Significant to note is the fact that the Hon'ble Delhi High Court in *Ajay Verma* has held that it is the judicial duty of all trial courts to undertake a review in all instances where the inmate of a correctional home is unable to seek release even in the presence of a bail order in his favour. The current situation in the correctional homes in Assam warrants judicial intervention in the line of the directions laid down by the Hon'ble Delhi High Court in *Ajay Verma*. This is primarily because the issue of inmates languishing in prisons in spite of being granted bail not only violates their legal rights but also jeopardises the correctional administration setup by adding to overcrowding.²⁹

C. Under Trial Review Committees

It is pertinent to mention here that taking note of the fact that poverty had become one of the ground of incarceration, while dealing with the issue of overcrowding in jails, the Hon'ble Supreme Court in *Re- Inhuman Conditions* directed the induction of members of DLSA and SP of the districts into the Under Trial Review Committees(hereinafter referred to as the UTRC) and granted them discretion to assess and ascertain all such cases where UTPs could be released on personal bonds. During the timeframe when such Orders were being passed by the Hon'ble Supreme Court, we preferred RTIs to all the correctional homes seeking information on the performance of the UTRCs. The responses to the RTIs revealed and underlined a mis-appreciation of the law down laid down by the Hon'ble Supreme Court by the jail administration, the DLSA and the UTRC alike.

²⁹ Refer to discussion on overcrowding in sub-section 4.1.

This is manifest in the minutes of UTRC meetings of various districts which have been obtained by us through the means of RTI applications and are available in our records.

For instance, from our records as extracted in Table 2 below, in case of District Jail, Mangaldai no direct intervention was made in cases of persons who had been granted bail but were languishing in jail for not being able to pay surety.

Table 2: Extracts of UTRC meetings of District Jail, Mangaldai

Date of UTRC meeting	No. of 'granted bail but no surety' cases noted	Action taken
2016	12	To sensitise jail visiting lawyers
2017	7	To sensitise jail visiting lawyers
2018	8	To sensitise jail visiting lawyers

Source: Records of Pratidhwani, Studio Nilima 2017-18.

Infact, on 05.04.2017, the UTRC merely noted that there were ten UTPs who were in custody but had been granted bail. The discretion of the members making these recommendations were influenced by the fact that the release of these cases on personal bond would not be feasible as the UTPs were accused of serious offences.

In the case of District Jail, Goalpara, there seems to have been a mis appreciation of the role of the UTRC. The records reveal that for the duration between 2013- 2017, the UTRC only considered cases eligible for release of such inmates who had served half of their sentences as mandated under Section 436 A of the Code of Criminal Procedure, 1973. A tabulated analysis of the minutes of the UTRC meetings between 2013-2017 have been extracted in Table 3 below:

Table 3: Tabulated analysis of UTRC meetings of District Jail, Goalpara (2013-17)

Date of UTRC meeting	No. of 'granted bail but no surety' cases noted	Action taken
30.08.2013	No mention whether considered (Only eligibility under S.436A considered)	NIL
09.12.2013	No mention whether considered (Only eligibility under S.436A considered)	NIL
25.05.2014	No mention whether considered (Only eligibility under S.436A considered)	NIL
10.09.2014	No mention whether considered (Only eligibility under S.436A considered)	NIL

06.01.2015	No mention whether considered (Only eligibility under S.436A considered)	NIL
25.05.2015	No mention whether considered (Only eligibility under S.436A considered)	NIL
19.11.2015	No mention whether considered (Only eligibility under S.436A considered)	NIL
29.02.2016	No mention whether considered (Only eligibility under S.436A considered)	NIL
03.07.2016	No mention whether considered (Only eligibility under S.436A considered)	NIL
19.11.2016	No mention whether considered (Only eligibility under S.436A considered)	NIL
19.02.2017	No mention whether considered (Only eligibility under S.436A considered)	NIL
20.05.2017	No mention whether considered (Only eligibility under S.436A considered)	NIL
19.08.2017	No mention whether considered (Only eligibility under S.436A considered)	NIL
20.11.2017	No mention whether considered (Only eligibility under S.436A considered)	NIL
28.02.2018	5	List was furnished to the DC, Goalpara to communicate with family members

Source: Records of Pratidhwani, Studio Nilima 2017-18.

The RTI responses received from the District Jail, Dhubri (vide reply dated 22.06.2018), North Lakhimpur (vide reply dated 20.06.2018) and Hailakandi (vide reply dated 16.06.2018) are incomplete and failed to provide any information on the categories of cases considered by the UTRC during the timeframe in question and/or information on inmates who have been languishing in the correctional home for having failed to furnish the required surety. The District Jail, Udalguri (vide reply dated 20.06.2018) stated that only four meetings of the UTRC had taken place between 28.05.2015 and 20.12.2017 and provided minutes for only two such meetings. Both these minutes did not record the number of ‘granted bail but no surety’ cases present in the jail. It is unfortunate to note here that of all the thirty one correctional homes in Assam, responses were received from only twenty correctional homes.

To streamline the functioning of the UTRCs across prisons in India, the Hon’ble Supreme Court vide Order dated 04.12.2018 in Re-Inhuman Conditions adopted the Standard Operating Procedure (SOP) prepared by the NALSA which provides a detailed breakdown of the cases which the UTRC

must review and assimilate data related to UTPs.³⁰ It also provides the various interventions that the UTRC must make in cases fulfilling specific parameters including cases of continued incarceration due to inability to furnish bail amount or surety. The Order along with the SOP/guidelines was to be communicated with immediate effect to all UTRCs across districts in India. However, in our subsequent visit to the District Jail, Dhubri, we realized that no such Orders/SOP had been communicated or received by the Administration.

Such lapses in communication, where important notifications, circulars, guidelines or legal precedents having an impact on prison governance, management and reforms do not percolate to the ground is a pattern discernable very distinctly in the organizational set up of the present prison administration of Assam which needs immediate and urgent attention.

3.6. Declared Foreign Nationals

A phenomenon unique to the correctional homes in Assam is the presence of a substantial number of Declared Foreign Nationals (hereinafter referred to as the DFNs) in jails designated as such.³¹ In our travels to the designated detention centres within the correctional homes of Tezpur, Jorhat, Goalpara and Kokrajhar, we realized that the DFNs is a heterogeneous group of people distinguished in terms of their nationality, ethnicity, linguistic and religious practices. While the majority of such DFNs are alleged to be nationals of Bangladesh, our team also came across a few who were declared to be citizens of Pakistan and Afghanistan. We also met some of the Rohingya Muslims who were detained as refugees in the correctional home of Tezpur.³² At present, there are a total of 1042 DFNs in the notified detention centres of Assam.

The practical implication of the notifications passed by the Government of Assam in notifying the correctional homes as detention centers has meant that the DFNs are exposed to the prison environment in their entirety and for all effective purposes treated as inmates. Further, the sheer magnitude and volume of DFNs has overshadowed all other issues, poses a serious challenge to the correctional home administration, impacts the existing infrastructure and has resulted in the

³⁰ Order dated 04.12.2018 passed by Hon'ble Supreme Court in Re-Inhuman Conditions available at https://www.sci.gov.in/supremecourt/2013/18545/18545_2013_Order_04-Dec-2018.pdf.

³¹ The State of Assam vide a series of Notifications designated the Central jails of Jorhat, Tezpur, Dibrugarh, Silchar and district jails of Goalpara and Kokrajhar as detention centres.

³² These detainees have since then been deported back to Myanmar.

overcrowding of these correctional homes. For instance, in absence of any rules, guidelines or framework applicable on the DFNs, the jail administration has been compelled to apply the constituent statutes and regulations of the Assam Jail Manual, meant specifically for the convicts and the under trial inmates. Our interactions with the jail administration revealed that the dietary allowances given to the DFNs were same as for “non laboring prisoners and under trials” as under Rule 368, Chapter XXI of the Rules for Superintendence and Management of Jails in the State of Assam (a constituent of the Assam Jail Manual). However, unlike other inmates, including convicted inmates, the DFNs are not entitled to parole/leave, nor are they encouraged to communicate with their family members. Infact, the spatial distribution of the detention centers across Assam has disrupted family units and made separation inevitable. Further, our interactions revealed that there are virtually no statutory parameters to define the period of incarceration of such DFNs. Inspection of records available at the correctional homes of Tezpur and Jorhat indicated that the average years of incarceration for such detainees was eight and six years respectively.

Given the absence of a substantive procedure for the treatment of the DFNs and the grave violations of human rights observed, we made an intervention before the Hon’ble Supreme Court in Re-Inhuman Conditions through I.A No. 105821/2018 (hereinafter referred to as Studio Nilima I.A) *inter alia* challenging the constitutional validity of declaring the correctional homes as detention centers and the continued indefinite incarceration of the DFNs in the correctional homes. The Application further raises concerns relating to the living conditions of the DFNs including dietary allowances, communication and separation of families, entitlement to wages and work and parole and leave benefits etc. A copy of the Interlocutory Application filed by Studio Nilima before the Hon’ble Supreme Court is appended in Volume II as **Document 13** at page 39. Vide Order dated 02.08.2018, the Hon’ble Supreme Court issued notice to the Union of India and the State of Assam in the said matter, however restricted its enquiry only to the facilities and living conditions of the persons in detention centers.³³

The Union of India, in this matter, brought to the notice of the Hon’ble Supreme Court, the notification No. 25022/32/2014- FI dated 09.09.2014 issued by the Ministry of Home Affairs (Foreigners Division) which explicitly mandates the setting up of detention centers/ holding

³³ Order dated 02.08.2018 passed by the Hon’ble Supreme Court in Re-Inhuman Conditions, available at https://www.sci.gov.in/supremecourt/2013/18545/18545_2013_Order_02-Aug-2018.pdf.

centers/ camps outside the Jail premises and with the provision of basic amenities and open space and security. This notification was issued pursuant to the law laid down by the Hon'ble Supreme Court in Order dated 28.02.2012 in Prof. Bhim Singh v. Union of India being W.P(Cr) No. 310 of 2005 (hereinafter referred to as Prof. Bhim Singh) wherein it was held that suspected foreigners who cannot be repatriated (unless their nationality is confirmed), cannot be confined to prison and deprived of their basic human rights and human dignity.³⁴ It is obvious that the notifications passed by the Government of Assam are in direct contravention to the established law, specifically the Notification No. PLB.121/2015/44 dated 24.09.2015 passed subsequent to the said Orders, notifying the Central Jails of Jorhat, Tezpur and Dibrugarh as detention centres. Be that as it may, during the pendency of the proceedings in the Studio Nilima I.A, the Government of India passed another Notification being 25022/32/2014. F.I dated 07.09.2018 directing the Government of Assam reiterating its previous notification dated 09.09.2018 and further directing the segregation of inmates and DFNs. The operative part of the said Notification reads as follows:

“...In case, pending setting up of such Detention Centres/Holding Centres/Camps outside jail premises, any specific area in the jail premises has been earmarked by the State Government for housing such foreign nationals who are awaiting deportation as purely temporary measure, it may please be ensured that such premises are well segregated from the prisons housing the under trial and convicted prisoners and that the strict prison regimes applicable to such under trial and convicted prisoners are not made applicable to the foreign nationals housed in the detention centres. It may also be ensured that the segregated area for housing such persons have all the basic amenities like electricity, drinking water, hygiene, accomodation with beds, sufficient toilets/baths etc. You are also requested to ensure that the persons housed in such detention centres are permitted to meet/communicate with the family members and no restrictions are imposed on this account.”

However, our subsequent visits to the detention center reveal that no such circular/ order and/or notification have been communicated to the jail administration or even to the respective Foreigners Tribunals constituted under the Foreigners Act, 1946. Consequently, the DFNs have not been

³⁴ Order dated 28.02.2012 passed by Hon'ble Supreme Court in Prof. Bhim Singh, available at <https://www.sci.gov.in/jonew/bosir/orderpdfold/1474288.pdf>.

accommodated elsewhere nor have their segregation within the correctional homes been implemented in absence of any directives, the same being in contempt of the directives of the Hon'ble Supreme Court. Infact, the correctional homes and detention center continue to receive increasing numbers of DFNs posing serious administrative and infrastructural impediments which continue to cause grave prejudice to the inmates of the correctional homes as well as the DFNs.

At present, the Hon'ble Supreme Court has entrusted the Union of India to prepare a detention manual concerning the DFNs and the matter will be heard in the month of February 2019 for final directions.

3.7. The Third Gender

In our visit to the Central Jail, Guwahati, we came across three inmates who were members of the transgender community, who were segregated from the rest of the inmate population and were “quarantined” in solitary confinements. Such isolation in solitary cells was explained to be the result of a lack of specific wards designed to accommodate members of the third gender. The Hon'ble Supreme Court in *National Legal Service Authority v. Union of India* reported in AIR 2014 SC 1863 recognized the constitutional rights of transgender persons who do not fall within the male/female binary and entitled them to legal protection of laws in all spheres of State activity under the constitutional mandate. Consequently, the barriers faced by the incarcerated members of the transgender community in their interaction within the correctional homes, such as “quarantine into solitary confinement” for lack of adequate accommodation, would effectively violate their fundamental rights and requires immediate attention of the Superior Courts. It would therefore be important to address the exclusions faced by such inmates within the correctional homes and take appropriate steps to facilitate and design interventions that address their specific needs and requirements with immediate effect.

4. CAPACITY

The Inmate population of a correctional home has a direct correlation with its capacity. It is therefore obvious that the term capacity in the context of the correctional home invariably suggests the prison capacity to house inmates. Assam has recorded significant instances of overcrowding in at least nine of the correctional homes, as per the data made available by the Government of Assam.³⁵ The discussion in the following paragraphs considers the issue of overcrowding and identifies its key drivers in the context of Assam. In addition, the subsequent paragraphs broadens the scope of the term “capacity” to assess and determine the stakeholder capacity. Such assessment is aimed at effective and informed participation in decision-making and sustainable implementation of prison reforms. The stakeholders under review include the Government of Assam, the Jail Administration and Legal Services Authorities.

4.1. Overcrowding

Overcrowding is considered one of the perennial aspects of the correctional home context in India and has been subject of much speculation and discussion. In recent years, the issue has garnered significant attention before the Hon’ble Supreme Court in *Re-Inhuman Conditions* where respective State Governments have been directed to submit the present statistics on overcrowding in their State prisons and present “Plans of Action” for its resolution. Non compliance of such directives have also meant imposing costs of 25,000 INR by the Hon’ble Supreme Court on State Governments (Government of Assam included) vide Order dated 04.04.2016 in *Re-Inhuman Conditions*.³⁶ Subsequently, the Hon’ble Supreme Court vide its Order dated 08.05.2018 *inter alia* directed the Hon’ble State High Courts to initiate suo moto proceedings to assess the issue of overcrowding in their respective jurisdictions.³⁷ Accordingly in compliance of order dated 08.05.2018, W.P(C) (Suo Moto) No. 8 of 2018 came to be registered before the Hon’ble Gauhati High Court and the same is pending adjudication.

In this context, according to the Affidavit dated 10.08.2018 submitted by the Government of Assam in W.P(C) (Suo Moto) No. 8 of 2018 before the Hon’ble Gauhati High Court, the extent of

³⁵Supra (n 26).

³⁶ Order dated 04.04.2016 passed by the Hon’ble Supreme Court in *Re-Inhuman Conditions* available at <https://www.sci.gov.in/jonew/ropor/rop/all/569995.pdf>.

³⁷ Order dated 08.05.2018 passed by the Hon’ble Supreme Court in *Re-Inhuman Conditions* available at https://www.sci.gov.in/supremecourt/2013/18545/18545_2013_Order_08-May-2018.pdf.

overcrowding above 150% applies to nine correctional homes in Assam, specifically the District Jails of Nalbari (194.19%), Barpeta (175.58%), Dhubri (177.82%), Hailakandi (201.72%), North Lakhimpur (160.39%), Golaghat (161.29%), Biswanath Chariali (154.25%), Dhemaji (153.07%) and Udalguri (150.39%). In this regard, the State of Assam has made a commitment to construct additional barracks in the various correctional homes across Assam to increase the present registered capacity from 8888 to 10778 for which all necessary administrative sanctions have been approved. A copy of the Affidavit-in-opposition dated 04.07.2018 in the W.P(C) (Suo Moto) No. 8 of 2018 before the Hon'ble Gauhati High Court filed on behalf of the State of Assam by Secretary to the Government of Assam, Home Department is appended in Volume II as **Document 14** at page 87.

Additionally, it has been stated that the presence of 1042 DFNs in the correctional homes (which tends to place an additional burden on the jail administration) will be resolved with the transfer of such detainees from the correctional homes to the proposed detention centre at Matia, in the district of Goalpara, Assam, scheduled for completion on 31.08.2019.³⁸

Increasing prison capacity and transfer of DFNs to the “permanent” detention centre at Matia has been suggested by the Government of Assam to resolve the issue of overcrowding in Assam. In our visits to the correctional homes and as evident from the tally of prison population documented in the Fortnightly Prisons Population Report, the core identifiable driver for overcrowding is the presence of a substantial number of under trial prisoners in the concerned correctional homes. Our visits further revealed that large sections of such UTPs come from marginally weak economic backgrounds and continue to remain in the correctional homes for their inability to furnish surety.³⁹ It has been time and again reiterated by the Hon'ble Supreme Court that poverty cannot and should not be a ground for incarceration. Release on bail/ parole and remission and recourse to alternatives on incarceration such as fine, civil commitment and probation have been recommended as alternatives to absorb the stress on the existing prison infrastructure.⁴⁰ As discussed above, the Hon'ble Supreme Court vide its Order dated 04.12.2018 in Re-Inhuman Conditions has adopted the Standard Operating Procedures wherein it has specifically articulated guidelines to the UTRC in

³⁸ Derived from Affidavit filed by State of Assam in compliance with Order dated 31.10.2018 in Re-Inhuman Conditions.

³⁹ Refer to discussion on UTP in sub-section 3.5

⁴⁰ See Rama Murthy v. State of Karnataka relevant at para 23, 24 & 26.

every district to ascertain and assess such cases of UTPs who are entitled to bail and may be released on personal surety.⁴¹

The team notes with concern that in our visit to the District Jail, Dhubri, which records a substantial number of UTPs and is projected as one of the overcrowded jails in Assam had not received any such intimation from either the Government of Assam and/or the Office of the Inspector General of Prisons. It is critical that a close monitoring of the implementation of SOP at the district levels be monitored to ensure effective implementation to relieve the burden of overcrowding in the correctional homes of Assam.

In this regard, attention needs to be drawn to the provisions for plea bargaining as available under Sections 265A – 265L in Chapter XXIA of the Code of Criminal Procedure, 1973.⁴² Further, emphasis needs to be placed on the advisory dated 17.01.2013 issued by the Ministry of Home Affairs, Government of India on ‘Overcrowding in Prisons’ which encouraged the use of plea-bargaining methods to reduce the delay in the disposal of criminal trials and appeals and also to alleviate the suffering of the under-trial prisoners. However, plea-bargaining remains an under used provision in the correctional homes of Assam.⁴³ We have noted that awareness of plea-bargaining is dismal not only among the inmates but also among the LACs. As a result, plea bargains are generally not being entered in legal aid cases causing delay in trials and consequently burdening the correctional homes with the presence of a large volume of UTPs.

Further, the Hon’ble Supreme Court in order dated 24.04.2018 in *Re-Inhuman Conditions*, noted that a large number of the prison population are accused or charged with offences of compoundable nature. However, no effort is generally made to ascertain whether these cases can be compounded. As a result, it issued directions to the SLSA through the Member Secretary of NALSA to take up the issue with panel lawyers. In our visits, we have noted the passivity, which is apparent in the

⁴¹ Refer to discussion on UTRC under UTP in sub-section 3.5

⁴² These provisions were inserted by way of Criminal Law (Amendment) Act, 2005.

⁴³ In this regard, attention may be drawn to the findings of the NCRB which suggests that plea bargaining has been used in several instances across India. There is data to suggest vide the Report of the NCRB, 2015 that 4000 cases have been compounded across India (including charges of murder). This finding of the NCRB has faced multiple challenges in public discourse due to the fact that there exists a bar on plea bargaining in cases of offences which are punishable by imprisonment of seven years or higher quanta (including imprisonment for life and death) under Section 265A of the CrPC.

lack of instances where offences have been compounded. In fact in certain cases, UTRCs in correctional homes did not consider the presence of UTPs under compoundable offences until up to 6 years after their institution. A copy of minutes of UTRC meetings at District Jail, Goalpara (obtained by RTI application) is appended in Volume II as **Document 15** at page 95.

Another significant aspect, which needs to be highlighted, is the presence of the DFNs in the correctional homes of Assam. Although projected and viewed as a marginal factor, the presence of the DFNs, in our considered view, has destabilized and derailed the prison infrastructure in most of the notified correctional homes and subsumed all other issues by its sheer volume and magnitude. The number of projected DFNs (post NRC) is estimated to be in lakhs. In absence of appropriate detention centers, such DFNs would be detained in various notified detention centers as per the existing statutory norms. Even if the Matia detention centre is completed as assured by 31.08.2019, it will not have the necessary capacity (at present 3000) to absorb the high volumes of projected DFNs. In such a scenario, the problems pertaining to overcrowding in the correctional homes of Assam will increase manifold and herald a situation where a large-scale humanitarian crisis is imminent. A copy of a table demonstrating the current rate of overcrowding at all notified detention centres based on data provided by the Inspector General of Prisons, Assam is appended in Volume II as **Document 16** at page 116.

In this regard, the Orders passed by the Hon'ble Supreme Court is instructive wherein the State Governments and Union Territory Administrations have been directed to consider the feasibility of establishing open jails in as many districts within their jurisdiction. In Assam there is one such open jail named Mahendra Nagar Open Air Jail in the district of Jorhat, which is housed adjacent to the Central Jail Jorhat. Our site visits to the Mahendra Nagar Open Air Jail, Jorhat revealed that such facilities remain under utilized in spite of available infrastructure and land. It may be considered (as a temporary measure) by the Government of Assam to house the DFNs presently lodged in the Central Jail Jorhat in facilities such as the Mahendra Nagar Open Air Jail, Jorhat. Such accommodation will also be in compliance of the Notification No. 25022/32/2014-F.I dated 07.09.2018 passed by the Government of India directing the Government of Assam to ensure segregation of the undertrial/convicts and the DFNs in the existing detention centers. Further, feasibility studies may be undertaken to open similar open jails around the vicinity of the existing detention centers to accommodate the rest of the presently incarcerated detainees in the correctional

homes of Goalpara, Kokrajhar, Tezpur, Silchar and Dibrugarh, secure the human rights of the DFNs and inmates alike and also ease the burden on the jail administration.

In this context, reference may also be drawn to an instance where transfer of DFNs to other States with detention centers (with proper lodging and boarding facilities) has been considered by the Hon'ble Supreme Court. The Hon'ble Supreme Court in Prof. Bhim Singh being W.P(Crl) No. 310 of 2005, thirty seven Pakistani fishermen, of whom twenty one were stated to be mentally challenged were accommodated in the detention centers in Delhi and Amritsar namely at Sewa Sadan, Lampur and Mahila Sadan, Jail Road (females) and one in Amritsar from Gujarat, until their deportation to Pakistan.

4.2. Stakeholder capacity

The stakeholders within the correctional home ecosystem are varied, each working within its ambit to strengthen and advance the reformative philosophy that has come to define prison administration and management. In our considered view, however, a discussion on the assessment of stakeholder capacity is critical as it has a direct bearing in causing and affecting change within the correctional home ecosystem in Assam. In our experience and as evident from the discussion above, most of the impediments and challenges in implementation relate to the existing structure, which require some intervention. In this section, our emphasis is on three key stakeholders (Government of Assam, the Jail Administration and the Legal Service Authorities including the DLSAs, the LACs etc.), whose position and role, we think, is pivotal in causing and affecting change within the correctional home ecosystem in Assam.

Before addressing the concerns of stakeholder capacity and conditions in the section that follows, it is important to note a preliminary observation. Although India has made remarkable economic progress over the past few decades, such progress has been asymmetric vis a vis the respective States. In a tally of performance of the various States of India, the State of Assam ranks 17th recording a Gross State Domestic Product (GSDP) of 8.3% in the year 2018-19. This may seem impressive at a first glance, however, there are a vast majority of people in various pockets of Assam who live in conditions of abject poverty and suffer immense alienation often snowballing into conflict over land, identity and resources. This is an important fact to consider in a discussion on prison reforms as prisons being a State subject (under Entry 4 in List II of the Seventh Schedule

of the Constitution of India) has to compete with other government responsibilities for extremely precious resources and budgetary allocations. Invariably, the focus and attention tends to slip over more pressing concerns such as the annual flood of Assam, the demands on constitutional safeguards for the indigenous communities and/or land reforms. However, such an argument cannot defeat or justify state neglect and/or priority to safeguard the civic and constitutional rights of the inmates and nearly all commentators on prison reforms, starting from the All India Committee on Jail Reforms, headed by Justice A.N. Mulla (hereinafter referred to as Mulla Committee) to as recent as the social justice bench of the Hon'ble Supreme Court in *Re- Inhuman Conditions*, agree that conditions in prisons of India have been and continue to be appalling.

A. Government of Assam

As noted above, prison is a State subject under Entry 4 in List II of the Seventh Schedule of the Constitution of India. This effectively means that prison administration and management comes within the exclusive domain of the State. The role of the Central Government and other stakeholders are limited and only advisory in nature. Arguably, this may create certain structural barriers (owing to the asymmetric federal structure of the India State) for implementation for a State like Assam, which is crunched for funds to implement reform measures as effectively as others. It is curious however that the Government of Assam has never raised any concern over funds. Infact, when the matter was raised on the allocations of grants to State Governments under the 14th Finance Commission for prison administration in *Re-Inhuman Conditions*, the State of Assam stated to have sufficient funds for maintaining prisons and as such no allocations were made under the 14th Finance Commission. In this regard, the Performance Audit on management of prisons in the State of Assam which is a constituent of the Report of the Comptroller and Auditor General of India on Social, General and Economic (Non-PSUs) Sectors for the year ended 31.03. 2016 (Report No. 1 of 2017) is instructive. The Report *inter alia* makes serious observation on financial mismanagement, weak reform process, instances of delay in civil works, financial mismanagement, existence of vacancies at the functional level of security staff and absence of any survey to identify the thrust areas requiring immediate intervention.⁴⁴

⁴⁴ *Report of the Comptroller and Auditor General of India on Social, General and Economic (Non-PSUs) Sectors for the year ended 31st March, 2016* (Report No. 1 of 2017). Comptroller and Auditor General of India, https://cag.gov.in/sites/default/files/audit_report_files/Report_No_1_of_2017_of_SGE_Non-PSUs_Sectors.pdf.

Observations such as these seem to invariably suggest a lackadaisical approach or a sheer apathy on the part of the State Government for making prison a priority area of governance and implementation of prison reforms as advised by the Ministry of Home Affairs, Government of India or the Hon'ble Supreme Court. Such an approach is also discernible in the conduct of the Government of Assam in implementing changes and adopting the directives of the Hon'ble Supreme Court as is evident from our experience at the ground level.

For instance, prison reforms have received a huge momentum through the intervention of the Hon'ble Supreme Court in recent months. Some major developments, amongst others, have been in the area of custodial death of inmates, overcrowding in jails etc. The state of under trial prisoners have been a matter of great concern and measures such as the constitution of review committees with regular monthly meetings have been adopted to reduce the burden of overcrowding in the correctional homes. The Court also directed the respective Governments to furnish data on the number of undertrial prisoners accused/ charged with offences of compoundable nature. The Government of Assam's response highlighted an alarming number of such cases because of their inability to furnish bail bonds. The Ministry of Home Affairs, Government of India was also directed to study the prison management system and a portal updating information on prison statistics was directed to be implemented by all the respective Governments of State. In this regard, the Hon'ble Supreme Court supported State Governments with additional funds that had voiced concerns over the lack of resources. It was also specifically directed that the recommendation made under the Model Prison Manual, 2016 prepared by the Bureau of Police Research and Development should be incorporated into the existing regulatory framework of the respective Government.

The team notes with great disappointment and immense concern that the Government of Assam has monumentally failed to implement any/ all of these reforms. At best, assurance of implementation exists on Affidavits submitted in Courts, however the ground conditions narrate a different reality. For instance, it is evident from our discussion on UTPs that none of the notifications/ advisories or the SOP concerning the UTRC has been circulated to the concerned correctional homes. As such, inspite of reiteration and expansion in the law relating to bail for UTPs, the behaviour of stakeholders at the ground level conveys an understanding contrary to the established principles of law. In Assam, the rhetoric on bail is geared more towards jail rather than the Krishna Iyer's J. philosophy of "bail not jail" having grave ramification on prison infrastructure and capacity.

Further, our team failed to access accurate data on information related to correctional homes in Assam specifically on the National Prisons Information Portal maintained by the National Informatics Centre (nic), as mandated by the Hon'ble Supreme Court. It appears that the process stands incomplete as regards the State of Assam in spite of a lapse of more than two years since the time of the direction passed by the Hon'ble Supreme Court in Order dated 05.02.2016.⁴⁵ It is pertinent to note that the passive approach of the Government of Assam for non compliance of Orders and directives of the Hon'ble Supreme Court have been treated seriously, where at least in one occasion the Government of Assam along with other States have been reprimanded and costs imposed.

Most significantly, the Government of Assam on multiple occasions and at least once stated on Affidavit their commitment to review the existing regulatory framework and make them consistent with the existing norms. For this, the Government of Assam is stated to have formed a review committee with the exclusive mandate to revise the Assam Jail Manual on the basis of the newly enacted Assam Prisons Act 2013 and also incorporate the provisions of the Model Prison Manual 2016 with such modifications as are relevant to the State of Assam. However, as noted above, the revisions are still awaited.

A serious lapse on the part of the Government of Assam's duty towards the inmate population is the non availability of a handbook concerning inmate rights and duties, in the local language of the inmate in any of the correctional homes that we visited. Such lapses were brought to our notice by the inmate population who requested members of our team to supply them with such copies. Our team accordingly prepared a translated compendium of the relevant provisions of the rights and duties of inmates and sought the approval of the Office of the Inspector General of Prisons for its distribution in the correctional homes of Assam. Curiously, the Office of the Inspector General of Prison placed an objection of the distribution of the compendium in its response dated 27.04.2018 stating that the contents of the Model Prisons Manual, 2016 and the Assam Jail Manual cannot be translated, the same being Government documents. We were further informed that the inmates were being apprised of their rights at the time of their admission into the correctional home.

⁴⁵ Order dated 05.02.2016 passed by the Hon'ble Supreme Court in Re-Inhuman Conditions available at <https://www.sci.gov.in/jonew/bosir/orderpdfold/2415277.pdf>.

Such statements demonstrate administrative highhandedness that pervades through the departments of the Government of Assam, where the approach continues to be seeped in a punitive legacy rather than grounded in the reformatory paradigm that has come to define the correctional administration. When such concerns were raised with the concerned department i.e. the Office of the Inspector General of Prisons and the law on the subject clarified, the Office of the Inspector General of Prisons through their response dated 23.05.2018 gave an assurance that handbooks prepared by their Department such as “Karabaseer Hatputhi” (which were outdated and hence discontinued) would be revived and revised and made available to the inmates. The team regrets to report that even after the lapse of eight months, no handbooks have been made available to the inmates thus far and they continue to be deprived of their basic entitlements guaranteed by the Constitution of India.

Such practices of the Government of Assam compel us to conclude that the existing approach seems to be couched in bureaucratic apathy and more significantly runs contrary to the principles of transparency in public actions as is directed by the Government of India and the judicial norms upheld by the Hon’ble Supreme Court and the Hon’ble Gauhati High Court. Copies of our correspondences with the Office of the Inspector General of Prisons dated 11.04.2018, 15.05.2018 and the responses dated 27.04.2018, 22.05.2018 are appended in Volume II as **Document 17 (Colly)** at page 117.

The administrative inertia that has come to define the present institutional framework impedes implementation of reforms on the ground and frustrates the laudable goals and objectives of the prison reform movement. There is an urgent need for a consensus and mutually acceptable transparent and accountable structures designed in collaboration with NGOs to implement the reform commitments in Assam. In this regard, some of these structural concerns may get addressed if prisons as a subject be transferred to the Concurrent List where both the Centre and the State Government share jurisdiction for the governance and management of the correctional homes and streamline a uniform policy that is made applicable to all federating units as recommended by the Mulla Committee.

B. Understaffing and Correctional Home Administration

Our discussions on capacity with the concerned stakeholders, particularly the Jail administration invariably indicated the issue of understaffing and the continuing vacancies in the correctional home administration. As per data submitted by the Inspector General of Prisons, Assam in W.P(C) No. 9 of 2018 (instituted in compliance of the Hon'ble Supreme Court's Order dated 08.05.2015 in Re-Inhuman Conditions) before the Hon'ble Gauhati High Court, against the sanctioned strength of 1189 for the different posts, there are a total number of 266 posts which are lying vacant as on 01.04.2018.

Our visits to the correctional homes indicated that such vacancies concerned positions such as warders, security staff, medical and health officers, psychiatrist and counsellors, jail teachers, drivers specifically for ambulances and emergency services, sweepers; posts which evidently have a crucial bearing on the various components of correctional home administration. Also, in our experience, allocation of sanctioned posts across correctional homes in certain ranks such as drivers, sweepers is not uniform. Such practices have led to some grave situations. We have one recorded instance where an inmate at the correctional home expired due to unavailability of medical emergency services due to the absence of an inhouse driver. Further, officers at various correctional homes have indicated the effect of vacancies such as the lack of adequate number of security staff posing threat to the internal security of the correctional homes. In one such instance, a Jailor pointed out the manner in which the security of the correctional home was breached (with mobile phones being throw into the prison compound from the outside) due to the lack of adequate security guards in the external perimeter of the correctional home.

In this regard, a reference ought to be made to the 5th National Conference of Head of Prisons of States and UTs on Prison Reforms was held at New Delhi on 29-30.09.2016, where certain important resolutions were adopted and resolved to be implemented by the State Governments. Most importantly, the State Government had resolved to establish a welfare wing under the Prison Department comprising of welfare officers, law officers, counsellors and probation officers. Further, existing vacancies in all ranks of prison department were to be filled up expeditiously. Also, combined training of prison, police and health department and judiciary on under trial management were to be conducted periodically. None of these resolutions stand implemented by the Government of Assam, although the same were resolved to be effected in a time bound manner.

Further, in order to strengthen the capacity of the prison officers and warders, training manuals have been prepared by the Bureau of Police Research and Development. These manuals were directed to be circulated vide Order dated 08.08.2018 by the Hon'ble Supreme Court in *Re-Inhuman Conditions* to the Director General of Prisons / Secretaries of the Prison Department of the State Governments and UTs. It needs to be noted that except for the Central Jail, Guwahati, none of the correctional homes that we visited seemed to be aware of the context of the training manual. Infact, some officers expressed an urgent need to conduct capacity building and mid career training programs to render services effectively.

C. Legal Service Authorities

The Indian legal system crystallizes the right to consult and be defended by a legal practitioner at several levels. Article 22(1) of the Constitution of India provides an arrested person the right to consult and be defended by a legal practitioner of one's choice. The bounden duty of the Court to ensure that legal assistance is provided to the accused arises from Article 39A of the Constitution of India which provides that the State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity. It is mandated to provide free legal aid by suitable legislation or schemes or in any other way.

In addition to the Constitution of India, the Code of Criminal Procedure, 1973 also contains several provisions, which provide the right to legal representation. Section 303 of the Code of Criminal Procedure, 1973 provides the right to be defended by a pleader of one's choice to any person accused of an offence before a Criminal Court or against whom proceedings are instituted under this Code. Section 304 of the Code of Criminal Procedure, 1973 provides for cases in which legal aid to the accused may be given at State expense.

(i) Inadequate Number of Panel Lawyers

During the course of our work in the correctional homes, we have sought to engage with the ASLSA and the respective DLSAs, which have been constituted under the Legal Services Authorities Act, 1987 (hereinafter referred to as 'LSA Act'). We have noted that the functions of the State Authority under Section 7 of the LSA Act are multifarious and legal aid related to prisons is only one component of its function. Similarly, the functions of the DLSAs under Section 10 of the LSA Act are expansive in nature though limited to providing legal services targeted at the

weaker sections of society. The Hon'ble Supreme Court in its Order dated 05.02.2016 in Re-Inhuman Conditions at point 3 of the directions issued, underlined the need to recruit more panel lawyers to provide effective legal aid services to the inmate population.⁴⁶ However, except for the District Jail, Dhubri, none of the correctional homes have initiated an effort to engage an adequate panel of lawyers to commensurate the legal needs of its inmate population. A copy of the Order dated 05.02.2016 passed in Re-Human Conditions is appended in Volume II as **Document 18** at page 128.

(ii) Capacity Building for Legal Aid Lawyers

The last mile delivery of legal aid in the present structure rests on the LAC appointed by the DLSAs and the Amici Curiae who are appointed by the Hon'ble High Courts in cases of Jail Appeals. We have observed that there are no structured training programs for either category of lawyers. It must be noted that several lawyers appointed as LACs are often new entrants into the profession who have no orientation towards the concept of legal aid and lack grounding in procedural law. When combined with logistical issues like lack of timely payment of outstanding bills to legal aid counsels, it has been noted that the quality of legal representation available to the incarcerated person suffers.

The Hon'ble Supreme Court has affirmed that the right to effective legal assistance extends to considering the adequacy of the legal assistance, which is being rendered.⁴⁷ In Mohd. Hussain (I) v. State (Govt. of NCT of Delhi) reported in (2012) 2 SCC 584 at para 25; the Hon'ble Supreme Court concluded that in a trial where the appellant was without the aid of counsel for major portions, it could not be concluded that he had had the assistance of counsel "in a substantial and meaningful sense". As per the present law relating to claims of ineffective legal assistance, the onus, in the present context, however would rest on the inmates to establish a breach.

The Hon'ble Supreme Court recently noted in Reena Hazarika v. State of Assam, reported in AIR 2018 SC 5361, that not having the means to engage a lawyer of one's choice is a handicap in the criminal justice process. This was a case, which had been taken up by Pratidhwani and argued *pro*

⁴⁶ Order dated 05.02.2016 passed by the Hon'ble Supreme Court in Re-Inhuman Conditions available at <https://www.sci.gov.in/jonew/judis/43347.pdf>

⁴⁷ Sekhri, Abhinav. "Dancing in the Dark: The Right to Effective Legal Assistance in India." SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3305241.

bono by Mr. Shri Singh, Advocate, Supreme Court of India in which the inmate was acquitted by the Hon'ble Supreme Court vide Order dated 31.10.2018.⁴⁸ More importantly, Reena Hazarika noted that neither the Trial Court nor the High Court had taken notice of the defence forwarded by the appellant through her statements under Section 313 of the Code of Criminal Procedure, 1973. It must be noted that these gaps were also not demonstrated to the Court at the Trial or High Court stage.

In at least two other cases, which have been taken up by Pratidhwani, it has come to our notice that pleas for ineffective legal assistance are made out. Such instances of breach range from issues like non-examination of material witnesses, not raising direct contradictions or mis-appreciation of evidence in the impugned judgments. It is unfortunate to note that in all of these cases including in Reena Hazarika were argued by LACs appointed by the DLSAs. In our experience and interaction with LACs and other stakeholders, it has become apparent that the lack of a specific training period and training infrastructure has jeopardized the cases of several inmates and undermined their constitutionally guaranteed rights.

⁴⁸Order dated 31.10.2018 of the Hon'ble Supreme Court in Reena Hazarika v. State of Assam, available at https://www.sci.gov.in/supremecourt/2018/7005/7005_2018_Judgement_31-Oct-2018.pdf

5. CONDITIONS

The jurisprudence behind the administration of correctional homes has shifted largely in India. They are no longer institutions meant to lock away ‘hardened’ and deviant characters in order to isolate these individuals to protect the society from their acts. The conversation around correctional homes has not only shifted in the governing terminology, from ‘jails’ to ‘correctional homes’, but changes in correctional home administration has shifted from barring the deviants to providing an environment for their effective reformation.

Having said that, even though progress has been made in the approach towards the correctional home administration, some systemic issues in the administration of the correctional home rhetoric which act as a obstruction to the cause of reformation of the inmates. These administrative issues in the correctional homes not only affect the lives of the inmates but also the lives of the correctional staff administering the day to day activities of the correctional homes. The discourse on prison reforms in India, often overlooks the perspective of the correctional staff which is inherently a flawed approach because these individuals form a vital component of a prison environment. While some of these conditions are similar to most of the correctional homes, a disparate picture is still apparent where some correctional homes have had a better chance at functioning than other basing upon several factors. Part 5.1 of the discussion focuses on our observations on the conditions of the correctional homes, pertaining to the perspective of the inmates. Part 5.2 specifically centre the issues that the administrative staff of these correctional homes face in the course of their duty.

5.1. Living and Working Conditions of the Inmates

A. General Infrastructure

Several studies based on prisons have more than often stressed on the impact that prison architecture, the size and shape of the space has on its functioning.⁴⁹ Imagination of a bad prison structure is not an elusive concept—dark and dingy walls, cramped corners, little ventilation—are also tell tale sign of what one would imagine a prison to look like. The correctional homes in Assam, too, do not score too well in this regard.

⁴⁹ Human Rights Watch, *Behind Bars in Brazil*, 1998, https://www.hrw.org/legacy/reports98/brazil/Brazil-06.htm#P641_152891. Accessed 5 January 2019.

As far as infrastructure for correctional homes was concerned, a general neglect for this very vital aspect of prison administration has been observed in almost all the studies that we have conducted over the past year. While the layout of these correctional homes were all similar, tall boundary walls and imposing gates with bars but housing behind them a community of inmates and correctional staff who not only work and live in this enclosure but have also owned the space as their own. Issues that these correctional homes face in the aspect of infrastructure have become routine and are treated with a general neglect.

The Central Jails in this regard fare better than the District Jails, which are situated in the more remote parts of the State. Because of the situational advantages and their location, these Central Jails obviously are in a better position to function effectively. But another factor that plays a major role in this regard is the constituency of prisoners that these correctional homes accommodate and the demography of the districts that these prisoners belong to. For the Central Prison, Guwahati, located in the administrative capital of the State, which houses the most high profile or politically conspicuous prisoners, the situation commands the flow of resources into this correctional home in contrast with another correctional home situated in the remote and flood affected district of Dhubri, where the prisoners belong to a much lower economic and political strata of the society. Therefore, a marginally well functioning prison, does not give an accurate representation of the state of condition of the correctional homes in Assam.

Nevertheless, the environment that surrounds the inmates within the structure of the jail proper does give the picture of a community accommodating persons from different backgrounds locating their lives in the wards that they inhabit, separate spaces for the practice of different faith, libraries, kitchens, hospitals, etc. The condition of these units have been discussed in details below.

B. Wards

The wards in most correctional homes were old and in immediate need of renovation. Some wards were in such condition that because the structures have never been renovated or replaced after their construction. The leaking walls and dilapidated roofs in the older wards of District Jail, Morigaon, had holes in them through which water leaks in when it rains. Because the inmates have been accommodated on the floor with no solid beds, during monsoons, water seeping in through the cracks on the roof create an inconvenience. This state of affairs is not an isolated incident in

Morigaon, the conditions of the inmates' wards are similar in the other correctional homes as well. The Central Jail, Jorhat, although, is an exception. Despite being one of the oldest correctional homes, Jorhat did not show many complaints in this regard because of the attention it grabbed of the government and civil society owing to the fact that it at one point housed several freedom fighters like Pitambar Deva Goswami, former President Fakharuddin Ali Ahmed, former Chief Minister Bimala Prasad Chaliha, Kamala Miri, etc. But the designation of correctional homes into detention centres, including Jorhat, has largely affected the conditions of the wards as they are not equipped to accommodate such a large number of individuals owing to overcrowding.

According to Chapter LIV, Public Works in Jail, of the Assam Jail Manual, the Superintendent of the Jail can submit a proposal to the Executive Engineer of the concerned district for any repair work. The Executive Engineer then provides an estimate of the preliminary cost which is sent to the Inspector General of Prisons to decide whether the said proposal should be considered or not. There have been several instances where communication has been made to the Public Works Department of the concerned district and but getting these proposals approved has been met with another administrative hurdle. Representations made to the District Administration has also often not yielded any results, showing the general attitude of neglect that is present towards the infrastructure in prisons.

Furthermore, according to Rule 2.02 of the Model Prison Manual, 2016 the Prison administration must ensure separation of the following categories of prisoners: a) Women b) Young Offenders c) Under Trials d) Convicts e) Civil Prisoners f) Detenues g) High Security Prisoners. But from our observations in the correctional homes it can be inferred that only separate wards for women have been provided for. While high security prisoners may be in some cases segregated from the general prison inmates, ensuring that young offenders, UTPs, Convicts are also segregated becomes an inconvenience for the prison staff due to space constraints. Owing to this factor, the Declared Foreign Nationals are also housed within the same compound and therefore, they cannot be shielded from the prison environment.

C. Women Wards

As compared to the men's ward, the ward segregated for the women inmates are much smaller in all the correctional homes. They are built like an enclosure within the walls of the prison where the women are not provided with much space to move around.

This shortage of space becomes even more critical in the correctional homes which also function as detention centres as the women's wards in all the prisons had not been constructed foreseeing a situation where such a large numbers of inmates and detenues would have to be accommodated. Owing to this condition, segregation of women prisoners and women DFNs also is an impossibility for the administrators.

D. Toilets

The conditions of the toilets in these correctional homes are such that they should be put out of use or at least renovated immediately and replaced to maintain a habitable space which will not be detrimental for the health and hygiene of the inmates. The Model Prison Manual, 2016 under Chapter II, 'Institutional Framework', mandates the duty on State Government or the Central Government to provide minimum needs essential to maintain standards of living in consonance with human dignity. Back in 2009, the then UN Special Rapporteur in her Report on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation asserted that:

"Sanitation, more than any other human rights issue, evokes the concept of human dignity"⁵⁰; she further added, "Consider the vulnerability and shame that so many people experience every day when, again, they are forced to defecate in the open, in a bucket or a plastic bag. It is the indignity of this situation that causes the embarrassment."⁵¹

That being said, the right to sanitation is not just the presence or access to sanitation facilities like a toilet or a latrine, but the disposal of human excreta and the associated hygiene.⁵² This has also

⁵⁰ United Nations, *Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation*, July 1, 2009, UN Doc.A/HRC/12/24, http://www.ohchr.org/Documents/Press/IE_2009_report.pdf para 55.

as read in Human Rights Watch, "Going to the Toilet When You Want": *Sanitation as a Human Right*, <https://www.hrw.org/report/2017/04/19/going-toilet-when-you-want/sanitation-human-right>. Accessed 5 January 2019.

⁵¹Ibid.

⁵²Human Rights Watch, "Going to the Toilet When You Want": *Sanitation as a Human Right*." <https://www.hrw.org/report/2017/04/19/going-toilet-when-you-want/sanitation-human-right>. Accessed 5 January 2019.

been recognised by the United Nations General Assembly in their Resolution 70/169, which entitles the right to sanitation to everyone “to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, and socially and culturally acceptable and that provides privacy and ensures dignity.” The International Covenant on Economic, Social and Cultural Rights doesn’t explicitly lay down the right to sanitation as a basic human right but the Committee on Economic, Social and Cultural Rights has validated sanitation as an integral component to the right to an adequate standard of living provided under the Covenant.

The half broken doors that lead to, the dark and dingy, night toilets attached to some of the wards at District Jail, Morigaon, show the atrocious conditions of the toilets, where the inmates have also maintained that they feel their human dignity being stripped as they are forced to use these toilets after lock up. The conditions are much worse in Mangaldai where some male wards have not even been provided with attached toilets in the wards, meaning that the inmates have no access to sanitation facilities after sun down. Even in Central Jail, Guwahati which is a fairly new campus, the conditions of the day toilets which are situated outside the wards are horrifying.

The conditions for the women are not better as they too do not have access to clean toilets in the correctional homes. The women inmates because they do not have access to sanitary conditions are at the risk of many diseases such as urinary tract infection, other fungal infections, which might go untreated for years. The women’s ward in Mangaldai does not have a permanent structure for the day toilet. Plastic sacks sewn together and supported by bamboo sticks act is being used as a resemblance of a day washroom.

These instances show that even the most basic of human necessity—clean sanitation, is not being provided to the inmates in these correctional homes which is a clear violation of the standards, not even considering the measures in the prescribed international standards of detention of prisoners, but even the Model Prison Manual, 2016.⁵³

⁵³ According to Rule 2.10.1 of the Model Prison Manual 2016, In the barracks used for sleeping there shall be one unit of WC for 10 prisoners and the ratio of the WC’s which can be used in day time will be one unit per six prisoners. According to recommendation suggested by Mulla Committee, all wards/cells should be fitted with flush type latrines and the ratio of latrines to prisoners should be 1:6, and the system of open basket type latrines should be discontinued. Also according to Chapter XXXVII of Assam Jail Manual, receptacles for urine and faecal matter should be provided in every ward or sleeping cells and if enough land is there night soil to be provided.

E. Water Supply

Right to clean and safe drinking water has been recognised as a fundamental right, interpreted under Article 21 of the Constitution of India and is a basic human right.⁵⁴ But this right is being infringed from the inmates in most of the correctional homes documented in our observations.

In District Jail, Morigaon, a severe scarcity of drinking water was seen which was not resolved for the longest time. Without potable sources of drinking water, the inmates had to rely on two wells, one in the male ward and the other in the female ward, as their only sources of drinking water. The Deputy Commissioner of the District had assured the team that drinking water facility will be provided immediately, on our first visit to the correctional home on 22.10.2017, but the water tanks are still not functional even after a year. Even in Guwahati, there was water shortage although, only one section of the inmates were vocal about this but drinking water is taken care of because of water purifiers in the wards. The shortage of water supply is also one of the major reasons why the living standards of the jail inmates are low and it is difficult for them to maintain and keep the toilets in their campus clean.

However a contrasting image was seen in Central Jail, Jorhat. The correctional home administration had constructed around thirty nine watersheds all over the campus for the purpose of rainwater harvesting. A tank for water supply was constructed under the aegis of the then Ld. Sessions Judge, and this was donated by members of the Gattani family, who are local residents of Jorhat, in the memory of their father Shiv Dayal Gattani. This donation has acutely solved the issue of water supply in the correctional home and has immensely improved the lives of the inmates.

F. Kitchen

All the correctional homes have functional kitchens that are run by the inmates. However, the conditions of these kitchens vary from one prison to another. In District Jail, Morigaon, the facility of woodfire stoves was available as there was no provision of a gas pipes. The Deputy Commissioner of Morigaon had informed the team that the process of construction of another kitchen was underway for the prison but the plan hasn't materialised yet. In District Jail,

⁵⁴ Subhash Kumar v. State of Bihar as reported in 1991 SCR (1) 5, M.C. Mehta v. Kamal Nath as reported in (1997) 1 SCC 388; Narmada Bachao Andolan v. Union of India, WP (C) 319 OF 194, the Hon'ble Supreme Court held that, "water is the basic need for survival of human beings and is part of the right to life and human rights".

Mangaldai, a similar condition was seen where the structure of the kitchen itself half built of wood. According to the correctional home authorities there has been a survey done by the Public Works Department (PWD) who has taken an estimate needed to repair and construct the kitchen around three years ago, but till this date there has been no construction work done; despite this fact the inmates working in the kitchen have tried to keep the place clean and hygienic.

In the Central Jail, Guwahati, a new kitchen was inaugurated on Republic Day, 2018 to provide for the inmates and it has been built with several modern facilities such as advanced gas stoves, appliances like water coolers and food heater have also been provided.

One good practice that was observed in most correctional homes was that the kitchen was not segregated in terms of religion or caste. Inmates from all backgrounds were provided for by these kitchens without discrimination which shows another manner of how a community is built within the environment of a correctional home.

G. Medical Infrastructure

The medical facilities in most correctional homes are again in a deplorable condition. In most district jails, there are no permanent medical officers and are functioning with the support of only medical technicians or pharmacists; the medical officers only work on deputation which is inadequate for such institutions.

The Model Prison Manual, 2016 under Chapter IV provides for four categories of Medical Personnels: Medical Officers, Psychiatrist, Nursing Staff and Pharmacist under Rule 4.03. However, in our observations only few jails have permanent staff working in these positions; while the presence of a in-house psychiatrist is almost nil. Most mentally inmates in these jails are taken for check-ups to LGBRIMH, Tezpur. But owing to the lack of an in house professional specializing in this area these inmates have no access to the specialized treatment required for their specific type of mental illness. This situation has led to a point where a bracket of drugs prescribed for mental illness are given to these inmates, with no regard paid to their specific illness.

Basic facilities like that of an ambulance, oxygen supply, adequate supply of medicines, laboratories, refrigerator for storage have not been provided to most of the correctional homes. The

major issue that still remains is that the correctional homes have no system, or extra support, in place for medical emergencies and the lack of an ambulance and oxygen supply only aggravates the situation, can result in a question of life or death of an inmate.

In the Central Jails of Jorhat and Tezpur, the isolation wards used for the treatment of inmates suffering from contagious diseases have been utilized to accommodate the DFN, meaning that the inmates ailing from diseases such as tuberculosis, pox, etc. will be either accommodated in the general wards or shifted to another hospital outside the correctional home. In Guwahati, the isolated wards, called “quarantined cell” by the staff, were dingy single cells where the patient was accommodated on the floor.

In Central Jail, Guwahati, a good practice was observed, that the correctional home administration had a separate team in place in case of medical emergencies and the advantage of location that the correctional home had over the others because of easy access to Guwahati Medical College and Hospital. Furthermore, the food provided for the inmates in the hospital of Central Jail, Guwahati was cooked separately in the hospital premises rather than in the common kitchen; although the hygienic conditions of the kitchen in the hospital remains questionable.

Special needs for the women inmates such as sanitary napkins, extra dietary supplements for pregnant women as provided under the Model Prison Manual, 2016 are not fully provided for in the correctional homes. Furthermore, most of the correctional homes do not provide access to these women to a female doctor or nurse and in such a case their gynecological needs are often overlooked as the inmates find it either difficult or are embarrassed to approach the male medical officers of the prison.

H. Hygiene and Sanitation

The maintenance of hygiene standards in the correctional homes is also a major area of concern. Most correctional homes have the system of open drains, which sometimes were clogged and the stench from these drains made the living conditions of the inmates unhealthy. This a clear violation of Model Prison Manual, 2016 which under Rule 6.74 provides that cesspools, and open drains for accumulation and disposal of sewage are prohibited inside or near a prison. The Model Prison Manual, 2016 provides that all the drainage system in prisons should be underground which will be directly connected to the public drainage system which is not the case in most prisons here, putting

the inmates under the threat of several air borne and water borne diseases, aggravated by the presence of uncovered septic tanks in the case of District Jail, Mangaldai. The conditions of these drains have been consistently brought to the notice of the concerned District Authorities but no action to rectify the situation has been taken yet.

The Model Prison Manual, 2016 also provides for the Municipal Health Doctor, District Health Doctor or the health officers to visit all the prisons under their jurisdictions once a month and offer suggestions for sanitation and hygiene under Rule 6.72 but the proper compliance of this provision is unknown.

I. Interview/Visitors Room

According to Rule 5.02 (xxiii) of Model Prison Manual, 2016, a modern interview room with sound absorption to ensure smooth conversation and human dignity, without overlooking the security needs to be there in every prison. But most of the jails that we visited had no separate area built for interview rooms, apart from Central Jail, Guwahati where there was a separate room which was again inadequate and too small for a correctional home with the capacity of thousand. The room was too dark, noisy and did not provide the inmates and their visitors adequate privacy.

While in the District Jails of Morigaon and Dhubri, the room which provided the office space for the Asst. Jailors was used as the interview room, so the inmates had absolutely no privacy with their visitors; although, the administrative staff of the correctional home tried to maintain their distance and allowed the communication without any interruption.

J. Education, Library & Vocational Training

In some correctional homes that we have visited, the inmates and the correctional authorities have conjointly worked towards improving the lives of the inmates through education. The District Jail, Mangaldai has been showing exemplary improvements in this regard. They have collaborated with K.K Handique State Open University (KKSHOU) with the help of which the inmates can enroll in the university and pursue the higher education. One of the inmates Arup Jyoti Talukdar enrolled himself in KKSHOU in the course of Bachelor's Preparatory Programme Examination and scored 75% marks in his exam. The correctional home collaborates with Brilliant Academy which sends professors to teach and educate the inmates through its co-ordinator. Also the inmates, jail authorities and others together put forward a wall magazine every month which has been christened

as “*Karalipi*” literally meaning writings from the jail. This encourages the inquisitiveness of the inmates towards education and learning and also works as a reformatory measure.

However, libraries in these correctional homes are poorly stocked; the central jails only fare slightly better than the district jails. The inmates have often mentioned that they would like to have books which will help them in learning about their rights relating to the environment that they live in. Only Central Jail, Guwahati has a few volumes of literature in their library which catered to this specific need of the inmates. The office of the Inspector General, Prisons was intimated about this specific need of the inmates, and assurance was also taken by them that literature will be provided to these correctional homes on rights of prisoners but no action has been taken in this regard by the State.

The education of the children who are living with their mothers inside the jail premises until the age of six are at a disadvantageous position as they do not have access to regularised primary education within the jail premises. In Central Jail, Jorhat, the room that was used as the school for the children within the women’s ward is now used to accommodate female DFNs and therefore, the classes have been discontinued for the children.

The jail industries have been flourishing in some jails such as Central Jail, Jorhat and Guwahati. The bamboo artifacts made by the inmates of the latter have also been displayed in an exhibition in New Delhi. But this facility is not uniform in all the correctional homes that we visited.

The Model Prison Manual, 2016 lays down that the architecture of the correctional homes should be such that they have adequate resources to support various correctional/ reformatory activities. While the spaces may have been provided for various types of jail industries but the lack of supply of materials has prohibited their adequate utilisation.

Furthermore, such reformatory measures as seen in the form of jail industries mostly cater to the male inmates. Investments for the vocational training for female inmates was seen only in the case of Central Jail, Guwahati.

5.2. Living & Working Conditions of Correctional Home Administration

It is also unfortunate to observe that members of the correctional staff are prone to relatively less focus in the discourse regarding reforms in the prison system of India. Such a fact is, at the same time, not surprising to notice as correctional staff-members are often negatively portrayed in the public standpoint and media.⁵⁵ This could also explain the reason for the comparatively lower position of correctional staff-members in the social standing to other “uniformed” service officials like the police staff-members.

The presence of deplorable conditions of service for the members of correctional staff would be detrimental to the administration of criminal justice in the country. The existence of such conditions are reflected by the provision of inadequate salaries, negligent remuneration and benefits as well as sub-standard and unhygienic accommodation and infrastructure facilities to staff-members. This is also associated with the difficulties related to overcrowding of prisons due to high number of under-trial prisoners and the concurrent shortage of staff. Hence, it furthers the burden on the staff-members, which could result in the decay of the quality of facilities provided for the inmates. Thus, such pressing issues of the correctional staff require to be expediently addressed as human rights in prison are intrinsically linked to the service and working conditions of the staff-members who are satisfied during the course of their service, and would further implement such values in the treatment of prisoners.⁵⁶

Stress and burnout among the correctional staff is not unusual as they are factored by circumstances like lack of training, under-confidence in crisis-management, working conditions, duties and responsibilities along with distribution of staff.⁵⁷ Such factors lead to rising levels of sickness related leaves taken which further aggravates stress among them.⁵⁸ If this problem is not nipped in the bud, then it is possible for the correctional staff-members to channel their frustration towards

⁵⁵ Penal Reform International, *Staff working conditions: Addressing risk factors to prevent torture and ill-treatment* (Detention Monitoring Tool, 2013) <https://s16889.pcdn.co/wp-content/uploads/2016/01/factsheet-3-working-conditions-2nd-v5.pdf>
Accessed 13 August 2018.

⁵⁶ Liebling, Alison. *Prisons and Their Moral Performance: A Study of Values, Quality, and Prison Life*, Oxford University Press, 2004, p.375.

⁵⁷ Bada Math, Suresh. Pratima Murthy, Rajani Parthasarathy, C. Naveen Kumar, & S. Madhusudhan, eds. *Mental Health and Substance Use Problems in Prisons: Local Lessons for National Action*. Bangalore: NIMHANS, 2011. p. 154.

⁵⁸ Ibid.

the inmates which can also appear as aggression towards them and hence, contributing towards the dehumanising conditions of the inmates in correctional homes.⁵⁹

A. Working Conditions

It is generally said that the environment variables of a place greatly determines an individual's behaviour of work relative to the circumstances. Similarly, the working conditions of a correctional home have a significant influence in the performance of the correctional staff⁶⁰ It is ordinary to find deprived working conditions in the correctional homes for reasons like the insufficient space, inadequate staff and lack of operational funds needed for its maintenance.⁶¹

The debilitating conditions of the physical infrastructure in the Central Jail, Tezpur, the District Jail, Morigaon and the District Jail, Jorhat as seen in the form of cracks on the walls and ceilings of the offices of these correctional homes were conspicuous which reflects on the passive attitude for maintenance. There was no sight of upgrade in the furniture used such as the desk, chairs, cupboards, etc. in these places. The absence of efficient space utilization in the office of some correctional homes like the Central Jail, Tezpur as the office appeared to be nothing less than a muddle of tables and chairs occupied by the members of the staff.

Furthermore the inadequate height of the boundary walls of the correctional homes pose a problem to the staff-members despite the acute shortages of security staff as sixty eight escapes have been noted in the correctional homes of Assam from 2012 to 2015.⁶² Another official from the District Jail, Morigaon said that the ideal height of the perimeter wall should range between 18 feet to 22 feet. However, in reality, the perimeter wall stands close to 14 feet in height, which reflects the lax approach in improving the physical infrastructure of the correctional homes.

⁵⁹ Tiwari, Arvind. "Human Rights Approach to Prison Management: Issues and Challenges." *The Indian Police Journal* 60.2 (2013): 68.

⁶⁰ E. Narag, Raymund. and Clarke R. Jones. "Understanding Prison Management in the Philippines: A Case for Shared Governance." *The Prison Journal* 97.1 (2017): 20.

⁶¹ Ibid.

⁶² Accountant General (Audit) Assam. "Epitome of CAG's Reports on the Government of Assam For the Year ended 31 March 2016." Comptroller and Auditor General. 2016. Web. 22 August 2018, www.agasm.cag.gov.in/forms/audit_report/epitome2.pdf.

It was also fascinating to observe in the Central Jail, Tezpur and District Jail, Morigaon despite the space-crunch in the offices, the visiting rooms of the inmates were found to be attached to them. Hence, it is not clear whether such arrangements are a result of the management or mismanagement of the office space but an official of the District Jail, Morigaon and District Jail, Dhubri did state their frustration towards such an arrangement contending that the staff members are not able to work in peace due to their nature of being proximate to the outdoors.

The issue of lower scale of pay is also contended to be a persisting problem according to members of the correctional staff of Assam. After holding interviews based on lightly structured talk with the officials of the correctional homes in Tezpur, Morigaon and Jorhat, it was visible that the scale of pay provided to them was not considered to be sufficient. Thus, the 7th Assam Pay and Productivity Pay Commission had recommended that the post of Superintendent of Jail Gr. II and Lady Superintendent were upgraded with grade pay of 5,400 INR.⁶³ It had also made the recommendation of bringing the grade pay for Warder, Head Warder and Chief Head Warder at par with the grade pay of Constable, Head Constable and Assistant Sub-Inspector of Police at 2200 INR, 2700 INR and 2900 INR respectively in order to address the disparity of scale of pay among uniformed services.⁶⁴ Yet, the delay of implementing these recommendations have agitated the members of the correctional staff as the Assam Jail Officers Association had forwarded a memorandum to the Anomaly Committee seeking a grade pay of 9100 INR for the rank of Assistant Jailors⁶⁵

In the existing structure of managing correctional homes, a staff-member could be asked to work for as many hours as per requirement, without the provision of compensatory allowances for overtime other than the payment of the regular salary.⁶⁶ This factors the very long work and unpredictable hours for correctional staff, which also creates stressed environment to work in.⁶⁷

⁶³ *Report of 7th Assam Pay and Productivity Pay Commission*. Finance Department, Government of Assam, 18 November 2016, https://finance.assam.gov.in/sites/default/files/swf_utility_folder/departments/agriculture_com_oid_2/do_u_want_2_know/7th%20Assam%20Pay%20%26%20Productivity%20Pay%20Commission.pdf Accessed 2 August 2018.

⁶⁴ Ibid.

⁶⁵ *Report of the Anomaly Committee*. Finance Department, Government of Assam, 2017, https://finance.assam.gov.in/sites/default/files/swf_utility_folder/departments/agriculture_com_oid_2/menu/document/Report%20of%20Anomaly%20Committee.pdf. Accessed 2 August 2018.

⁶⁶ Coyle, Andrew. *Managing prisons in a time of change*. London: International Centre for Prison Studies, 2002. 54.

⁶⁷ Ibid.

Along with the provision of less pay and absence of compensatory allowance for overtime, the members of the correctional staff are also stifled with disparity in provision of other allowances like kit allowance and ration allowance, with other governmental services like the police personnel. Thus, the memorandum that had been submitted to the Anomaly Committee had also contained the demands of providing compensatory allowance and ration allowance up to the rank of jailor, at par with that provided to the police personnel.⁶⁸

Another bone of contention which concerns the correctional staff is the matter of promotion in their service. The prospects of promotion in the correctional service is considered to be very stationary and provide upward mobility in their career concerned.⁶⁹ The situation pertaining to promotion is even worse among the lower echelons of the correctional staff due to the existence of a number of warders who have been denied the opportunities of promotion for the last two decades.⁷⁰ For redressing this issue, the 7th Assam Pay and Productivity Pay Commission had made a suggestion of permitting the Warders, Head Warders and Chief Head Warders possessing graduate qualification to appear for the procedure of direct recruitment to higher posts such as Assistant Jailor.⁷¹

The current system of correctional administration clearly represents the female members belonging to the correctional staff are a part of the minority and a lot of distinct hurdles are placed before them, in their work.⁷² The consequence of a male-dominated system is that the requirements of the female staff-member are not paid with much heed. There have been allegations made for the deplorable conditions of hygiene and sanitation, for instance in Central Jail, Tezpur, the women's washroom is in such a pathetic condition that the female staff-members are forced to use the gents' washroom. This highlights another severe infrastructural defect in the prison where there is an absence of the provision of separate washrooms for men and women.

⁶⁸ Finance Department, *Report of 7th Assam Pay and Productivity Pay Commission* (n 63)

⁶⁹ Bedi, Kiran. *It's Always Possible: Transforming one of the largest prisons in the world* (9th edn, Sterling Publishers 2012) 51.

⁷⁰ "Prisons and Human Rights." *Commonwealth Human Rights Initiative*. April 1998. Web. 22 June 2018. available at http://humanrightsinitiative.org/publications/prisons/bhopal_98_workshop_report.doc.

⁷¹ Finance Department, *Report of 7th Assam Pay and Productivity Pay Commission* (n 63)

⁷² Rope, Olivia and Frances Sheahan, 'Global Prison Trends 2018' (*Penal Reform International*, May 2018) https://s16889.pcdn.co/wp-content/uploads/2018/04/PRI_Global-Prison-Trends-2018_EN_WEB.pdf. Accessed 22 June 2018.

The notion of gender inequality also rears its ugly head when the service condition of the working mothers who hold posts in the prison administration plays out to be an inconvenience for such women, as the system does not provide an environment or enough provisions which will be helpful for them to work to their highest capabilities and still ensure that no compromises have been made in the upbringing of their children.

B. Living Conditions

The living conditions of the correctional staff have close proximity to the conditions within the premise of the correctional home. Such may be inclusive of bad physical infrastructure, inadequate space, air and light along with deficiency in efficient sewerage system and waste management or other unhygienic circumstances.⁷³ In addition to these, the remoteness or inaccessibility of the location of the correctional homes further makes it imperative to provide appropriate living conditions to the correctional staff.⁷⁴ The construction of decent staff quarters for correctional personnel has been argued to augment their morale which is beneficial in the effective performance of the duty.⁷⁵

Nonetheless, the living conditions of the correctional staff in the correctional homes of Assam looked very decaying. Such an observation was evident from the corrugated metal roofs which appeared to be rusted and the multiple cracks on walls of the staff-quarters in the correctional homes of Tezpur, Morigaon and Jorhat.

⁷³ UN Special Rapporteur on Torture, 'Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention' (2010) UN Doc A/HRC/13/39/Add.5 paras 9 and 229-237.

⁷⁴ United Nations Office for Project Services (UNOPS). "Technical Guidance for Prison Planning." *United Nations*. 2016. Web. 14 July 2018. https://content.unops.org/publications/Technical-guidance-Prison-Planning-2016_EN.pdf?mtime=20171215190045. 206.

⁷⁵ Tiwari, Arvind. "Human Rights Approach to Prison Management: Issues and Challenges." *The Indian Police Journal* 60.2 (2013): 65.



Fig 1: An image of the leaky roofs and shutter-less windows of Sipahi barracks at Central Jail, Jorhat. 22 Apr. 2018. Pratidhwani, Studio Nilima.



Fig 2: An image of the damaged walls of Sipahi barracks at Central Jail, Jorhat. 22 Apr. 2018. Pratidhwani, Studio Nilima.



Fig 3: An image of the damaged walls of *Sipahi* quarters at Central Jail, Jorhat. 22 Apr. 2018. Pratidhwani, Studio Nilima.



Fig 4: An image of the Barracks provided to the *Sipahis* at Central Jail, Jorhat. 22 Apr. 2018. Pratidhwani, Studio Nilima.

The correctional staff-members in Jorhat complained that due to lack of maintenance of these quarters, rainwater seeps into these places through the leaking roofs during the monsoons. An official from the District Jail, Morigaon maintained that even though there is a provision of running water facility, it relies itself on the power supply to run the water-pump. However, unlike other correctional homes, is not provided with a separate sub-station/ transformer for supply of electricity and are left with no choice but to share it with the power supply of the town. Unfortunately, due to the occurrence of frequent power-cuts, its impact is felt while one is trying to obtain water for oneself.



Fig. 5: Condition of the toilets provided to the *Stepahis* near their quarters/barracks at Central Jail, Jorhat. 22 Apr. 2018. Pratidhwani, Studio Nilima.

The provision of water for the inmates fare better than that provided to the correctional staff of Central Jail, Jorhat as the inmates are provided with tanks for their supply but the correctional staff are supplied from the nearby pond. The condition of the washrooms were horrendous in Central Jail, Jorhat as the staff-members had to access the toilets which were located outside their quarters. Hence, the impact on the sanitation and hygiene of the correctional home can be aptly reflected from such a groundwork.



Fig. 6: An image portraying the condition of staff quarters at Central Jail, Tezpur. 23 June 2018. Pratidhwani, Studio Nilima.



**Fig. 7: The decaying condition of staff quarters at Central Jail, Tezpur.
23 June 2018. Pratidhwani, Studio Nilima.**

6. THE CORRECTIONAL HOMES OF ASSAM: A PERSPECTIVE

Jails are often projected as laboratories of torture and cruelty. Jurists, scholars and commentators often tend to judge civilisation in the manner in which we treat our prisoners. Prison have time and again been described as being authoritarian and dehumanizing. In our experience, however, this description cannot be understood as all-encompassing for the correctional homes in Assam. Several correctional homes like those in Morigaon, Mangaldai and Jorhat have a distinctly rural and community-based environment as opposed to one, which is totalitarian and dehumanizing.

The architectural structures of the prison compound, which more often than not consist of Assam type structures serving as wards, which open out to a single courtyard, which contains kitchens and places of faith. In the larger jails like Jorhat and Tezpur, some RCC construction is inevitably present and accommodates the library, legal aid clinics and at times the wards. Among the jails we visited, only Central Jail, Guwahati presented a built environment, which had predominantly large RCC structures and marked a departure from the traditional rural or community-based environment.

Throughout the duration of our work, we came across several practices in many of these correctional homes, which contributed, to making the environment conducive to reformation, reflection and general well being. Often these were systemic interventions while at times they were simply the result of proactive leadership among both inmates and jail authorities. Some of the best practices are documented below.

6.1. Best Practices

A. Collaboration with Civil Society:

Involvement of civil society has the potential to plug several important gaps in the correctional administration apart from aiding the understaffed prison department with specific domain expertise. It is also quite apparent that involvement of civil society provides a much-needed scope for social audit of the closed environs of a correctional home and also serves as an important conduit for the inmate to preserve his connection with society at large.

During the course of our work we have come across several examples of best practices, which have evolved as a result of civil society's involvement with the correctional homes. *Karalipi*, which is a wall magazine at District Jail, Mangaldai is an example of how seemingly simple initiatives can metamorphose into means of emotional and mental sustenance in the environment of a correctional home. The 2016 edition of *Karalipi* (in magazine form) which was published to celebrate its first anniversary carried an article titled '*Mangaldai Zila Karagaror Karabondi Sokolor logot mur ekatmota*' (*My solidarity with the inmates of District Jail, Mangaldai*) by Ms. Mira Dutta Choudhury which details the manner in which the civil society has been engaging with the correctional home. For example, the '*Asom Lekhikha Sontha*' (Mangaldai branch) celebrated International Women's Day on 08.03.2009 with the eleven women inmates. It also details several instances where social workers and other members of civil society have been invited within the premises to engage and train inmates through cultural avenues like theatre.

There have also been other instances of correctional homes giving space for eminent members of society to impart skills and knowledge within the premises. A case in point was the Brojen Barua Memorial Documentary Festival, which was conducted by the Krishna Kanta Handique State Open University (hereinafter referred to as 'KKHSOU') in collaboration with filmmaker Jahnu Barua. In the course of this project, documentaries were screened at several correctional homes within the state. During the visits by the Pratidhwani team in Mangaldai and Dhubri, we received positive feedback about the impact of this project.⁷⁶

B. Education

Education and educational infrastructure remains a critical issue in the correctional homes of Assam. Since more than three fourth of the prison population in the jails of Assam have literacy below high school level, it becomes all the more important for education facilities to be present. While jail schools are being run by the correctional administration itself, it is in providing higher education that the KKHSOU has been involved with its study centers across correctional homes (The number of such centers according to the website of the IG Prisons, Home and Political Department, Government of Assam is 10, updated as of 2016).

⁷⁶ 'Ace filmmaker Jahnu Baruah visits Golaghat Jail.' *The Sentinel*, 17 Feb. 2017, <https://www.sentinelassam.com/news/ace-filmmaker-jahnu-baruah-visits-golaghat-jail/>. Accessed 9 Jan. 2019.

Our visit to the correctional home at Mangaldai was a revelation in terms of the impact that education can have on the lived experience of inmates. As will be evident in the detailed inmate profiles that follow, skill development and educational programmes are not mere rhetoric or tools of mechanical engagement in a 'prison' environment. Rather they become anchors of sustenance for inmates who look at opportunities for meaningful engagement as a means of reformation.

Arup Jyoti Deka

Arup is one of the inmates who is pursuing graduate level education from inside the jail. Arup who hails from Nuzura village in Darrang district under P.S Mangaldai along with some fellow inmates was encouraged by Mr. Munindranath Sharma, Superintendent, Mangaldai District Jail to organise themselves into a team to work for social welfare and development in the correctional home. As a result of this effort, the wall magazine of the correctional home called *Karalipi* was inaugurated on 15th August, 2015.

As a result of initiatives like *Karalipi* several inmates expressed their desire to continue their education further and finally a KKHSOU Study Centre was opened at the jail. Arup has excelled in his exams taken through the KKHSOU Centre and intends to continue his education further.

Illias Purty

Illias who came to the correctional home in 2009 has a family consisting of his wife, small child and old parents. Before his incarceration, he worked in the factory of a tea estate as sub-assistant. Mr. Brajen Das, the then Jailor encouraged him to start working in the pharmacy.

Subsequently when the KKHSOU centre was started in the jail he enrolled in the Higher Secondary course where he secured the 10th position among correctional homes in the first year. He soon enrolled himself in the graduate course where he wishes to excel and inspire his fellow inmates to do better too. Illias tells us that he has only one aim in life, which has been reinforced by his exposure to education that is educating his own child.

Dhruba Jyoti Hazarika

Dhruba states that he came to the correctional home on 21.03.2012. Coming from Nuzura village in Darrang district, Dhruba says that he was confused about how he would be able to spend his life in

jail. However, the opening of the KKHSOU centre in the jail has provided him a constructive option to spend time in the correctional home along with providing him the option of securing his future after his sentence is over.

On 15th August, 2018 every person involved in the correctional home (both staff and inmates) contributed Rs.2570 to donate to the publication of the in-house magazine Karunadhara. The magazine was published with a total collection of Rs. 80,000 and was inaugurated by the local MLA. It has also become a practice for the students to gather at the library from around 11 am and impart lessons to each other apart from discussing specific topics.

C. Leadership

Leadership among both inmates and authorities has the potential to bring major changes in the prison environment in our experience. During our visits, we have come across examples where both inmates and authorities have taken initiative to solve issues and better conditions of life within the correctional home. Infact, in certain correctional homes like those in Jorhat and Tezpur, the presence of officers who were genuinely interested in a rights-based reformation approach had the effect of transforming the atmosphere of the correctional home. In Tezpur, Mr. Mrinmoy Kumar Dawka, the Superintendent and in Jorhat, Mr. Sanjib Kumar Chetia, the then Jailor stood out by their positive attitude and proactiveness in improving the correctional home and also addressing issues of the inmates.

(i) District Jail, Morigaon

Mr. Hemen Das, Deputy Commissioner, Morigaon took the initiative to address the deteriorating condition of the toilets within the premises and under his directions the construction of a new block has been undertaken. He has also taken the initiative for the construction of a new kitchen block along with providing sitting arrangements for visitors in the meeting area.

(ii) Central Jail, Guwahati

The rocky terrain has been utilized by the inmates for beautifying the campus and also showcasing their skills. Bogiram Das, one of the inmates is a sculptor and artist who has made several sculptures from stone which are present all over the compound.

(iii) Central Jail, Jorhat

The correctional home at Jorhat provided examples of several best practices which have been implemented with sheer initiative and industry. These were:

1. Well maintained gardens and preservation of colonial heritage like old wheels of chariot carts etc which have been done by the inmates themselves.
2. Proactiveness to inform inmates of their rights by display of guidelines in *D.K Basu v. State of West Bengal* on a prominent board right at the entrance in both English and vernacular language.
3. Well conserved heritage spaces like the cells which housed freedom fighter Pitambor Deva Goswami and Kushal Konwar.
4. Jail industries: 30-day skill training course initiated under ITI. Various other programmes such as handicraft, gardening, blacksmith etc are available as vocational and training programmes for the inmates. More importantly, there is a small showroom opposite the jail where jute and bamboo handicrafts made by the inmates are sold and the revenue generated from this shop is paid back as wages.
5. Presence of makeshift volleyball court.
6. Complaint box within jail proper which was being regulated by the CJM who mandatorily visits the correctional home at least once a month.
7. Publication of books by the correctional home like '*Swadhinatar Sangramat Jorhat*'
8. The multi-purpose library has utilized contributions both from the DLSA and also members of civil society. For example, the bookshelves have been provided by the DLSA, Khumchand Gattani Charitable Trust and the Lions Club of Guwahati Metro. The DLSA has also provided a desktop computer along with a printer and copy machine.
9. A gym within the correctional home with necessary equipment which has been sourced by the jail administration. For security reasons, access to the gym is limited to inmates who have shown signs of continuous good behaviour and have spent at least three years in the correctional facility.
10. Organisation of sports and cultural activities regularly: Sports Day is organised with inter-ward competitions twice a year and events such as volleyball, tug-of-war, cricket, chess, long-jump, carrom etc are available for the inmates

11. National Holidays and Bihu are also organised and one of the unique features in this correctional home is inviting artists from outside to perform inside the correctional home. Inmates are also encouraged to write poems and songs and perform them during these events. This practice is also seen in the Central Jail, Guwahati.
12. Personal initiative and supervision of Mr. Sanjib Kumar Chetia, Jailor (presently Superintendent, Central Jail, Dibrugarh)

(iv) Central Jail, Tezpur

1. Presence of a shop outside the jail premises where goods from within the jail like *Khaloi*, *Sekhoni*, *Dola* were being marketed and displayed for sale.
2. Mr. Mrinmoy Kumar Dawka, Superintendent has been working on improving the infrastructure and the general atmosphere of the correctional home. He stated during our interaction that he has worked with the objective of making the correctional home look more like an ashram as opposed to a jail. There are inspirational quotes like '*Karmai Dharma*' which have been inscribed at specific locations within the compound.
3. Inmates and relatives were allowed to celebrate Bihu together.

(v) District Jail, Mangaldai

1. One of the unique features of the correctional home at Mangaldai is the presence of a co-operative society (Mangaldoi Zilla Karagar Silpa Tatha Grahak Samabai Samiti Ltd.) which was started as an initiative by the inmates of the jail. The staff members and inmates of the correctional home pooled together Rs. 100 each at the beginning to facilitate the co-operative which makes bakery and confectionary goods and sells it within the jail. Such bakery products are often supplied at the events organised by the Bar Association of Mangaldoi. Mr. Gajendra Rajbongshi, one of the inmates, is the secretary of the society and has designed a plan to expand the market for such products outside the correctional home of Mangaldoi.
2. Karalipi, a hand-written wall magazine has started a literary revolution in the correctional home. It is a monthly magazine which carries contributions by both inmates, staff members and other members of society.

D. Past Practices

The correctional homes in Assam have had a vibrant history in terms of positive practices which promoted continuation of the inmate's interaction with society and also promoted interpersonal and vocational skills. Unfortunately some of these have come to be discontinued, such as:

1. Inter jail football matches/sporting events: Previously, there have been instances of football tournaments organised between the jail inmates which provided a platform for inmates to develop interpersonal skills and qualities apart from boosting their general morale.
2. Jail exhibition: In our interactions with concerned jail officials we were informed of the previous practice of organizing exhibitions displaying the work emanating from the industries in the various correctional homes. This provided scope for inmates interacting with mainstream society apart from providing a revenue-generating model for the jail industries.

While some of the above-mentioned practices have been instrumental in transforming the lived experience of the inmates, it must be noted that several systemic issues also exist hand in hand with these practices. For example, living conditions have been noted to be difficult especially in correctional homes which are designated as detention centres either because of overcrowding or because of DFN related issues.⁷⁷ In spite of this, in our experience, presence of positive practices often softens the blow of systemic issues in prisons and prevent conflagration of tensions. To cite one such instance, District Jail, Dhubri has an environment, which was perceived as hostile, largely due to the fact of being overcrowded and associated groupism attended by severe infrastructural deficiency. The pertinent fact to be noted here the issues in District Jail, Dhubri seem to have been compounded by the absence of curricular and reformatory practices such as the ones enumerated above. While it is not to hold the jail administration solely responsible for this state of affairs, it does remain a fact that this promotes the growth of dehumanization thereby creating strong polarization and the potential for conflict.

⁷⁷ Please see discussion on DFN in sub-section 3.6.

7. CONCLUDING REMARKS

While the correctional homes that we visited may not have been entirely “typical” – it revealed an entire spectrum of inmate experiences and their living conditions, some of which were relatively good. Nevertheless, the observations in the report highlight some of the difficult issues that concern the correctional home reforms in Assam. Our experience indicates that the correctional homes carry both the weight of a punitive legacy inherited from our colonial past and suffer from decades of neglect and lack of investment for its reforms. A deep seated reason for such apathy and neglect discernable from our interactions was an unforgiving attitude towards the inmates, often rejected by their local communities and attract negligible attention from civil society organisations involved in the work of prison reforms and/or reformation and rehabilitation of its inmates. It is unfortunate to note that at present, neither the politicians, nor the vocal pressure groups and/or the public seem to have an abiding interest or concern for the inmate population. They remain cast away in a world where time sits still.

The major thrust to propel change in such environs has come from the Judiciary, specially the interventions of the Hon’ble Supreme Court, recently in *Re-Inhuman Conditions*. The constitution of the Supreme Court Committee headed by Justice (Retd.) Mr. Amitava Roy promises to inquire into all aspects that need urgent and immediate intervention and recommend structural change critical for reforms. We are hopeful of such laudable efforts and wait in anticipation that such interventions would mark the beginning of significant changes.

Change, of course has come very slowly in Assam, specifically in the context of the correctional homes. Unequivocal instructions and directive of the Hon’ble Supreme Court are anything but universally circulated or implemented across the districts of Assam. In sum, our experience on the ground has reiterated the known fact that unless there is political will, recommendations on prison reforms will only gather dust. Further, the lack of franchise of the incarcerated inmates exacerbates such administrative and institutional inertia. Certain crucial interventions into the structure are imperative, such as transferring the responsibility of prisons as a subject from the State List to the Concurrent List. For Assam, it *inter alia* requires infusion of a generous amount of resources, creating capacity within the prison administration, treating prison administration with human dignity by improving their living and working conditions, adopting a gender sensitive prison policy and setting up an effective accountable and transparent mechanism for the implementation of such reforms. We hope that the voices of the mute, the silent, the forgotten, the unforgiven and the wretched be heard.



XOLAGOR XARAI
Words of Gratitude

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In gratitude,
Abantee Dutta
January 2019

9. TEAM BIO NOTES

Anubhab Atreya is a fourth year law student at the National Law University and Judicial Academy, Assam. He is one of the core (founding) team members of Studio Nilima and works as a principal associate for Pratidhwani (the Echo). Seeking to specialise in criminal practice, Anubhab also has a growing interest in public policy research concerning Assam. He is an avid reader, a quizzier and enjoys a good cup of coffee.

Trishna Devi is a law graduate from National Educational Foundation (NEF), Law College, Guwahati. She worked as the project lead for Pratidhwani (the Echo) for the year 2017-18. Her interests lie in the areas of human rights and humanitarian law, specifically its translation into the municipal laws of a State. She is a staunch advocate for the vulnerable and marginalised voices of the community, an amateur storyteller with an abiding interest in mythology.

Abantee Dutta is the co founder of Studio Nilima. A reluctant lawyer, she is presently a Masters candidate at the School of Conflict Analysis and Resolution, George Mason University, USA. Her interest lies in post conflict reconstruction of societies with a specific focus on Assam. A traveller of roads less taken, she pretends to read, cherishes conversations and enjoys a good laugh.

Juri Hazarika is an advocate practicing in the Guwahati High Court. She is the Project Manager of Pratidhwani (the Echo). A keen observer of society and an empathetic listener, her interests lie in litigation. She is a member of the Internal Complaints Committee of the Assam State Legal Service Authority. An adept manager of diverse personalities and situations, Juri has recently discovered a growing interest in matters concerning sports integrity, specifically anti doping laws.

Krishanu Kar is a fourth year law student at the National Law University and Judicial Academy, Assam. He was one of the team members of Pratidhwani (the Echo) for the year 2017-18. He debates with panache and has participated, won and chaired many Model United Nations conferences and parliamentary debates in the University circuit. Determined to litigate, he struggles to balance his passion for politics and love for law.

Pushpanjali Medhi is a fourth year law student at the National Law University and Judicial Academy, Assam. She is one of the core (founding) team members and the principal associate for research at Studio Nilima. Blessed with a rare intuition and inherent flair for research, her work in areas of conflict in Northeast, specifically in Arunachal Pradesh has received critical attention. Straddling multiple worlds with ease, she enjoys capturing through her lens the mundane simplicity and beauty of everyday life.



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About Studio Nilima

Studio Nilima is a not for profit research collective based in Guwahati. It seeks to be at the forefront of engaging and initiating dialogues on the contemporary public policy concerns of the northeast of India. It brings together lawmakers, thinkers, learners, policy makers, academicians and practitioners from across the arts to unfold new ways of learning, thinking, research and practice.
