

3. The Need for Prison Reforms in India

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i. Abstract

This research project focuses on the need for legal reforms pertaining to the operation of the state machinery and various correctional homes like prisons existing in the country. It points out the various evident aberrations present in the system wherein the public servants who are supposed to protect the human rights from getting violated, themselves contribute to their deterioration. The legal provisions existing for the functioning of the prisons are stated. International standards set by various treaties and conventions are also asserted. The cause and effect relationship between different burning issues that the prisoners encounter in Indian jails are affirmed. The menace of overcrowding strikes most of the Indian prisons where the youth can be seen languishing for years awaiting trial. The number of undertrial prisoners is more than the convicts. In such circumstances, urgent reforms are required to liberalize the laws related to bail and make it accessible to all, rather than a matter of privilege for the rich. Other problems like a large number of vacancies, lack of training to the prison staff, custodial torture, custodial death, custodial rapes, lack of basic sanitation facilities, etc. are also addressed in the project. The researcher seeks to suggest viable reforms to improve the present conditions of Indian prisons by expediting the entire criminal justice system. Emphasis is laid on the reformatory approach that has to be adopted to secure the rights of prisoners and bring about a rudimentary change in their conscience.

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1. Introduction

Correctional homes like the prisons are important pillars of the criminal justice system of our nation. The primary aims of this entire system are retribution and rehabilitation. Whether the present structure and functioning of this system suffice in fulfilling these aims is the focal point of contention of this paper. The researcher attempts to determine if there has to be a change in the approach while dealing with problems like overcrowding, lack of basic sanitation facilities, custodial violence, and so on. While doing so, the pre-existing laws will be first touched upon. Their provisions for protection of rights of prisoners and detainees will be seen. The present situation in the Indian jails will be observed. The regular problems faced by prisoners in different sections of the country will be stated. The root causes of these problems will be examined and a solution to them will be suggested.

All kinds of problems that occur in prison are inter-related. Indian prisons are highly crammed with the prisoners, most of who are not even convicted of any offense. Most of the jails are burdened to accommodate many more prisoners than their capacity. This leads to the denial of many human rights to the prisoners. Proper sanitation facilities are difficult to maintain due to this condition. Sometimes, the number of personnel deployed in the prison is not adequate. Such personnel need to be specially trained and sensitized in a better manner regarding the management of the prisoners. Instances of custodial torture, violence, rape, and death are widespread due to the ineffective implementation of such policies.

The main objective of punishing criminals shall be more importantly rehabilitative, although retributive too. The behavioral engineering of prisoners is necessary to facilitate their reunion with the society on completion of punishment. They shall be enabled to develop their personality by learning new skills. There shall be a fundamental shift in their thoughts and perspectives. Their value system as well as conscience shall be redefined. If the criminal activity committed by the convict was circumstantial, counseling shall be offered to such prisoners. Training shall be given in various occupations like pottery, baking, etc. so that they have a means of livelihood when their sentence is completed. The prisoners shall be provided with a conducive environment to rehabilitate themselves and reunite with the society.

2. Existing Laws

2.1. The Prisoners Act, 1894

This century-old legislation dealing with the management of prisons continues to operate in our country despite its obsolescence. It hardly mentions anything about the rights of prisoners, for whose reformation this entire structure is built. There are no provisions establishing minimum standards of hygiene that is to be expected in prisons. A Medical Officer is appointed to examine a prisoner on admission and before discharge of a prisoner.³² The Act provides for segregation of male and female prisoners, convicted and undertrial persons, and a prisoner who is under death sentence.³³ The Act discriminates with the convicted criminals by providing that the supply of food, clothing, bedding and other necessities from private sources can only be allowed for civil and unconvicted prisoners.³⁴ Only the civil prisoners are allowed to carry on work/ profession of their choice and shall receive their earnings subject to deduction by the Superintendent.³⁵ The health of all prisoners is taken care of by the Medical Officer and Medical Subordinates³⁶. Prison offenses like assault, disorderly behavior, contumaciously refusing to work, insulting or threatening language, etc, and their punishments are enlisted in the Part XI of the Act.

2.2. The Transfer of Prisoners Act, 1950

According to this Act, any prisoner can be transferred from one state of India to another based on a writ, warrant or order can be issued by the Court. This legislation was mainly enacted to facilitate inter-state transfer of prisoners from overpopulated to less congested jails.

³² The Prisons Act, 1894 (Act IX of 1894), S. 24, S. 26.

³³ The Prisons Act, 1894 (Act IX of 1894), Chp V.

³⁴ The Prisons Act, 1894 (Act IX of 1894), S. 33.

³⁵ The Prisons Act, 1894 (Act IX of 1894), S. 34.

³⁶ The Prisons Act, 1894 (Act IX of 1894), Chp VIII.

2.3. The Prisoners (Attendance in Courts) Act, 1954

This Act provides for the procedure that is to be followed when a prisoner has to attend the Court proceedings to act as a witness/ give evidence in another case or answer a charge against oneself.

2.4. Indian Constitution

The Constitution of India entitles prisoners to certain fundamental rights enshrined in Part III. Art 20 protects the convicts from the application of ex-post facto laws, double jeopardy and self-incrimination. It was held by the Supreme Court in the case of *Sunil Batra v. Delhi Administration*³⁷ that prisoners are no less of human beings just because they are imprisoned. Thus, they are entitled to have the Right to Life and Personal Liberty under Art 21 limited by certain reasonable restrictions. Art 22 of the Constitution protects against arbitrary arrest and detention in certain cases. Art 22(1) states that a person shall be informed of the grounds of the arrest and shall be allowed to consult as well as be defended by a legal practitioner of his own choice. A person arrested shall be produced before the magistrate within 24 hours of such arrest, unless otherwise prescribed by the advisory board or parliament.³⁸ Art 39 A provides for free legal aid given to the prisoners. The President and Governors of states are empowered to grant mercy from judicial punishment to prisoners.

The Model Prison Manual acts as guidelines for the Prison Management Systems in India. Recommendations of the Mulla Committee and Krishna Iyer Committee are also considered to be guiding principles. However, Prison administration is a subject in the State List in the Seventh Schedule. Hence, each State government has different laws concerning this subject.

³⁷ *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579.

³⁸ The Constitution of India, 1950, Art 22.

3. Role Played by the Judiciary

The Hon'ble Supreme Court has reiterated in cases such as *D.B.M. Patnaik v. State of Andhra Pradesh*³⁹ and *State of Andhra Pradesh v. Challa Ramkrishna Reddy*⁴⁰, that the prisoners are entitled to the fundamental rights. They do not cease to be human beings only because they are in the prisons and hence they shall be treated with the basic standards required for human existence.

SC underscored the rehabilitation and reformation of prisoners in the case of *Hiralal Mallick v. State Of Bihar*⁴¹. The ultimate desideratum of most judicial sentences is to turn offenders into non-offender. Delinquency was perceived as indicative of the person's underlying difficulties, inner tensions, and explosive stresses. There is a need for informal treatment by a free mix of professionals, social workers, and experts operating within the legal framework.

In the case of *Sunil Batra v. Delhi Administration*⁴², a prisoner was subjected to inhuman torture by the jail warder that led to profusely bleeding injuries at the anal aperture. The SC held that Grievance Deposit Box is to be maintained in every prison under the orders of District Magistrate and Sessions judge. The writ of Habeas Corpus shall be used to guard other inherent rights of the prisoners. Solitary imprisonment, hard labor, dietary change as a painful additive or other punishment denying amenities shall not be imposed without the judicial appraisal of Sessions Judge. It was also held that in the eyes of law, the prisoners are persons and not animals. The deviant guardians of the prison system must be punished where they go berserk and defile the dignity of the human inmate. A Prisoner's Handbook shall be made freely available to the inmates in their regional language. The District Magistrates shall submit a report of their periodical visits to jail before respective High Courts.

The Supreme Court stressed on the Right against hand-cuffing in the case of *Prem Shankar Shukla v. Delhi Administration*.⁴³ It was held that the golden triangle of Art 14, Art 19, and Art 21 will spring into disshackle an individual from dehumanizing practices under the garb of 'security' or 'dangerousness'. While the parallel claims of protecting the prisoners from fleeing

³⁹ *D. Bhuvan Mohan Patnaik & Ors v. State Of Andhra Pradesh & Ors*, 1974 AIR 2092.

⁴⁰ *State of Andhra Pradesh v. Challa Ramkrishna Reddy*, AIR 2000 SC 2083.

⁴¹ *Hiralal Mallick v. State Of Bihar*, 1977 AIR 2236.

⁴² *Supra* Note 6.

⁴³ *Prem Shankar Shukla v. Delhi Administration*, 1980 AIR 1535.

and securing the personality from barbarity have to be harmonized, handcuffing is prima facie ‘inhuman’. The absence of fair procedure and objective monitoring to inflict ‘iron’ makes it unreasonable. Thus, binding a man’s (or woman’s) hand and foot, fettering his limbs with the hoops of steel, shuffling him along in the streets, and making him stand for hours in the Court leads to his torture and defiles his dignity. Such type of treatment is against our Constitutional culture. Hence, restrictions were imposed on the discretionary powers of police to handcuff the prisoners.

In the case of *Madhav Hayawadanrao Hoskot v. State Of Maharashtra*⁴⁴, the Supreme Court held that denial of free legal aid to the accused will be a violation of fair and reasonable procedure under Art 21. It will be against the principles of Natural Justice. Under CPC and CrPC, it is the duty of the State to provide free legal aid and shall not be construed as the government’s charity.

The Hon’ble Supreme Court held that the Right to Speedy trial is implicit in the spectrum of Art 21 of the Constitution in the case of *Raj Deo v. State of Bihar*.⁴⁵ An incarceration procedure that keeps a large number of people behind the bars without trial so long cannot be considered as reasonable, just, fair, or in conformity with Art 21.

The Right to Medical aid was highlighted by Court in the case of *Paschim Bengal Khet Mazdoor Samiti v. State of West Bengal*⁴⁶. It was held that the preservation of human life and health is of paramount importance. Hence, Art 21 imposes a liability upon the State to provide medical assistance to the aggrieved in the prison.

The Hon’ble Court held, in the case of *Selvi v. State of Karnataka*⁴⁷, that techniques like narcoanalysis, polygraph and brain mapping are violative of the Right against Self-incrimination granted to the accused under Art 20(3) of the Constitution. When such techniques are forcibly applied in cases, it affects the reliability of statements made by the accused and hence does not fulfill the substantive standards of due process. This makes the confessions obtained under the influence of such impugned techniques inadmissible.

⁴⁴ *Madhav Hayawadanrao Hoskot v. State Of Maharashtra*, 1978 AIR 1548.

⁴⁵ *Raj Deo v. State of Bihar*, AIR 1999 SC 3524.

⁴⁶ *Paschim Bengal Khet Mazdoor Samiti v. State of West Bengal*, AIR 1996 SC 2426.

⁴⁷ *Selvi v. State of Karnataka*, (2010) 7 SCC 263.

In the case of *Dharambir And Anr v. State Of U.P*⁴⁸, the SC held that long prison terms with inhuman conditions debase the prisoner and promote recidivism instead of humanizing and rehabilitating. Hence, the Court issued certain directions to ensure that the crippled psyche of the prisoner gets restored in this course. This included keeping in touch with the family and allowing the family members to visit them.

4. International Standards

The International Covenant on Civil and Political Rights is a pivotal international treaty for the protection of prisoners' rights. The Covenant came into force on 26th March 1976 and it was ratified by India in 1979. Hence, India is bound to incorporate the provisions laid down in this treaty into its domestic law. Art 7 implies that no one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment. Art 10(2) states that the accused persons shall be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Furthermore, a part of Art 10(3) reads as “*The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation*”. It was specifically held by the Human Rights Committee of ICCPR that overcrowding, lack of medical attention, depriving prisoners of natural sunlight, etc amounts to torture and violates the abovementioned articles.⁴⁹

The International Covenant on Economic, Social, and Cultural Rights suggests that the prisoners are entitled to the highest attainable standard of physical and mental health. The human rights laid down in this convention also apply to the prisoners.⁵⁰

The Universal Declaration of Human Rights also protects prisoners from such cruel and inhuman treatment. Art 1 of UDHR reads as “*No one should be subjected to torture or cruel, inhuman or degrading treatment or punishment.*” Art 9 of the same reads as “*No one shall be*

⁴⁸ *Dharambir And Anr v. State Of U.P*, 1979 AIR 1595.

⁴⁹ U.N. General Assembly, *The International Covenant on Civil and Political Rights*, 1966, Res. 2200, Sess. 22, U.N. Document A/RES/2200XXI. Retrieved on 21st May 2020 from <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>.

⁵⁰ U.N. General Assembly, *The International Covenant on Economic, Social and Cultural Rights*, 1966, Res. 2200, Sess. 23, U.N. Document A/RES/2200XXI. Retrieved on 21st May 2020 from <https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>.

subjected to arbitrary arrest, detention or exile.” Whereas Art 11 of the UDHR reads as *“Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.”* Apart from this, the UN General Assembly also adopted the Declaration on Protection from Torture in the year 1975.

5. Burning Problems

5.1. Overcrowding

The Indian prisons continue to burst at seams due to the issue of over-crowding. This menace particularly strikes the most populated states of the country badly. The Indian Justice Report 2019, prepared by certain Indian non-profit institutions with the support of Tata Trusts released the first-ever state-wise ranking of the prisons, judiciary, police, and legal aid systems. According to this report, the overall nationwide occupancy rate at Indian jails was 114%. 12 States in India had an occupancy rate of over 100% including Chattisgarh (222.5%), Madhya Pradesh (208%) and Uttar Pradesh (168%).⁵¹

The prime cause of overcrowding is a large number of undertrial prisoners and delays in the justice system. The survey conducted by the National Crime Records Bureau shows that 68% of prisoners in India are undertrials and have not been convicted of any offense. Most of them have to wait for years for their trial to begin. The report also suggests that the jails are mostly flooded with illiterate or semi-illiterate people coming from socio-economically backward classes. Above 65% of prisoners belong to SC, ST and OBC categories who cannot even afford a bail fee. The 268th Law Commission Report of India had also stated the evident norm that powerful and rich obtain bail easily, whereas the poor keep languishing in the jails.⁵²

⁵¹ Bhattacharya A. (November 7, 2019). *Some Indian states have more than twice as many prisoners than they can house*. Quartz India. Retrieved on May 19, 2020 from <https://qz.com/india/1743852/overcrowded-indian-prisons-are-understaffed-underfunded/>.

⁵² Law Commission of India, Government of India. (2017). *Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail* (268th Law Commission Report). Retrieved from <http://lawcommissionofindia.nic.in/reports/Report268.pdf>.

Sec 436A of CrPC states that a person shall be given bail on personal bond with or without sureties when s/he has undergone one-half of the maximum punishment for the particular offense. It was added by an amendment in the year 2005. The Home Ministry had also released certain guidelines for the States to ensure reckoning half-life of time spent in judicial custody of the undertrial prisoners in the year 2014.⁵³ The Supreme Court of India has also observed that overcrowding of prisons is a violation of human rights and also requested the Chief Justices of High Courts to take up this matter suo moto.⁵⁴

5.2. Shortage of Staff

The Indian Justice Report also suggests that Indian prisons are understaffed by at least 33 %. The highest number of vacancies are found at the officer and correctional staff level. However, this dearth was experienced at all levels such as officers, cadre staff, correctional staff, medical staff, and medical officers.⁵⁵ 6 Indian States have more than 50% posts vacant at the cadre level.⁵⁶ This tremendously increases the burden on the working staff. It also adversely impacts the ‘correctional’ aspect of imprisonment. Moreover, low salaries and poor training of staff worsen the situation further. This shortage also results in a lack of basic sanitation and medical facilities. The lack of free legal aid is one of the most important factors in this vicious cycle of torture. For instance, the number of legal aid lawyers in a large state like West Bengal with 13 prisons is just 27. Each of them makes up to 2 visits every month.⁵⁷ To maximize reformation, the services offered by psychologists, welfare officers, lawyers, counselors, etc are very important.

⁵³ Ministry of Home Affairs, Government of India. (2014). *Guidelines for reckoning half-life of time spent in judicial custody of the Under-trial prisoners under under Sec 436A of Cr.P.C.* (V-17013/24/2013-PR). Retrieved from https://www.mha.gov.in/MHA1/PrisonReforms/NewPDF/GuidelinesForRreckoningHalfLife_161014.pdf.

⁵⁴ Press Trust of India. (May 13, 2018 13:09 IST, UPDATED: MAY 13, 2018 13:45 IST) *Overcrowding prisons a violation of human rights, says Supreme Court.* The Hindu. Retrieved on 19th May 2020 from <https://www.thehindu.com/news/national/overcrowded-prison-involves-violation-of-human-rights-says-worried-supreme-court/article23871465.ece>.

⁵⁵ Khetarpal S. (November 8, 2019, 15:04 IST). *Prisons understaffed by 33% and overcrowded at 114% occupancy rate, says report* . Business Today. Retrieved on 19th May 2020 from <https://www.businesstoday.in/current/economy-politics/indian-prisons-understaffed-by-33-per-cent-overcrowded-at-114-per-cent-occupancy-rate-says-report/story/389250.html>.

⁵⁶ Supra Note 18.

⁵⁷ Amnesty International India. (2017). *Justice Under trial: A state of pre trial detention in India.* Pg No. 14. Retrieved on 19th May 2020 from <https://amnesty.org.in/justice-trial-study-pre-trial-detention-india>.

5.3. Custodial Crimes

As per data by NCRB, the custodial deaths increased by 9% from 92 deaths in 2016 to 100 deaths in 2017. 58 people out of these had not been produced before the Court yet. In 62 such cases relating to custodial deaths, 33 policemen were arrested, charge-sheet was filed against 27, four of them were acquitted or discharged. However, none of them were convicted. The most cited reason for such deaths is suicide.⁵⁸ The Statistics placed by the Home Ministry in the Upper House of parliament shows that there were 1764 custodial deaths in India between 1st April 2017 and 28th February 2018. Out of these, 1,530 were in judicial custody and 144 in police custody. It was observed in a Report⁵⁹ published on the National Training of Prisoners Rights that many a times, women are not given basic sanitation facilities like sanitary pads, soaps, etc due to which many of them easily contract infections. When a person is in the custody of the police, they exercise a greater degree of control over their mobility and liberty. But the police officers have to keep such custodians protected under supervision and conduct the investigation honestly. When rising instances of custodial rape into light in the late 19th century, more stringent punishment was prescribed for this crime as it is being committed by the protector himself. However, a greater challenge is experienced by the victim to file a complaint to start a trial against police officers.⁶⁰ All these statistics are adequate to paint a clear picture of the ongoing custodial torture in India. In the case of *Francis Coralie Mullin v. Administrator, Union Territory of Delhi & Ors.*⁶¹, the Supreme Court had held that such custodial torture, cruel and degrading treatment is severely violative of Right to Life and Liberty enshrined in Art 21 of our Constitution.

⁵⁸ Mallapur C. (November 2, 2019). *100 Custodial Deaths Recorded In 2017, But No Convictions*. India Spend. Retrieved on 19th May, 2020 from <https://www.indiaspend.com/100-custodial-deaths-recorded-in-2017-but-no-convictions>.

⁵⁹ Centre for Constitutional Rights, India (CCRI), Human Rights Law Network (HRLN). 2018. *REPORT OF THE NATIONAL TRAINING ON PRISONERS' RIGHTS*. Retrieved on 21st May, 2020 from <https://www.prisonforum.in/files/Report%20of%20the%20National%20Traininig%20on%20Prisoners%20Rights.pdf>.

⁶⁰ Bhog, S. (2019, April 24). *What Is Custodial Rape And Why We Need To Be Discussing It*. Retrieved May 21, 2020, from <https://feminisminindia.com/2019/04/16/custodial-rape-india>.

⁶¹ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi & Ors.*, AIR (1981) SCC 608.

6. Reforms Needed

India is a signatory of The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment since October 1997. However, India is still yet to ratify it. The ratification would make it mandatory for India to maintain certain basic standards to prevent inhuman torture against prisoners.

Setting up of better oversight mechanisms for shall be prioritized. These functionaries shall be responsible for scrutiny of conditions in the prison at regular intervals. Inspection shall be carried out without the interference of Prison authorities. This would help to hold the Prison authorities accountable in a better manner.

The government should give some responsibility to Non-profit organizations and law schools to ensure that the prisoners are known their rights well and have access to adequate legal aid.

The capacity of criminal justice prison-related functionaries should be built. The large number of vacancies that are overburdening the working officials should be filled. Specialized training on how to deal with such prisoners should be given to all the staff working in jails. A certain amount of sensitization is also necessary to achieve the objective of reformation.

The Right to Legal Aid should be converted into a fundamental right from the Directive Principles of State Policy. This will ensure that the State is compelled to provide free legal aid to all the prisoners. The entire justice delivery system will be facilitated due to this.

The 154th Law Commission Report, 2017 suggests certain bail reforms to ensure that number of undertrials is decreased to a great extent. This will also save the lives of thousands of innocent youth languishing in jail due to the inability to get bail. The report recommends that the undertrial prisoners who have completed one-third of their maximum sentence for offenses up to seven years shall be released on bail. The Commission also stated that there is a need to include new provisions for remission of undertrials who have already completed the full length of the maximum sentence.

The project of the Unified Prison Management System that has been recommended by NALSA and successfully executed in the Tihar Jail shall be adopted by other prisons in the country as

well. This system has the record of all the prison inmates so that they do not encounter inconvenience while collecting the Court orders and the process is carried out smoothly.

Reasonable wages should be paid to the prisoners which would ensure that they have enough financial security when they come out of the prison. Various training programs like pottery, baking, carpentry, sewing, etc. should also be arranged for the prisoners that would enable them to take up an acceptable job blend with the society.

The presence of a psychologist should be made compulsory in all the prisoners. Such counselors are essential if we want to bring about a fundamental change in the psyche of the prisoners. They are constantly exposed to negative environments when they are residing with fellow-mates who may also adversely influence them in certain cases. Hence, the presence of a mental health professional is a must.

Unfortunately, a civilized democracy like India has not codified the Rights of Prisoners yet. Amendments should be made to the Prisons Act to include the Rights of Prisoners.

The scope of work of the National Human Rights Commission should be widened and greater compensation should be given to victims of custodial crimes.

7. Conclusion

Hon'ble Justice Krishna Iyer had asked, "*Is a prison term in Tihar Jail a post-graduate training in tough crime?*"⁶² This question has relevance even today. The conditions in which our prisoners are kept are such that they would rather be instigated to commit a crime against the society. Correctional orientation and cautious humanization have to be implemented in such circumstances. The criminal justice system must protect these caged human beings from torture.

The constitutional purpose of imprisonment should not be defeated. The justification for a sentence of imprisonment or similar depriving measures is to protect the society against crime. This end can only be met if the duration of imprisonment is used responsibly to ensure that

⁶² *Ramesh Kaushik v. B. L. Vig, Superintendent And Anr*, 1981 AIR 1767.

upon his/her return to the society, the offender is not only willing but also able to lead a law-abiding and self-supporting life. Gandhiji had suggested a hospital-setting approach for prisons. Prisoners should be treated as patients who have come for treatment. Therapeutic techniques should be used to raise the level of conscience of the individual. Higher awareness and feeling of socialization should be instilled. This method also revolves around meditation, self-expression through work, studies, and artistic development.

The prison reforms surely need to see light of the day. But, they also need to be accompanied by police reforms and the judicial system reforms as these form important pillars of our criminal justice system. Prison violence and criminality directly flow from anti-rehabilitative strategies. The Prison Administration has a conscientious responsibility to maintain dignity while discharging the correctional obligations. A greater emphasis should be laid on behavior modification, rehabilitation, treatment, and the psychological growth of inmates. Re-integration of the prisoner in the society can only be achieved if such measures are adopted.

“Every saint has a past and every sinner has a future”- Oscar Wilde