

Preferential Treatment: An Avenue For Decay In Prisons (A Comparative Analysis With India And the Philippines)

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Abstract—The New Bilibid Prison was mandated to rehabilitate those that have committed wrong to allow a smooth resocialization process to society. However this mandated function has not been fully performed. Instead there is another structure that dominates and destroys the purpose of rehabilitation. This is the phenomenon of Preferential Treatment, here the elite prisoners becomes above the law instead of being under the law. This phenomenon allows the wealthy and politically powerful inmates to still indulge themselves in the luxuries of the free world, defeating the purpose of rehabilitation. The study will provide you with a comprehensive workings and dynamics of an inmates' life and the inner working of our country's national penitentiary. There will also be a comparison of special treatments received by inmates from India and whether it conforms to the Standard Minimum Rules for the Treatment of Prisoners.

Keywords—*Indian Prison, Inequality, Philippine Prisons, Preferential Treatment.*

I. INTRODUCTION

TRATIONALLY Prison institutions are “utilized by any local criminal justice system for detention, and possible for punishment of those brought before it (Carter, Glaser, & Wilkins, 1963: 3).” This means that the prison system is for the confinement of those who have to undergo judicial and administrative proceedings. The prison system as an institution has the following primary functions of Reductivism and Retributivism.

Preferential treatment in Philippine prison remains to be one of the unexplored issues in our society today. Preferential treatment did not only remain talked about inside prison but soon after became more public. Most articles written about preferential treatment are gossips in news columns, slowly becoming the content of formal news. Given the fact that preferential treatment is a favorite topic of news writers indicates the need to have a careful look at this phenomenon. Despite the media hype on preferential treatment people still know less about this issue. Preferential treatment is not only present in our major prisons but also in city and provincial jails thus again making it a public issue. These journalistic articles written about preferential treatment can indeed help in opening the eyes of the public to this issue however it does not suffice for a deeper and clearer understanding of preferential

treatment. This insufficiency encourages the initiative to further look into the public but unexplored issue of preferential treatment.

The New Bilibid Prison has been known because of its famous prisoners who belong to the elite class of society. The presence in prison of these elites (rich and politically influential) would somehow mean that justice is still served by our judicial system. As a common perception of most people that being rich and/or politically influential does not exclude them from judicial orders if convicted. But people are misled; the presence of these elites¹ simply veils the reality that they do still enjoy in the luxuries of the free world and is not under the law. The phenomenon is already known to the public however the extent and gravity of such, remains unknown. As such the author aimed to expose the extent and depth of this phenomenon.

II. PHILIPPINE PRISON: BUREAU OF CORRECTION “THE NEW BILIBID PRISON”

The Bureau of Corrections is the main penitentiary in the Philippines and houses more than 20,000 plus inmates (as of June 2009). In terms of the inmates breakdown we can see that majority of inmates are from the maximum security camp which houses 12,279 prisoners second is medium with 7,854 and last is minimum security camp with 561 inmates. The number here shows that majority of inmates are those with sentence of 20 years and above.

A. *Process of Rehabilitation*

The main objective of rehabilitation or the purpose of confinement for a person committed to prison is to separate him from society, wherein he is expected to realize the wrong he has done against society, through which will allow him to be a responsible and law-abiding citizen. As stated in the manual of the Bureau of Corrections it “shall undertake rehabilitation and treatment programs to help an inmate lead a responsible, law-abiding and productive life upon release.” The institution is also delegated with the task of ensuring an optimum balance between the security of the prison and the effectiveness of treatment programs.

The rehabilitation and treatment of inmates shall be focused on providing services that will encourage and enhance the

¹ Whenever the term “elite” is used, it would refer to the rich and politically influential prisoners.

inmate's self-respect, self-confidence, personal dignity and sense of responsibility.

The whole duration of an inmate's stay inside prison, rehabilitation takes place. Rehabilitation that takes place inside the New Bilibid Prison² is a continuous process and there are no specific steps to be followed. This however doesn't mean that rehabilitation is an unorganized process because there are guidelines that are observed. Their operating manual contains these guidelines. From the manual it states that corrective and rehabilitation services will include religious guidance, psychotherapy; socialization; health and sanitation; vocational training; mental, physical and sports development; and value formation and education. As proof to this there a lot of religious groups that conducts different forms of services that helps an inmate reform. Also there is education inside the prison institution, which is ran and managed by the University of Perpetual Help Dalta-System. Aside from this another guideline includes programs and activities for offenders with special needs which are placed under the supervision of a social welfare officer in coordination with other correctional officers with special skills and specialized training. Some of the activities involved here are specialized training of mechanic, ornaments, and plants. Mechanic training usually includes vehicle engines and other machineries.

B. Preferential Treatment in Philippine Prison

Given the existence of a very well organized system of rehabilitation and prison management where does the idea that life inside prison is too difficult through which you still need to look for the luxuries of the free world?

This is happening in the formal interactions of the prison system, despite the fact that the Bureau of Corrections is formally regulated to pursue the goals of rehabilitation. The population of the prison is represented by inmates coming from the different strata of the general society. The majorities are coming from the lower classes but there are also inmates who belong to the wealthy and politically powerful families of the country. They belong to the elite classes of the general population, and despite being convicted of certain crimes, and eventually committed to prison; they hardly change their cultural propensity to act in a privileged manner.

The wealthy prisoners or the elite inmates often bargain with authorities to avoid the imposition of the guidelines on them, and in exchange material benefits such as gifts and money are extended to them. This kind of reciprocity reverses the roles prescribed by the formal organization, and makes the informal role generated more by cultural predispositions to prevail instead of the formal which is reinforced by certain material benefits provided by an acknowledged, although illegitimate power of elite prisoners. Illegitimate power because an inmate or a prisoner theoretically should be temporarily deprived of his freedom and rights as the requirements of rehabilitation. On account of an apparent weakness in the administration of the prison, the strength of culture dislocates the formal authority and regulative

environment of the prison as the powerful wealthy inmates subvert the policies and rules to favor their self-serving interests. This kind of dislocation of the formal organization, which makes the informal organization dominant, prevails and characterizes the everyday administration of this particular prison system.

Preferential treatment is also manifested in the different interactions that take place between inmates and officials³ of the New Bilibid Prisons however it is vital to look at the following interactions to further expose the phenomenon of preferential treatment, primarily the interaction of an ordinary inmate and an elite inmate, and an elite inmate and a prison official.

Inside the prison compound the interaction between ordinary inmate and elite inmates can be observed constantly because they are both inside the prison compound. It is expected that their interaction will be governed by equality being both inmates and under the supervision of the same administration. However, this has not been the case. The elite inmate usually has the upper hand in their interaction. For example, all inmates are expected to clean their respective cells individually. Elite inmates, however, would usually ask or even command the ordinary inmates to clean their cell. In return these ordinary inmates will be given certain material good such as new clothes or other material things. Other practices of this kind are also done by ordinary inmates to be able to get certain extra things they want such as doing their own "diskarte"; for instance, if they want extra food they will have to help or assist in the carrying of food supply so that he can ask the cook to provide him with extra food. For the elite inmates they can just give money to the cook so that their food will be more than the usual. The common thing that occurs between these two groups of inmates is that the ordinary inmates are usually asked by the elite inmates to do certain tasks that they do not want to do for themselves. Also, if the ordinary inmate wants something they must work extra for the elite or authorities in order to get an extra favor, as opposed to the elite inmate who can simply use the power of money to get what he wants even within the prohibitive requirements of the prison system. The elite inmates' day inside is essentially the same with the day of ordinary inmates. However, these inmates can have more self-serving interactions with guards/authorities whenever they feel they want to enjoy some prohibitions. These elite inmates do follow the institutional operating manual of the prison but often times engage in negotiations and bargaining with prison officials regarding the required behavior and conduct expected of them, thereby violating often the requirements of the operating manual without incurring punishment. They can bypass certain rules stipulated in the operating manual and in exchange, give cash/money to the guard or certain officials to prevent them from squealing their violative behavior to higher authorities. The money would usually come in big amounts. Also these elite inmates according to the interviews and observations are given more lee-way by the prison guards. For example when the time for all prisoners must return to their cell, elite inmates can still stay outside their cells without getting reprimanded in

² New Bilibid Prison is also the same as the Bureau of Correction, the change of name was due to the transition from and strict and harsh prison system to a more lenient and rehabilitative prison system.

³ The use of the term "officials" includes both the prison administrators and prison guards.

exchange for monetary tips given to the prison guards in charge. These kinds of things happen frequently within the interactive encounters between the elite inmates and the prison officials.

From the interviews and observations, respondents reveal that it is during the inmates' leisure time that most interaction takes place with the guard/s. It is usually the time that an elite inmate would ask prison officials for favors such as:

- To be able to have visitors even if it is not allowed
- To buy them food that they want to eat (such as Jollibee, Mcdo, and etc)
- To be able to start their own business.
- To send letters to their family and loved ones.
- To load their cellular phones.

Another area of interaction between elite inmates and prison officials happens when the gate keeper will be closing the cells, which is usually done on time. When the inmate comes late at closing time, he gives alibis and excuses that he was made to do extra work and as a result he finished late the reason why he failed to come on time. To be able to get inside his cell, the inmate would usually give a certain amount of „tip“ to the keeper for him not to be issued with a memorandum from the Board of Discipline.

All in all interactions between elite inmates and prison officials may take place anytime and anywhere where they are. This is most true for the rich and politically influential inmates, with their tendency to act like they are the „bosses“ inside without even being checked or reprimanded by the guards. When ever they want something it is the prison officials who get scared, as one key-informant has said, “Kapag may gusto sila, nagmamadali pa nga ang mga prison guard para masunod „tong mga mayayaman na to!” These kinds of observations and responses are telling of the prevalence of preferential treatment inside the prison.

Some of the preferential practices are the following:

1. Allowed gambling session for the influential
2. Allowed to have expensive mattresses
3. Refurbish (beautify) their „kubol“
4. Possession of money more than the allowed
5. Appliances are installed in their kubol
6. They have their own cellular phones
7. To roam around the compound with personal bodyguards
8. Exempted from doing mandatory labor
9. Allowed to have their own DVDs, TV sets
10. They have laptop computers
11. They can freely roam around the compound
12. They can go out of their cell and the compound whenever they want to
13. They have bath tubs and Jacuzzi
14. They have portable Air Conditioner
15. Possession of Illegal drugs and narcotics
16. Can have visitors whenever they want to
17. They are given protection by the prison officials “untouchables” (their bodyguards are prison guards)
18. Choice of own prison group
19. Allowed to play in high-stake gambling session
20. They are allowed to wear expensive jewelries
21. Exemption from body and kubol searches

22. Other inmates are allowed to have gambling session but only those that does not involve big amounts of money

23. The television sets are only for personal use of the rich inmates

24. Food inside is not enough so the rich and influential will ask prison guards to buy food they want.

While the elite inmates can live their usual lives the way they live it outside the prison, the ordinary inmates who cannot give money or any other material things to the guards in exchange for doing activities they are prohibited in doing, cannot enjoy any special request or favors from the authorities, and especially from the prison guards who are constantly monitoring them. If food is lacking, ordinary inmates have to withstand hunger and be content with “rancho” food. They are the ones subjected to the prohibitions and regulatory requirements of rehabilitation in the midst of blatant violations of rules and policies of those who can provide material benefits in exchange for the privileges they enjoy. The rich are given excess attention because they can afford to give money or material things in exchange for their usual caprices which ordinarily imprisonment prevents them from doing.

III. DIFFERENT CASES OF PREFERENTIAL TREATMENT

Case 1

Case 1 is a former politician of a province in Mindanao but convicted of rape filed against him by an 11 year old girl last 1996. Case 1 was found guilty beyond reasonable doubt of two counts of statutory rape and six counts of acts of lasciviousness. As such case 1 was sentenced to two reclusion perpetua. He was also ordered to pay the additional amount of P50, 000.00 as civil indemnity for each count of statutory rape and acts of lasciviousness. The Supreme Court also increased the award of P50, 000.00 for moral damages for each count of acts of lasciviousness. Given the sentence case 1 was moved to this prison institution where in he will have to serve a total 80 years inside prisons.

Case 1 in comparison with the other cases has the most number of preferential practices given to him by both fellow inmates and prison guards and officials. Some of these practices include the freedom to choose the prison gang where he wants to be a part of. According to informants he even paid a sum of 100 thousand pesos to the Batang City Jail (BCJ) in order for the gang to provide him with inmate security inside the prison compound. Aside from this case 1 is given the privilege to freely roam around the prison compound and even go out of the prison compound and go to his house in a subdivision near this prison institution. In addition to these privileges case 1 has the most beautiful *kubol* inside. Informants would even say that his cell is very close to a house with the complete household amenities. His cell or *kubol* has the following appliances: television set including dvd player, portable air condition, mattress, sala set⁴, and his

⁴ The presence of a sala set inside a cell would explain how big his share in terms of his *kubol* is. Given the small size of a *kubol* he can afford to have a sala set which can be used by other inmates having a hard time to fit inside a small cell.

own kitchen. From the perspective of the informant he said that *“napakabias ng ginawa ng admin sa kanya kasi ung mga bagay na meron sya maliwanag na bawal un eh. Kami nga na mataas na pwesto sa mga mga bilanggo ay hindi naman naibibigay ung lahat ng hiling naming eh.”* Aside from these, case 1 also enjoys the privilege of having to have his own body guard while inside the prison compound. Case 1 is also very generous and giving to prison guards, that every Christmas he gives them, 500 and 1000 pesos. Low ranking prison guards would usually receive 500 pesos while higher ranking prison guards receive 1000 pesos. These prison guards who accept such money will have to sign in a payroll like paper⁵. Aside from these privileges, case 1 also enjoys the privilege of having visitors whenever he wants to. For him he does not need to follow rules regarding visits of friends and relatives. Case 1 is also given the right to use cellular phones and wear expensive jewelries inside the prison compound. It is clearly stated in the operating manual of this prison institution that such possessions are strictly prohibited. It is also interesting to look at the fact that this inmate has his own bakeshop in both inside and outside the prison compound. He can also have as much money as he wants to keep for his disposal, but which is a violation indicated in the Operating Manual. These are only some of the perks and privileges that this inmate receives inside the prison compound, because as most informants have claimed that this inmate receives the most preferential treatment among all other elite inmates. When the informants were asked as to how they feel regarding the provision of preference to this wealthy and politically influential prisoner, their response was: *“Ganun talaga ata kapag may pera ka mas prioridad ka dito marami kang makukuha na gusto mo kapag marami kang pera at maliwanag na kawawa ung mga mahihirap dito sa loob.”* Here we can see that even the informants themselves feel the exclusion and that they are not treated accordingly as stated in the definition of the requirements of rehabilitation.

IV. PREFERENTIAL TREATMENT IN INDIAN PRISON

Use Instances of preferential treatment are not only present in Philippine prison but also in other prison system. According to Sumanta Banerje *“The prison as an institution has become a site of contention between the privileged and the deprived.”* This means that instead of properly carrying out its mandate it becomes a venue for the imposition of the will of the privileged and further emphasizes the deprived.

Case 1

⁵ To sign in this payroll like paper would symbolize that you are under case 1. This means that you are expected to follow and give in to the demands and requests of case 1 or else he can yell at you indiscriminately and can humiliate you whenever he does not get what he wants. I was fortunate enough to interview a prison guard who does not accept these Christmas pay that comes from case 1. He said that there was one instance that he was asked by case 1 when he was already a living out to do something for him but he refused to it. He said that he heard case 1 said that *“tignan mo nga sa payroll kung nandun ang pangalan ng gwardiyang yan”* and when they found out I wasn't getting my share he immediately went to another prison guard to do him this demand he wanted.

The mafia Don Muhammads Hahabuddin -a protege of Lalu Yadav's- has been arrested in Delhi after a prolonged game of hide-and-seek with the police, and was transferred to a jail in his home state. Muhammads Hahabuddin is no stranger to jails. *“In the past, during his various stints in Bihar prisons, he was reported to have been using his mobile phone to advise and guide his goons, watching television, feasting on sumptuous meals and giving interviews to reporters (Banerje, 2005).”* The jail superintendent's office room was taken over by him to entertain his cronies whenever he chose to meet them. The few days he spent in jail were evidently treated by him as a vacation from his rather hectic life of a killing spree⁶.

Case 2

“Ajay Sao alias Ajay Kanu alias Ravi Kanu - a Naxalite leader- who after having spent some three years in jail, was rescued by his followers in a daring raid on Jehanabadjail (where he was lodged) on November 14. Obviously with the help of jail inmates (and possibly some jail warders whom the administration suspect of complicity), the raiders gathered the information they required stormed the jail at a particular hour, and not only rescued their party comrades, but also kidnapped around two dozen Ranbir Sena members – the upper caste gangsters, considered by the Naxalites as their “class enemies” - who were lodged in the same jail. (Banerje, 2005)”

“Some 300 other prisoners, who were ordinary criminals, and were asked by the raiding Naxalites to get lost, followed their advice and just rushed out through the jail gates (which were found to be open even the next morning when journalists visited the spot) to make a dash for an unexpected freedom. It was a mini-re-enactment of the razing of the Bastille during the French Revolution. It has now transpired that before the raid, Ajay Sao had literally taken control of the jail administration (Banerje, 2005).”

Aside from the above mentioned control one news paper also reported that Ajay had *“access to cell phones, an independent kitchen and television, besides money....He would be allowed to receive visitors all the time and get whatever he needed (Banerje, 2005).”*

With these cases we can clearly see that the predominance of preferential treatment is not only present in Philippine prison but also in other prison institution. Clearly we can see that these two influential inmates are wielding their power to bend the law towards their benefit and resulting to the damage in a prison institution's purpose, which is to rehabilitate.

V. INEQUALITY, INJUSTICE AND TREATMENT OF PRISONS

The study of preferential treatment belongs to the larger area of prison management. In theory and in practice, the core of prison management is rehabilitation, a process that prescribes behavioral requirements to re-socialize inmates from a criminal predisposition to normative attitudes and behaviors to be able to join the mainstream. Specifically, rehabilitation refers to the provision of the basic needs of

⁶ He is accused of murdering a number of his political opponents, including a CPI-ML youth leader

inmates as human beings and to be treated equally as human beings. This rehabilitation can be achieved through the provision of work programs, health care, education, skills training, recreation and sports (Bureau of Corrections, 2008: 26).

Since prison inmates are highly diverse socially, economically, politically, and in the types of crimes they committed, there is a need to define policies and rules to create conditions of equality in the manner by which authorities relate with them and the kind of treatment they accord them. Rehabilitation requires rigor and consistency in implementation of policies and rules defined in the Operating Manual of Prison Management. That these rules and policies, that set the condition for equality should be implemented rigorously to observe the proper environment in order to achieve the goals of rehabilitation. Inconsistency between policies and rules with practice can lead to the violation of the principle of justice being committed in the process of rehabilitation.

Preferential treatment allows an informal layer of interaction between the official layer of organizational interaction which is unofficial but dominates the official organization of the prison system. Instead of the official layer of organizational interaction of the prison system being dominant, it is the informal layer that almost becomes the official or standard organizational culture of the prison. These two layers are: the interaction between officials and inmates, and between inmates. This kind of interaction characterizes an exchange of favors: privileges are extended to the elite inmate with prevailing exchanges of money and material goods for the guard or the administrative official who facilitated the favor.

This practice invokes the elements of inequality and injustice. Inequality means that when there is preferential treatment, others who are not preferred are marginalized in the process. This is what happens when there is preferential treatment the outcome of which is the privileging of those who can provide an exchange for the favor being asked: The parties involved are the elite inmate who asked a favor and the prison official who can give the favor and who receives a material or non-material reward for facilitating the favor.

In relation to the Standard Minimum Rules for the Treatment of Prisoners it is clearly stated that "There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (United Nations, 1977)." This simply means that in the administration of the rules and regulations of the prison system there should be equality and fairness but from the different cases mentioned above it is also clear that there is inequality and those with power becomes above the law and can overturn the laws for their own benefit.

The dynamics of the practice of preferential treatment spins extensively to affect the over-all administration of the prison as these elite prisoners use their capacity to wield power and almost putting the system under his command, mobilizing co-inmates and officials to come under his informal authority coming from his wealth and historical influence. The general

prison population may not complain especially those who are rewarded by their participation in the practice, but they feel the presence of inequality and injustice in the prison environment.

VI. CONCLUSION

In conclusion it can be observed that the roots of preferential treatment are deeply embedded in the social factors of culture, economic, and political in the overall landscape of society.

In terms of how these practices are institutionalized we need to look at aspects of who undertakes the practice, why they do, what they do, what do they get from this practice and why the practice endures despite its violative nature? These questions will lead us to the ultimate reasons why the practice of preferential treatment despite being a violation persists.

Finally, the study validates that the practice of preferential treatment is strongly present, and that there are a variety of ways as to how and why these practices are perpetuated inside prisons.

Now what remains is how we respond to the different challenges given by this to our society, are we to change and totally overhaul the prison system, these questions remains to be in the minds of our prison officials, but though these practices might seem to be impossible to overcome it is not impossible. This study can be used as a spring board for our legislators to evaluate and restructure the prison system to make sure that its mandate of rehabilitation is followed and that it is at par with the international standards in treatment and rehabilitation of inmates.

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