A Call for Justice

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Introduction

“We live in a country that is addicted to incarceration as a tool for social control. As it stands now justice systems are extremely expensive, do not rehabilitate but in fact make the people that experience them worse and have no evidence based correlates to reducing crime. Yet with that track record they continue to thrive, prosper and are seen as an appropriate response to children in trouble with the law. Only an addict would see that as an okay result.” (James Bel)

The criminal justice system of the nation is one of the most integral pillars, that shapes up the justice system. An eminent institution, to safeguard the basic rights of any individual who feels threatened by any form of injustice. The state hence, provides protection to the society by delivering necessary justice.

India as a nation depicts a startling data in terms of individuals (men and women, children) who are still behind the bars waiting for justice to be delivered one fine morning. Adding to this is the delayed process of court trails and hence judgments that tend to deprive the very basic right of freedom for years to come. Umpteen cases clearly show that the term of conviction ends up being greater than the actual punishment. So here the most important question that arises is what about the basic human rights that must be given to these individuals primarily?

And secondly what is the role of the state today which tends to propagate itself as a democratic welfare nation. The institution’s that have been given the power by the constitution to protect its citizens has been unable to stop the misuse of law.

Such kind of humiliation that is faced by individuals who are under the trial process for years to come are left behind nameless under such ruthless incarceration. Thus, the criminal justice system shows the lack of any form of governance keeping in mind the protection of basic human rights or freedoms, i.e. the right to a respectful life.

Such degradation becomes painful for life to come as often these prisoners are suffering in jails for offences they may not have committed at all. They cease to be as individuals and are merely identified as case files or inmate numbers. This extremely sensitive issue has been a major concern that appeals to the administration to sensitize itself towards gross violation of human rights issues.

“Prisons have been focused mainly under the context of procedural access and administrative performance. Or on the other hand, studies on prisons have been so deep-seated (critical theorists) that the realities of politics and governance are only marginally considered within the frame of human rights leading to lack of implementation of policies for supporting legal assistance to the poor under trials”

Numerous experts both legal and criminal have essentially commented upon on the appalling conditions across states predominant inside the prisons. Such violations were examined and presented by several bodies who appealed for reforms at the immediate pace as possible. Some of the most important committees formed were as follows:

a) All India Jail reforms committee under the chairmanship of Mr. Justice A. N. Mulla in (1980)
b) The National Human Rights Commission,
c) National Expert Committee on Women Prisoners” under the chairmanship of Justice Krishna Iyer(1986,)
d) All India Group on Prison Administration-Security and discipline (1986) by Shri R.K. Kapoor

These bodies focused on the gross abuse and misuse of law whereby the justice delivery mechanisms completely failed to bring about a positive change or deliver justice in its true sense. Majority of these stalwarts focused on the following veracities as analyzed below –

Gross violation of human rights - the very basic idea of freedom or liberty is diminished. Looking forward to Part three of our constitution that guarantees several fundamental rights to an individual, the prisoner has an equal right to exercise such protections. Be it ARTICLE 14 which enshrines equal protection of law or right to equality, personal liberty under ARTICLE 21, the deplorable conditions of the prisoners showcases the gross desecration of such innate needs. And this becomes dreadful when under trials are forced to undergo punishment for years for a crime they may not have commit-

Crimes and Criminalizing Violence - The inmates face excessive forms of violence and cruelties, which further adds to the criminalizing effect within a prison. Cynical criminals tend to exploit and torture meek offenders to the extent that they may end up committing suicides. The rate of abuse in jails has been ever increasing. Cases of homosexual abuses, rapes etc are an ordinary characteristics of any jail all across the world. Massive abuses take place spreading sexually transmitted diseases and most of them being forced to face lifelong trauma of such episodes. With convicts in the country more than three lakh, the dangers of criminalization is one of the biggest fears. This is further fuelled by the estimates of under trials in the jails across the country which increases by more than eighty percent that are still hopeful of justice in near future.

Health consequences - "Prisons have very serious health implications. Prisoners are likely to have existing health problems on entry to prison, as they are predominantly from poorly educated and socio-economically deprived sectors of the general population, with minimal access to adequate health services. Their health conditions deteriorate in prisons which are overcrowded, where nutrition is poor, sanitation inadequate and access to fresh air and exercise often unavailable. Psychiatric disorders, HIV infection, tuberculosis, hepatitis B and C, sexually transmitted diseases, skin diseases, malaria, malnutrition, diarrhoea and injuries including self-mutilation are the main causes of morbidity and mortality in prison. In countries with a high prevalence of TB in the outside community, prevalence of TB can be up to 100 times higher inside the prisons. According to NHRC 76% of deaths in Indian prisons was due to tuberculosis. In most countries HIV infection in prisons is significantly higher than within the population outside prison, especially where drug addiction and risk behaviors are prevalent. Prison staff is also vulnerable to most of the diseases of which prisoners are at risk."  

Social impact - mostly the inmates belong to poor sections of the society whose families face great condemnation leading to social and economic exclusion. In the absence of any earning member the families are left behind strayed, as the socio economic marginalization forces them to opt for other means of crimes. Forced prostitution, criminal acts etc are a part of this vicious cycle. Ultimately, the structures of the family are completely ruined that in turn have deep social implications.

Costly affair - the cost of imprisonment itself is a big issue that defines the amount of attention given to each prisoner. Long term expenditure in various forms ranging from food, health care, recreational facilities, workshop, capacity building measured etc are immense in their nature. For example looking at the health facilities to be provided, the para medic staff is meager as compared to the requirement of the prisoners. For instance in Tihar jail with overcrowding of more than 10,000 inmates only 5 to 7 doctors may be available.

"Thus in many cases, besides lack of resources, it is the existence of a dehumanized system in the prison which contributes to the problem. It is, therefore, important to humanize the relationship between the prisoner and the prison staff so that the latter are not only fulfilled in their duties but also provided with the basic needs of life both physically and mentally."  

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3 http://www.unodc.org

4 Source: Prison Headquarters, Madhya Pradesh.

5 Source: Prison Headquarters, Madhya Pradesh.

6 The National Police Commission: The Third Report, Chapter XXII, 1980
sensitized to the needs of the prisoners and regard themselves as the caretakers of the inmates.” 7

A Quick Look
One look at the statistics of prison data by the National Crimes Bureau in India clearly shows the continuous flooding of prisons. Prisoners are being overcrowded and forced to face the brutalities of such inhuman conditions. The overburdening of jails ultimately, results in the forceful adjustments of prisoners to live in extreme deplorable situations. As it is, captivity strangles you to a life long struggle of shame and disrespect for lifetime. Adding to this are the worst conditions faced by the inmates and unaccounted forms of torture.

“The terms prisons and jail are used interchangeably in India, perhaps reflecting the fact that no significant effort is made to separate “under trials” as those awaiting trial are known from convicts. Separation of under trials from convicts is required by the India’s Supreme Court, but this is a decision that has been widely ignored. And hence substantial majority of all prisoners are under trials.” 8

So the correctional system ignores a major segment of the society and further absence of measures to bring these “individuals” to the mainstream is done away with it. People are led to back prisons again and again, due to complete ostracization. Adding to the system is the approach of the society towards the people, committing crimes. The society puts blinders and wants to just do away with such people. Putting them behind bars is the only solution that is believed to be the ultimate solution to bring about justice and peace in the society. One forgets that these “individuals” have their own identity and the continued negligence towards them is injurious to the society and the nation at large.

“We must therefore insist on a global consensus, not only on the need to respect human rights worldwide, but also on the definition of these rights...for it is the inherent nature of all human beings to yearn for freedom, dignity and equality” 9 (Dalai Lama)

The National Criminals Bureau publishes its studies every year keeping a track on the annual changes in the criminal support system. The following tables depicts the country’s position in terms of prisons and the large percentage of population that is still behind bars yearning for fairness.

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7 www.chri.org
9 http://www.dooneshi.org/quotes/prison
TABLE 1: Total capacity of jails in the country : 3,43,169

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<thead>
<tr>
<th>CATEGORY</th>
<th>MALE (%)</th>
<th>FEMALE (%)</th>
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<tbody>
<tr>
<td>Central jails</td>
<td>1,46,64</td>
<td>(42.7%)</td>
</tr>
<tr>
<td>District jails</td>
<td>1,26,110</td>
<td>(36.7%)</td>
</tr>
<tr>
<td>Sub jails</td>
<td>48,474</td>
<td>(14.1%)</td>
</tr>
<tr>
<td>Women jails</td>
<td>4,817</td>
<td>(1.4%)</td>
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| Other jails       | 4,028    | (1.2%)     |
| Borstal schools   | 2,438    | (0.7%)     |
| Special jails     | 10,331   | (3.0%)     |
| Total            | 3,43,169 | (100%)     |

Table 2: Brief Data On The Breakup Of Jail Inmates In India As On – 31.05.2015

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>MALE (%)</th>
<th>FEMALE (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of jail inmates : (3,85,135)</td>
<td>3,68,184 (95.6%)</td>
<td>16,951 (4.4%)</td>
</tr>
<tr>
<td>Convicts : 1,27,789 (33.2% of total inmates)</td>
<td>Male : 1,22,776 (96.1% of total convicts)</td>
<td>Female : 5,013 (3.9% of total convicts)</td>
</tr>
<tr>
<td>Undertrials : 2,54,857 (66.2% of total inmates)</td>
<td>Male : 2,43,055 (95.4% of total undertrials)</td>
<td>Female : 11,802 (4.6% of total undertrials)</td>
</tr>
<tr>
<td>Detenues : 1,922 (0.5% of total inmates)</td>
<td>Male : 1,832 (95.3% of total detenues)</td>
<td>Female : 90 (4.7% of total detenues)</td>
</tr>
<tr>
<td>Others : 567 (0.1% of total inmates)</td>
<td>Male : 521 (91.9% of total others)</td>
<td>Female : 46 (8.1% of total others)</td>
</tr>
</tbody>
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Source: the data presented (table 1 and table 2) above have been taken from the National Crime Records Bureau.

Such drastic figures show the unpardonable situations that the criminal justice system has been putting forward. Law as an instrument of justice has been blinded in its true sense by doing away with the plea of basic respectful living. Justice seems to be a dwindling ray of hope to bring about change. More than correctional or reformatory justice, the criminal justice system pushes these ‘victims of justice’ into a web of false optimism and expectations, the real travesty of justice.

‘Law has become for them an instrument of injustice and they are helpless and despairing victims of the callousness of the criminal justice system’.

A plea towards the State

It is high time that the basic principle of a welfare democratic nation be actually exercised. The state needs to revamp the entire justice system which tends to overshadow the brutalities carried by the so called whistle-blowers of justice and equality. Large numbers of individuals are waiting in the dark dungeons in vain for something that tragically ends up being beyond their reach.

For years to come some of the under-trial prisoners have been in jail for more than ten years, without their trial having begun. What belief can these lost souls have who have been subjected to darkness not just because they have been convicted due to certain crimes but mainly due to worse economic conditions that completely closes down chances of any release through bail or other law procedures. It is here that the poor find our legal and judicial system oppressive and heavily weighted against them and a feeling of frustration and despair occurs upon them as they find that they are helplessly in a position of inequality with the non-poor. Wearsome mechanisms of courts, complex structures, monetary weaknesses and adding to this dishonesty at every stage of the governmental hierarchies completely leaves the presumed innocent into a state of complete deficits both psychologically and physically. This vicious and inhuman cycle of justice entangles the individual who faces incarceration along with his family who have no routes to escape for a lifetime.

"Torture is banned but in two-thirds of the world's countries it is still being committed in secret. Too many governments still allow wrongful imprisonment, murder or "disappearance" to be carried out by their officials with impunity." (Peter Benenson)

http://www.doonething.org/quotes/prison