ALL THAT IS WRONG WITH THE CRIMINAL JUSTICE & PRISON SYSTEM

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ABSTRACT

The problems faced by persons due to deficit of adept laws in the field of criminal justice and in prisons are expansive in both their nature and geography. They range from inadequately resourced detention facilities to intentional and calculated acts of mistreatment by repressive governments. The developed as well as developing nations face these problems alike. Yet the precise nature of the challenges is specific to each country.

The article begins with a general introduction and explanation of criminal justice, how it came into existence on international level and its relation with Indian criminal justice system. The setup story of International Criminal Court with lucid examples has been included.

Next, the paper goes into the Indian constitutional guarantees provided to accused and highlights the various loopholes in the system. A detailed description of the prisons and gross human rights violations transpiring in there has been presented in an articulate manner. The proposed amendments in CrPC have been mentioned as well. The paper does not limit itself to India alone but covers the worldwide scenario in this regard as well. The condition of prisons is beyond imagination. Overcrowding, understaffing, lack of adequate medical care, physical mistreatment of prisoners resulting in custodial deaths, inadequate conditions for female and juvenile detainees, poor administration, long detention of those awaiting trial, and inadequate opportunities for prisoners to communicate with counsel, administrators, and family are some of the plaguing problems inside the jails.

Private Prison system has been carefully deliberated in its entirety. Private prison arrangement is a very risky and tricky path to tread on. It can offer many solutions but has an equally dangerous other side to it. Be it any country, common prison problems are symptoms of the rotten system prevailing for ages now. It reflects the actual causes like overwhelmed and inefficient justice systems, untrained and corrupt law enforcement officials, or mismanaged and underpaid prison staffing, unsympathetic morality, hostile political ideologies and lack of funds and will.

The paper aims to bring to the forefront numerous alarming concerns associated with the prison scheme and structure and proposes various suggestions for same.

1. INTRODUCTION

Indian criminal justice and International criminal justice mostly share the not so good parallels. The phrase 'international criminal justice' is little tricky to define comprehensively. At a fundamental level, it describes the response of the international community — and other communities — to mass atrocity. This seems to be the general accepted definition. How we

respond to war, to the rupture of society and to systematized murder and persecution, is at the heart of the issue. What forms of transitional justice are attempted and how their goals are achieved, or at least attempted, are all important responses, but 'criminal justice' is about more than responses[1]. The more important thing is that whether the response is appropriate or not. The proliferation of international war crime tribunals which began in the 1990s[2] culminated in the creation of the ICC. As recent referrals to the ICC by the Security Council of UN regarding situations in Sudan and Libya confirm, the international community very much views war crimes trials as an important response to conflict and atrocity. This preference and its implications for international criminal justice form an important theme that must continue to be discussed.

A reasonable place to start is the development of international war crimes trials. The first real example of such trials followed the Second World War. The Nuremberg, Tokyo and other post-war trials launched the new UN Charter world conception of international criminal justice. The goal of Nuremberg was to bring to justice the most senior German perpetrators of atrocities committed at the beginning of and during the war. While some important domestic war crimes trials were held between the 1940s and the 1950s[3], in reality, very little occurred on the international front until the creation of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 to try those accused of committing war crimes in the course of the Bosnian conflict.

There is of course a range of responses to atrocity. Truth and Reconciliation Commissions, of which there have been over 30 since the 1970s[4], reflect a less retributive, more reconciliatory emphasis. Other community-based approaches reflect a more culturally specific response to the subject matter of international criminal justice. Examples of this

[1] GIDEON BOAS, WILLIAM A. SCHABAS AND MICHAEL P. SCHARF, INTERNATIONAL CRIMINAL JUSTICE: LEGITIMACY AND COHERENCE 1-5 (1st 2012)

[2] International Criminal Tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda, Special Court for Sierra Leone, Extraordinary Chambers in the Courts of Cambodia and Special Tribunal for Lebanon.

[3] The trials of Adolf Eichmann in Israel, Klaus Barbie in France and Ivan Polyukhovich in Australia.

[4] Pavani Reddy, *Truth and Reconciliation Commissions: Instruments for Ending Impunity and Building Lasting Peace*, 41 UN CHRONICLE, 18-22 (2004)

include the *Gacaca* Courts in Rwanda[5], the *Fambul Tok* in Sierra Leone[6] and the *Mato Out*[7] in Northern Uganda.

The fact that the ad hoc tribunals were set up under Chapter VII of the UN Charter made their relationship with the conflict in their respective regions necessarily deeper than a traditional criminal jurisdiction. Any criminal court established as a measure to re-establish peace and security must surely need to contribute to reconciliation and sustained post-conflict measures to stabilise the region. Additionally, to the UN tribunals' credit, they espoused broader goals of accountability and justice — in their judicial and political rhetoric[8] as well as in substantive areas of their core work. An important example of this goal-setting was reference to reconciliation as a mitigating factor in sentencing. Other interesting aspects of the new tribunal model were the development of a human rights regime

The era of ad hoc and hybrid tribunals might be seen, in one sense, as preparatory work for the creation of the now functioning ICC. Determined somewhat optimistically in its statute to 'put an end to impunity', the ICC operates on a predominantly similar model to that of the ad hoc tribunals. Its struggle for existence through several International Law Commission drafts and the derelict Cold War years may have created an odd psychological facet to the Court, which on one level is played out in its substantive legal work but nevertheless the Court is regarded, and regards itself, as the pre-eminent expression of global retributive justice. It is empowered to investigate crimes within its various jurisdictional limitations, and is used as an increasingly important aspect of the Security Council's (albeit selective) redress of atrocity. An important example is Security Council Resolution 1970, referring the Libya situation to the ICC.

Within the framework of international Covenant on Human Rights, countries with varied

[5] PHILLIP CLARK, THE GACACA COURTS, POST-GENOCIDE JUSTICE AND RECONCILIATION IN RWANDA: JUSTICE WITHOUT LAWYERS 105-120 (2010)

[6] Elisabeth Hoffman, *Reconciliation in Sierra Leone: Local Processes Yield Global Lessons*, 2 FLETCHER FORUM OF WORLD AFFAIRS 32, 129 (2008)

[7] *supra* note 1.

[8] President Patrick Robinson, *`Statements and Speeches of the ICTY'* UN ICTY., http://www.icty.org/sid/ 10259 (last updated on Sept. 29, 2011)

religious, ideological and cultural backgrounds are urged to cooperate in the implementation of universal standards of human rights across the world. Repeatedly the U.N. General Assembly has emphasized that no country should be allowed to disrespect basic and entrenched rights like the right to life, freedom from physical violence, and the right to fair trial on the ground that a departure from these universal standards might be permitted under national or religious laws. Despite the insertion of such fundamental guarantees at international and national levels, the forty-first session of the United Nations Commission of Human Rights (held at Geneva in March, 1985)[9] revealed mass violations of human rights of the "under-trial" (accused) and "convicted" individuals in at least eighty-five countries.

2. INDIAN SCENARIO

The law prohibits torture, and confessions extracted by force are inadmissible in the courts as per the Indian Evidence Act, 1872. Furthermore, torture of the accused and the convicted is prohibited under Indian law, under sections 330 and 331 of the Indian Penal Code. Nevertheless, there is credible evidence that torture is common throughout India, and that police authorities frequently use torture even during interrogations. Custodial abuse/violence is deeply rooted in police practices.

3. RIGHTS OF THE ACCUSED

3.1 Protection against ex post facto laws

Clause (1) of Article 20 of the Indian Constitution says that “no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. Article 11, paragraph 2 of the Universal Declaration of Human Rights, 1948 provides freedom from ex-post facto laws.

3.2 Doctrine of *“autrefois acquit”* and *“autrefois convict”*

According to this doctrine, if a person is tried and acquitted or convicted of an offence, he cannot be tried again for the same offence or on the same facts for any other offence. This

[9] VASUDHA DHAGAMWAR, LAW, POWER AND JUSTICE : THE PROTECTION OF PERSONAL RIGHTS IN THE INDIAN PENAL CODE 127-129 (1993)

doctrine has been substantially incorporated in the Article 20(2) of the Constitution and is also embodied in Section 300 of the Criminal Procedure Code, 1973.

3.3 Prohibition against self-incrimination

Clause (3) of Article 20 provides that no person accused of any offence shall be compelled to be a witness against himself. Thus Article 20(3) embodies the general principles of English and American jurisprudence that no one shall be compelled to give testimony which may expose him to prosecution for crime. In **Nandini Satpathy v. P.L. Dani**[10], the Supreme Court has considerably widened the scope of clause (3) of Article 20. The Court has held that the prohibitive scope of Article 20(3) goes back to the stage of police interrogation not commencing in court only. It extends to, and protects the accused in regard to other offences-pending or imminent, which may deter him from voluntary disclosure.

3.4 Person arrested to be informed of grounds of Arrest

Article 22 (1) of the Constitution provides that a person arrested for an offence under ordinary law be informed as soon as may be the grounds of arrest. In addition to the constitutional provision, Section 50 of Criminal Procedure Code also provides for the same. As held in **Udaybhan Shuki vs. State of U.P**[11], the right to be informed of the grounds of arrest is a precious right of the arrested person**.**

3.5 Right to be defended by a Lawyer

It is one of the fundamental rights enshrined in our Constitution. Article 22 (1) of the Constitution provides, inter alia, that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice. The Supreme Court of America in **Powell v. Alabama**[12] observed that "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel".

3.6 No Right to Police officer to cause death of the accused

[10] AIR 1978 SC 1025

[11] 1999 CriLJ 274

[12] 287 U.S. at 68-69, 53 S.Ct. 63-64.

Sub-section (3) of Section 46 Criminal Procedure Code enjoins in clear terms that though police officer/any other person making arrest can use all necessary means for the purpose but they have not been given any right to cause the death of a person who is not accused of an offence punishable with death or imprisonment for life as held in **Karam Singh v. Hardayal Singh**[13]. Again Section 49 Criminal Procedure Code provides that 'the person arrested shall not be subjected to more restraint than is necessary to prevent his escape' as observed by the courts in **Citizens for Democracy v. State of Assam**[14] and **G.L.Gupta v. R.K. Sharma**[15].

3.7 Accused person as a competent witness

According to provisions of Section 315 of Criminal Procedure Code, the accused can be a competent witness for defence and can give evidence in disproof of the charges made against him or against his co-accused. He may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial.

3.8 Right to speedy trial

Justice delayed is justice denied. This is all the more true in a criminal trial where the accused is not released on bail during the pendency of the trial and trial is inordinately delayed. In **Hussainara Khatoon V. State of Bihar**[16]**,** the Supreme Court considered the problem in all its seriousness and declared that speedy trial is an essential ingredient of 'reasonable, fair and just' procedure guaranteed by Article 21 and that it is the constitutional obligation of the state of devise such a procedure as would ensure speedy trial to accused.

3.9 Compensation for wrongful arrest

Section 358 Criminal Procedure Code empowers the court to order a person to pay compensation to another person for causing a police officer to arrest such other person wrongfully. For applying Section 358 some direct and proximate nexus between the

[13] 1979 Cri LJ 1211

[14] (1995) 3 SCC 743

[15] AIR 2000 SC 3632

[16] AIR 1979 SC 1639

complainant and the arrest is required. It has been held that there should be something to indicate that the informant caused the arrest of the accused without any sufficient grounds.

3.10 Person Arrested not to be detained more than twenty-four hours

Section 57 of Criminal Procedure Code provides that no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate Court. The right has been further strengthened by its incorporation in the Constitution as a fundamental right under Article 22(2).

The victim of the crime suffers due to the system as well. Another problem with the existing statutory scheme is that once an investigation starts, the role of the victim is minimal. In many instances the police personnel proceed very slowly on investigations, thereby losing out on the opportunity to gather relevant evidence and opening up the possibility of corruption. Conversely, investigations involving well-connected and influential persons as victims tend to be taken up in a relatively expeditious manner. Even during the course of trial, the victim's role is confined to that of acting as a 'prosecution witness' since the prosecution is entirely conducted by the State. The lawyers working as Public Prosecutors at the district level often lack the necessary competence and function in a manner that is not accountable to the victim in any way. As a result trials are unduly delayed either on account of the disinterest or conversely the heavy workload faced by the Public Prosecutors. Furthermore, victims as well as witnesses tend to face considerable inconvenience when they are required to repeatedly attend court hearings or face aggressive cross-examination from defence counsels. The situation is even more complicated for victims of sexual offences. This phenomenon of the victims of crimes facing even more harassment during the course of investigation and trial – is called 'secondary victimisation'[17].

4. THE PRISONS – A PITEOUS PICTURE

4.1 Demography

[17] C. RAJ KUMAR & K. CHOCKALINGAM, HUMAN RIGHTS, JUSTICE AND CONSTITUTIONAL EMPOWERMENT, 437- 462 (2007)

According to the Prison Statistics of the National Crime Records Bureau (NCRB) for the year 2013, Indian Prisons are overcrowded with occupancy ratio of 18% more than the capacity. More than 2/3rd of the inmates are under trials & Women inmates constitute just 4.4% of the total inmates in prisons. Chhattisgarh tops the list with occupancy ratio of more than double the capacity. There are 1391 jails in the country. 80% of the capacity is in the Central & District jails. They are also the ones that are overcrowded beyond capacity. All the other jails have an occupancy ratio of less than 100%. Women jails are present in only 12 of the 35 States/UTs. Only 10 states have Borstal schools. Only 16 states have Open jails and just 12 states have Special Jails. Only 11 states have an occupancy ratio less than 100%, that is to say that the number of inmates is less than the capacity. In terms of occupancy ratio, Chhattisgarh tops the list with an occupancy ratio of 261. This could be because of Maoist problem in the state. Second in the list are UTs (including Delhi) with an occupancy ratio that is 74% more than the capacity.

One major cause for the overcrowding is the large number of under trials in prisons. This is a sad reflection of the pace of our judicial system that is painstakingly slow. More than 2/3rd of all the prison mates are under trials. More than 20% of these under trials are in the prison for a period of more than a year. An alarming 42% of the total inmates in prisons are less than 30 years old. A total of 87% of the inmates are less than 50 years old while the remaining 13% are more than 50 years old.

India had 4.2 lakh people in prison in 2013. Nearly 20% of them were Muslims although the share of Muslims in India's population is about 13% according to Census 2001. Religion-wise data from Census 2011 is yet to be released but it is unlikely to be much different[18]. Dalits make up 22% of prisoners, almost one in four. Their proportion in population is about 17% according to Census 2011. While adivasis make up 11% of prisoners, their share in the general population is 9%. Most experts say that this disturbing trend is not because these communities commit more crimes. Rather, it arises because mostly they are economically and socially under-privileged, unable to fight costly cases or often even pay for bail. Some say that these communities are also targeted with false cases to vent out prejudice against them.

4.2 General Condition

[18] Subodh Verma, *Muslims, dalits and tribals make up 53% of all prisoners in India*, TIMES OF INDIA, Nov 24, 2014

The condition of prisons is beyond imagination. Overcrowding, understaffing, lack of adequate medical care, physical mistreatment of prisoners resulting in custodial deaths, inadequate conditions for female and juvenile detainees, poor administration, long detention of those awaiting trial, and inadequate opportunities for prisoners to communicate with counsel, administrators, and family are some of the plaguing problems inside the jails. The intolerable conditions of prisons compound the misery of prisoners. Torture is widespread in prisons and police lock ups. Corruption is rampant. The absence of adequate medical and psychiatric services, contributes to the deplorable conditions. Individuals with severe mental illnesses, branded as “non-criminal lunatics,” are often imprisoned in a ruthless manner. With many mentally vulnerable prisoners left to suffer without support in a brutal environment, there is a high rate of suicides of prison inmates and police detainees. Overflowing with prisoners, with one waterless clogged toilet for every 100 inmates, where bad odour becomes a part of one's life and food is severely rationed-India's jails are less correctional centres and more of crime dens. In an environment where only the toughest survive, new inmates are forced to learn the ropes in no time. After a year in jail, an under trial for a petty theft gets as hardened as a convicted criminal. Also the poorer you are, the more you suffer.

4.3 Vices Inside

Underworld dons continue to operate from behind bars, thanks to mobile phones, money, connections and lax security arrangements. In March 2010, Patna trader Randhir Jaiswal was murdered when he refused to pay heed to the extortion demands of a jailed criminal. In Patna, almost every major crime is linked to the ganglords lodged in Beur jail. In February 2011, under trial Bablu Mishra, accused of selling spurious liquor, was beaten to death in Bihar's Nawada jail at the behest of the powerful liquor mafia, which feared that Mishra would spill the beans. Delhi's Tihar jail may boast of foolproof security but 2G scam accused Rajiv Agarwal, managed to smuggle in a BlackBerry phone. Four 'VIP' inmates at Bangalore central jail, serving life for murders, were found routinely going out for a meal as well as to broker land deals. The richer inmates even "hire" the poorer ones to do menial jobs, including cleaning and sweeping the cell, washing clothes and filling water.

Money can be a double-edged sword. It buys little luxuries but it also attracts extortion gangs. Notorious pimp Kamaljeet, charged under Maharashtra Control of Organised Crime Act (MCOCA), had his face slashed in Patiala House court in July 2006, and is believed to have coughed up Rs 10 lakh. According to jail authorities, Sanjeev Nanda, convicted in the BMW

hit-and-run case, faced extortion demands and had complained about it. Even the Jessica Lall case convicted Manu Sharma complained of extortion demands[19].

There is a dangerous trend of hate crime too inside the jails. A Pakistani prisoner Sanaullah Haq's death may have been one such case as it can be seen as fallout of Indian national Sarabjit Singh's death in Pakistan. Outside events have a direct bearing on the atmosphere inside the prison. Every time there is news of bomb blast or any terrorist activity somewhere, the terror convict becomes a punching bag. For inmates, beating a terror convict is considered an act of patriotism[20]. A total of 1,332 prisoners were reported dead in Indian jails due to natural and unnatural causes during 2011, according to NCRB data[21]. Out of these 1,244 were natural deaths, while 88 died due to unnatural causes. Tamil Nadu reported the highest number of unnatural deaths (15) followed by Haryana & Uttar Pradesh (7 each). Most of the unnatural deaths have occurred due to suicide (68) followed by murder by inmates (8)[22].

5. MOST RELEVANT PROBLEMS

5.1 Overcrowding

Congestion in jails, particularly among under trials has been a source of concern. . In Assam there were 7909 prisoners in accommodation meant for 4,930; Bihar- 38,407 as against 21,140; Madhya Pradesh-16,66 as against 12,388; Orissa-l0,222 as against 6,668; Maha-rashtra-19,786 as against 14,801; West Bengal-25,999 as against 20,237; Delhi 2,699 as against 1,273[23]. Speedy trials are frustrated by a heavy court workload, police inability to produce witnesses promptly and a recalcitrant defence lawyer who is bent upon seeking adjournments, even if such tactics harm his/her client. Fast track courts have helped to an extent, but have not made a measurable difference to the problem of pendency.

5.2 Corruption and extortion

[19] Bhavna Vij Aurora, *The Horror of Indian Jails,* INDIA TODAY, June 24, 2011

[20] Danish, *Yet another victim of India's rotten prison system,* FIRSTPOST, May 9, 2013

[21] Anil Goswami, *'Prison Statistics India'* NATIONAL CRIME RECORDS BUREAU, http://ncrb.gov.in

[22] *supra* note 21

[23] Rakesh Dubbudu, *Indian Prisons are Overcrowded & 2/3rd of the Inmates are Under Trials,* FACTLY, April 25, 2015

Extortion by prison staff, and its less aggressive corollary, guard corruption, is common in prisons around the world. Given the substantial power that guards exercised over inmates, these problems are predictable, but the low salaries that guards are generally paid severely aggravate them. Few examples have already been given above.

5.3 Unsatisfactory living conditions

Although several jail reforms outlined earlier have focused on issues like diet, clothing and cleanliness, unsatisfactory living conditions continue in many prisons around the country. A report of Economic and Political Weekly in 2010 stated, "Due to overcrowding, a number of prisoners have to spend the nights actually sitting up. The prisoners are invariably very poor people; but the food is so rotten that they find it revolting…..Quite often the prisoners are ordered to lap up the dal which overflows on to the floor. For vegetable the prisoners are fed with wild grass and roots.... A glass of water was found to have no less than one inch of mud at the bottom.... For 400 to 800 prisoners, there are just eight latrines. The prisoners therefore defecate at the drains. In winter, six of them have to huddle under one blanket."

5.4 Staff shortage and poor training

Prisons in India have a sanctioned strength of 49030 of prison staff at various ranks, of which, the present staff strength is around 40000[24]. With limited jail staff, the overcrowded barracks become difficult to manage and enforcing discipline is next to impossible.

5.5 Inequalities and Bias

"Though prisons are supposed to be levelling institutions in which the variables that affect the conditions of confinement are the criminal records of their inmates and their behaviour in prison, other factors too play an important part in many countries" cites a report by Human Rights Watch. It states that under the general system, special privileges are accorded to the minority of prisoners who come from the upper and middle classes irrespective of the crimes they have committed. A rigid class system exists in prisons.

5.6 Insufficient Reform Programmes

Prisons, though for a short or longer period are places of living for both accused as well as

[24] *supra* note 19

convicts. The reformative objective expects that it should also be a place of learning and earning. To provide physical, material and mental conditions of decent living to prisoners, it requires recreating almost a miniature world inside the prisons. This is difficult but not impossible. 'Art of Living' and 'Srijan Project' are the only most known and successful reform schemes for prisoners. Maximum prisons are without any such facility. Many prisons have vocational training activities, but these are often outdated. Hardly any of the prisons have well planned prison programmes providing structured daily activities, vocational training, pre-discharge guidance and post-prison monitoring. In India as governments across the ideological spectrum are non-liberal and society is unsympathetic to rights of the incarcerated. The result is lowest priority to the prison management.

5.7 Abuse of prisoners

Physical abuse of prisoners by guards is another chronic problem. Some countries continue to permit corporal punishment and the routine use of leg irons, fetters, shackles, and chains.

5.8 Healthcare

Prisons are obviously the best venues for diseases. A small study in the Central Jail at Hindalga in Belgaum district of Karnataka[25] where about 850 prisoners were evaluated revealed that anaemia (54.82%) was the most common illness among chronic morbidity followed by respiratory tract infections (21.75%) and diarrhoea (13%) for acute morbidity. Pulmonary TB and HIV contributed 2% and 1.5% respectively. Other morbidity included diabetes (3.6%), senile cataract (7%), pyoderma (12%) etc. The healthcare management is indeed very poor.

5.9 Long Story Short

While large-scale recruitment takes place to staff police ranks, there is no such exercise undertaken for jails. The staff is a minority in most jails. So the authorities largely let the inmates do what they want, to buy peace with them. The bribes make things smoother. The Government's indifference to the condition of jails defeats the basic purpose of crime control. Gang wars, ragging of new inmates and hate crimes- the saga of India's prisons are replete with stories of a charged atmosphere and ugly brawls which, at times, claims lives.

[25] Shaik Ali, *Prisons in India – An Overview*, 4 INDIAN JOURNAL OF APPLIED RESEARCH 12 (2014)

6. WORLDWIDE SCENARIO

There are roughly more than 10.1 million people formally imprisoned worldwide, according to the recent estimates by the International Centre for Prison Studies World. There are many others who are either in military detention facilities, held in some form of administrative detention, or detained by police and other security forces with little or no legal process.

In February, 2012 an open flame at the National Penitentiary in Comayagua in Honduras ignited a fire that swept through the crowded prison and killed more than 360 people[26]. In September, broadcast television networks in Georgia showed graphic video of prison guards beating, sodomizing, and verbally abusing inmates in Gldani Prison No. 8, sparking a national debate[27]. And nearly a month later, a massive gunfight broke out in Sri Lanka's crowded Welikada prison between inmates and police commandos, leaving at least 27 individuals dead and 43 injured[28]. The state of prisons in other parts of the world is definitely not much to boast about. The three most common issues are, 1) unsafe prison conditions, including overcrowding, poor sanitation, inadequate access to food or potable drinking water, and poor medical care, including inadequate services for people with disabilities; 2) mistreatment of prisoners by prison staff or other authorities; and 3) inadequate legal protections leading to prisoners' incarceration, as well as failure to respect the right to legal redress while in prison.

A majority of the world's prison systems do not function at the level of the United Nations' Standard Minimum Rules for the Treatment of Prisoners. In some countries, relevant international obligations and standards are deliberately disregarded.

In Eritrea, severe overcrowding in regular prisons resulted in people being held in irregular facilities, including unventilated shipping containers or crowded basements without ventilation or sanitation. It is estimated that Sri Lankan prison system routinely houses approximately three times its capacity. In Serbia, there are more than 11,000 prisoners in a system designed for 6,500 and poor sanitation is a problem in many facilities. Even in

[26] PRESS RELEASE, *Conclusions in ATF Team's investigation of fire at Comayagua Prison Facilty,* EMBASSY OF THE UNITED STATES, HONDURAS, http://honduras.usembassy.gov/pr-022112-eng.html (last updated on March 16, 2014)

[27] UNITED STATES, *Prison that beat president,* TIME, http://world.time.com/2012/10/02/inside-the-prison-that-beat-a-president-how-georgias-saakashvili-lost-his-election/ (last updated on Oct 2, 2013)

[28] ASIA, *Sri Lanka's Welikada prison clash leaves 27 dead,* BBC NEWS, http://www.bbc.co.uk/news/world-asia-20267735

countries in Western Europe with relatively greater resources such as Italy, Ireland, Belgium and France, prison overcrowding continues to be a problem. In Italy, for example, in 2012, 66,529 inmates were held in 206 prisons designed to hold 47,048 people[29]. The European Court of Human Rights has stated that overcrowded prisons violate the prohibition of torture and inhuman or degrading treatment under the European Convention on Human Rights.

The deliberate physical, psychological, and sexual mistreatment of inmates by prison officials is also a persistent and pervasive issue of concern. This problem needs strict action. In Iraq in 2012, a number of Vice President Tariq al-Hashemi's bodyguards were arrested and allegedly tortured by security officials to obtain forced confessions against the vice president. Similar reports emanated from Madagascar in 2011, where detainees were subjected to electric shocks and physical violence to extract confession and that too for political agendas. In North Korea, political detainees are routinely subjected to systematic physical and psychological mistreatment. According to numerous defector accounts and NGO reports, prisoners experience severe beatings, electric shock, public nakedness, confinement in small immobile cells, and the coercion of mothers to watch infanticide of their newborns. In Syria, activists cited hundreds of credible cases of security forces allegedly abusing and torturing prisoners and detainees[30].

Many domestic and international NGOs report common methods of torture and mistreatment included stress positions, beatings, broken fingers, electric shocks, suffocation, burning, removal of fingernails, suspension from the ceiling, overextending the spine, beatings on the soles of the feet with plastic and metal rods, forcing victims to drink large quantities of water then preventing urination, sexual assault, denial of medical treatment, and death threats. For instance in Pakistan, police sometimes torture and mistreat those in custody with methods that included beating with batons and whips, burning with cigarettes, whipping the soles of feet, prolonged isolation, electric shock, denial of food or sleep, hanging upside down, and forced spreading of the legs with bar fetters.

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[29] UNITED STATES BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *REPORT ON INTERNATIONAL PRISON CONDITIONS* (2014)

[30] ARCHIVE, '*Pre trial Detention and Torture: Why Pre trial Detainees Face the Greatest Risk'*, OPEN SOCIETY FOUNDATION, http://www.opensocietyfoundations.org/sites/default/files/pretrial-detention-and-torture-06222011.pdf (last updated on June, 2012)

Prisoners are often denied the minimum legal protections and legal process guarantees in the three phases of their detention or imprisonment: in the pre-trial phase; at trial; and in the post-conviction stage while they serve their sentences.

In America, for example, between 10-40 percent of the entire incarcerated population is behind bars without a conviction[31]. In Panama, the government regularly imprisons inmates for more than a year before a judge's pretrial hearing, and in some cases pretrial detention exceeds the minimum sentence for the alleged crime. In China, pretrial detention periods of a year or longer are common and police often deny detainees the ability to meet with defense counsel[32]. Detainees also experience a wide range of due process shortcomings during trial. In Cuba, for instance, despite the fact that the law presumes defendants to be innocent until proven guilty, authorities often place the burden on the defendant to prove innocence rather than on the prosecution to prove guilt. Politically motivated trials are often held in secret.

In Vietnam, the Communist Party of Vietnam (CPV) controls the courts at all levels and in many cases it determines verdicts. Political influence, endemic corruption, and inefficiency distort the judicial system and prison sentences. In Belarus, for instance, human rights advocates who are not members of state-controlled bar associations have no access to prisoners and detainees, and cannot provide them with legal advice[33].

7. THE COMMON CONCERN

Be it any country, these common prison problems are symptoms of the rotten system prevailing for ages now. It reflects the actual causes like overwhelmed and inefficient justice systems, untrained and corrupt law enforcement officials, or mismanaged and underpaid prison staffing, unsympathetic morality, hostile political ideologies and lack of funds and will. The international tribunals have enjoyed a number of successes in attempting to fulfill their mandate to try those accused of war crimes and prison crimes. Firstly, it is important not to take the existence of international criminal tribunals and international criminal law for granted. The existence and legitimacy of international criminal law as a body of law was doubted initially. The creation of these tribunals as a juridical response to mass atrocity is itself an achievement, and the broader impact of these tribunals both in a punitive sense and

[31] Josh Voorhees, *A City of Convicts*, SLATE, June 30, 2014

[32] *supra* note 30

[33] *supra* note 29

as a deterrent should not be underestimated[34]. The fact that modern international criminal law has been crafted from next to nothing in less than 20 years, is an extraordinary achievement. A significant number of trials have been held at the international criminal tribunals and, while far from perfect, they represent something of a credible system of criminal justice that responds to unspeakable crimes. The often referred-to 'road from Nuremberg to The Hague' was a difficult one but the international community values and appreciates such judicial initiative.

For crime trials to work, the accused must be tried fairly and expeditiously, account must be given of the role and rights of victims (individual and community) and the place of reconciliation must at least be considered in the process.

The Court is under pressure to investigate an enormous range of crimes and conflicts, develop technical assistance to states through a policy of positive complementarity, and develop an expeditious and efficient pretrial, trial and appeal model — an uphill task indeed.

The most pressing external problem facing the international tribunals has been a varying preparedness on the part of states to support them. For example, states have at times demonstrated a reluctance to arrest accused perpetrators. This can be explained in part by the unwillingness of even liberal states to endanger their own soldiers either by arresting war criminals. International criminal tribunals also face challenges partly of their own making, as their internal procedures have tended to frustrate the expedient running of the trial process. These impediments, such as a lack of prosecutorial restraint, preparedness on part of the courts, lack of case management provisions and trial inefficiencies continue to plague the system.

8. PRIVATE PRISONS – PROFIT PROPAGANDA OR PERCEPTIVE PROGRESS

The very mention of “prison” evokes images of chaos, violence and depravity in many of us. We tend to assume that prisons are not only uninviting places, but they are meant to be so because the objective of incarceration is to punish an offender rather than reform him. This is the traditional skewed thinking which induces even some responsible members of society to frown upon any change to make jails more liveable and therefore humane. Despite this, if a few prisons have, over the decades, become more orderly and their living conditions a little

[34] *supra* note 1

more tolerable, it is solely because of the enlightenment among a few policymakers and jail administrators across the globe.

Both the U.K. and the U.S. have had a long history of involving the private sector in the running of a whole prison or in managing services needed by prisons/inmates on a day-to-day basis. The first private prison in the U.K. was set up in 1992 in east Yorkshire. In the mid-1800s, penny-pinching state legislatures awarded contracts to private entrepreneurs to operate and manage Louisiana's first state prison, New York's Auburn, and others[35]. These institutions became models for entire sections of the nation where privatized prisons were the norm later in the century. These prisons were supposed to turn up profit for the state, or at least pay for themselves. Privatization is encroaching ever further on what had been state responsibilities and prison systems are the target of private interests. The shift to privatization coalesced in the mid-1980s when three trends converged: The ideological imperatives of the free market; the huge increase in the number of prisoners; and the steep increase in imprisonment costs. Prisons are now being contracted out to private parties by the government in order to alleviate the strain that is placed on the state prison systems. Punishment is not only a crucial and ever-larger state function, it is also big business. Private ownership and/or operation of prisons, while an increasingly significant part of the corrections system, represents only a fraction of the "prison-industrial complex." The cost of corrections-including state, local, and federal corrections budgets-ran to more than $20 billion a year in the early 1990s[36].

The two utmost important benefits of private prisons are **Cost cutting –** It is very apparent that if the government will transition this service to private sector, the possibility to cut the operational cost is high. They can save up to 50% of their expenses. The local government usually pays for the salary and benefits of public employees while private sectors pay almost the same amount of salary, however, with a lower compensation when it comes to health benefits, compensation claims or overtime claims. Basically, this is the most considered factor of the government when it comes to prison privatisation or hiring their services and **Better Quality of Care** - Since they operate in a free market economy, the competition that

[35] Phil Smith, *Private Prisons: Profits of Crime*, COVERT ACTION MEDIAFILTER, 1993

[36] Vicky Pelaez, *The Prison Industry in the United States: Big Business or a New Form of Slavery?*, GLOBAL RESEARCH, March 31, 2014

is present among private prisons provokes them to provide better quality care. Often this quality is given at a lower cost than government ran prisons could deliver. They can provide better living conditions for prisons, highly secured facility, and enforcement of effective security and on top of that, a much effective rehabilitation program for the prisons before they go back into community.

But the real picture is much murkier. The question whether private prisons function to their optimum level unfortunately would have to be answered in a tragic NO.

Private prisons are the biggest business in the prison industry complex. About 18 corporations guard 10,000 prisoners in 27 states. The two largest are Correctional Corporation of America (CCA) and Wackenhut, which together control 75%. Private prisons receive a guaranteed amount of money for each prisoner, independent of what it costs to maintain each one[37].

In a letter to 48 state governors in 2012, the largest for-profit private prison company in the US, Corrections Corporation of America (CCA), offered to buy up and operate public state prisons. In exchange, states would have to sign a 20-year contract guaranteeing a 90 percent occupancy rate throughout the term[38].

While no state accepted CCA's offer, a number of private prison companies have been inserting similar occupancy guarantee provisions into prison privatization contracts and requiring states to maintain high occupancy rates within their privately owned prisons. Three privately run prisons in Arizona have contracts that require 100 percent inmate occupancy, so the state is obligated to keep its prisons filled to capacity. Otherwise it has to pay the private company for any unused beds[39].

Profits are so good that now there is a new business: importing inmates with long sentences, meaning the worst criminals. When a federal judge ruled that overcrowding in Texas prisons was cruel and unusual punishment, the CCA signed contracts with sheriffs in poor counties to build and run new jails and share the profits. Private prisons are performing poorly. Low paid and inadequately trained guards make for-profit prisons dangerous for staff and prisoners alike. In a 2001 study, the National Council on Crime and Delinquency (NCCD) reported a

[37] *supra* note 35

[38] April M Short, *Shocking revelations about how private prisons make money,* ALTERNET, Sept. 23, 2013

[39] *supra* note 35

higher incidence of assaults on prisoners by guards at private prisons than in state and federal prisons.

Most Constitutions of the world prohibit cruel or unusual punishment of inmates. Increasingly, private prisons fail to meet even the minimal standard. One egregious example is the 'Bureau of Prison' contracts that require 10 percent of private prison beds to be set aside for solitary confinement. Because private prisons profit from keeping all beds full, this results in overuse and abuse of solitary confinement. A 2011 report by the American Civil Liberties Union on private prisons details horrifying cases of abuse, including instances where cells for juveniles that smelled of urine and faeces, insect infestations, racial segregation, punishment for speaking Spanish and refusal of medical and mental health treatment[40].

A new report from ITPI[41] revealed the inside industry disturbing dynamics and statistics; few of them are – 1. 'Occupancy guarantee clauses in private prison contracts range between 80% and 100%, with 90% as the most frequent occupancy guarantee requirement.', 2. 'Though crime has dropped by a third in the past decade, an occupancy requirement covering three for-profit prisons has forced taxpayers in Colorado to pay an additional $2 million' and 3. 'A 20-year deal to privately operate the Lake Erie Correctional Institution in Ohio includes a 90% quota, and has contributed to cutting corners on safety, including overcrowding, areas without secure doors and an increase in crime both inside the prison and in the surrounding community.'

Aside from practical issues of performance, there is the fundamental ethical question involved in handing out the repressive functions of the state to private interests: Should we, as a society, shift responsibility for the ultimate sanction by which we measure normative behaviour to those whose motive is profit. The deep rooted issue is conflict, and the ramifications are disturbing.

CCA's 2014 annual report warned shareholders that "relaxation of enforcement efforts, leniency in conviction or parole standards and sentencing practices" or changes in drug or immigration laws could adversely affect their profits. Unsurprisingly, the prison profiteers spend tens of millions of dollars on lobbying and on supporting the campaigns of "tough-on-

[40] *supra* note 36

[41] *supra* note 38

crime" candidates. Harsh sentencing laws fill prison beds, generating profit for corporations. The most vulnerable people — young, poor, immigrants and people of colour — make up a disproportionate number of those prisoners[42]. Ultimately, profit is the worst possible motive for running prisons, or for making laws that govern crime and punishment.

The proponents of private prisons have already started chipping in various such proposals in India. If any such thing happens without proper regulation, an atmosphere of despair will commence. The probability of corruption and exploitation will increase manifolds.

The most worrisome aspect of prison privatization is the inevitable emergence of a private "prison lobby" concerned not with social welfare but with increasing its dividends, not with 'doing good', but with 'doing well'. Sentencing guidelines, parole rules, corrections budgets, and new criminal legislation are areas in which private prison operators have a vested interest and could influence policy decisions. They could also benefit by manipulating public fear of crime. Unlike most other public policy arenas, criminal justice policy is largely determined not by the realities of crime but by its perception. That the fear of crime is exploited by politicians and "reality television" programming is a truism; but imagine a full-fledged corporate public relations campaign designed to whip up crime hysteria in order to increase profits. Such a whimsical and despotic situation has already begun and it is crucial to clean up the mess and put a stringent check on private prison system at the earliest.

9. THE ROAD AHEAD

Though the overall picture comes out to be very gloomy and pitiful, it is still not completely beyond redress. The international prison reform efforts by the UN and various nations are gradually making a mark and inspiring other countries to follow the same. The United Nations Office on Drugs and Crime (UNODC) is the primary international organization seeking to address the myriad global challenges associated with prisons. They are the custodians of the UN Standard Minimum Rules for the Treatment of Prisoners (SMRs)[43]. UNODC is of the view "that prison reform should not be regarded in isolation from broader

[42] Tanner Jean-Louis, *Privatized prisons indicate corrupt system*, THE DAILY WILDCAT, ARIZONA, June 16, 2015

[43] Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31st July 1957 and 2076 (LXII) of 13th May 1977

criminal justice reform" and carries out a large set of programs consistent with this perspective. It offers assistance in improving legal safeguards for prisoners; encouraging the introduction and widening of the scope of alternatives to pre-trial detention within domestic criminal codes; increasing the scope of alternatives to imprisonment, decriminalizing certain acts, and reducing sentences for selected offenses; and supporting the social reintegration needs of offenders and ex-offenders.

The National Assembly in Benin passed a new Criminal Procedure Code in March 2012 which aims to decrease pre trial detention, hasten judicial proceedings, reduce prison congestion, and protect prisoners' rights. In Cameroon, the government launched a prison modernization assessment, which resulted in the total renovation of 47 prisons.

In Mexico in 2012, the government inaugurated two new state-of-the-art federal facilities in Sonora and Guanajuato in an effort to address overcrowding. In 2011, the government of Panama opened a Penitentiary Training Academy to address human rights, prisoner's rights, and penitentiary law. The Japanese government initiated training for staff at all the juvenile centres after cases of abuse were reported. In Lebanon, inmates can practice their religion and receive visitors once or twice per week, with the frequency of visits dependent on the severity of the inmate's crime. Honduras and Zimbabwe too allow the prisoners to practice their religion freely and have relaxed the family visit norms.

Countries have also established procedures that permit prisoners to submit complaints to judicial authorities without censorship, investigate credible allegations of inhumane conditions, and document the results of such investigations in a publicly accessible manner.

In Belgium, for example, prisoners and detainees are able to submit complaints to judicial authorities and the government has established oversight committees. Magistrates and judges make prison visits, providing an avenue for prisoners to raise grievances in Kenya[44].

The problems faced by persons in prisons are expansive in both their nature and geography. They range from inadequately resourced detention facilities to intentional and calculated acts of mistreatment by repressive governments. The developed as well as developing nations face these problems alike. Yet the precise nature of the challenges is specific to each country.

The execution of Indian laws and regulations has failed to give enough importance to the accused as well as the victim. There is a serious dearth of appropriate provisions in the

[44] *supra* note 29

existing laws to cater to the needs of the victim. The present regulations fall short of providing adequate relief. India is still lagging behind while other nations have been constantly coming up with new laws or making required amendments in their existing statutes. In India the issue of justice to victims and prison reforms came to the forefront in real sense due to the recommendations of the Justice Malimath Committee on Criminal Justice Reforms in 2003 which triggered a lively debate between police officials, the judiciary, practicing lawyers, academics and civil society activists. The report of this esteemed committee is one of the most detailed and adept work on the reforms needed in the criminal justice arena.

10. POSSIBLE SOLUTIONS & SUGGESTIONS

The sad irony is that while the Constitution of India gives ample of protection to the accused, in reality he is in no better position than the victim who actually hasn't been given much place in the legal provisions.

Simply enumerating the recommendations of The Malimath Committee here would be superfluous but few other points are definitely worth pondering upon. Some of the victim oriented suggestions of the committee made it to the CrPC amendment bill such as; to allow the victim (or in the event of the victim's death, the nearest relative of the victim) to engage a lawyer in addition to the Public Prosecutor, to allow the victim to file an appeal against an acquittal of the accused or if he was convicted of a lesser offence[45], The most significant change has been the introduction of a victim's compensation scheme – that will enable trial courts to grant monetary remedies on a more consistent basis[46]. But there are few important and practical issues that need to be solved first in this regard like – 1. Criminal law provisions need to be examined in a fresh light so as to accommodate the concept of punishment together with compensation. A majority of the present remedies such as fines, penalties and imprisonment are not proportionate to the degree of harm suffered by the victim. 2. There is no statutory basis for payment of compensation to victims abused by the state such as custodial death, arbitrary arrest, fake encounter etc. 3. No accurate basis for assessing the harm or injury suffered especially in case of mental trauma and harassment; this is indeed very difficult but as far as possible a uniform method must be evolved. 4. The obvious

[45] Proposed change in Section 372 of the Code of Criminal Procedure (CrPC)

[46] Proposed change in Section 357 of the Code of Criminal Procedure (CrPC)

question about the source of funds for granting compensation to the victims. Needless to say that compensation would definitely have economic repercussions on the state in cases where the accused himself is incompetent or not caught for e.g. in terrorist attacks, negligence etc.

A major reason behind overcrowding in prisons and excess criminal cases pending before our courts is that many routine and regulatory offences are involved such as traffic violations, dishonour of cheques, failure to pay maintenance, nuisance etc. The criminal laws must differentiate between the nature of the acts and the subsequent degree of harm while deciding on the appropriate course of action to be undertaken by the criminal law machinery. A re-classification of offences on the basis of the gravity of the offences, appropriate procedures for investigation and dispute-resolution as well as the proportionate nature and quantum of fines and punishments was aptly done by the Malimath Committee.

The proposed categories are those of a Social Welfare Offences Code, a Correctional Offences Code, the Penal Code and the Economic Offences Code. Such a re-classification is important since a 'one-size-fits-all' approach does not work and we need to adopt innovative procedures which will be responsive to social realities rather than legal niceties. The concept of 'compoundable' offences corresponds to the idea of arriving at a settlement without trial. Furthermore, with the introduction of 'plea-bargaining' in our system, there is a possibility for the accused to admit to his or her guilt in return for a lower penalty. This method will prevent the delays associated with the presentation and contestation of evidence in the usual trial procedure.

Coming back to the main theme of this paper, regarding the pathetic and pitiable condition of prisons, some possible reforms and suggestions must be taken into consideration.

10.1 Overcrowding

1. To reduce overcrowding, provisions in the statutes (in terms of parole, bail, furlough, short leave and appeal petitions etc) should be exercised liberally by the concerned officers.
2. A jail committee may be constituted, having representatives from the inmates, to assist the jail authorities in the cases of paroles, reporting the conduct of fellow prisoners.
3. Financial status of the prisoners should not go against them. Legal assistance to prisoners must be provided– particularly for those who are not in a position to bear the cost.

10.2 Skill Enhancement

1. The educational programmes could be upgraded for both male and female prisoners. student prisoners may be encouraged to continue their studies and to take the examinations.
2. The inmates should be placed under an intensive 'After Care'. This process could offer them adequate vocational opportunities to overcome their inhibitions and start afresh.

10.3 Management & Regulation

None of the ideas would work unless the authorities wake up from their slumber and take initiative. Lakhs of lives are in their hands for a considerable amount of time. It is their moral as well as occupational responsibility to take proper care as per the laws laid down by the state. Corruption, prejudice, and non-accountability among those in power are sabotaging the system.

1. Every jail must have an effective and responsive grievance redressal system.
2. Process of Modernisation of Prisons should be given the highest priority. Violence must be avoided at any cost. There should be no scope of bullying and abuse.
3. Sanctioned posts (officers and medical staff) in the prisons should be filled-up timely.
4. The Jail Manuals should be reviewed on a periodical basis to confront the new challenges.
5. As cautioned earlier, if public-private partnerships are to be adopted, it must be done with utmost vigilance and attention.
6. Creation of a National Cadre of jail service and training/refresher courses for the prison officers on may be started.
7. Arrests under NDPS, Section 498-A, and preventive detention should be exercised by the police with restraint and with right intent, to reduce further pressure on already crowded prisons.
8. Scientific classification of prisoners may be done in terms of age, type of crime committed and health, for better handling of prisoners and improved prison management.
9. The existing Prison Act, 1894 which is more than a century old, needs to be thoroughly revised and even re-stated in view of the changed socio-economic and political conditions of India over the years. Many provisions of this Act have become obsolete and redundant.
10. The existing rules & restrictions and excess scrutiny of postal mail and visitation of inmates may be liberalised. This shall infuse trust and faith among inmates for the prison officials.

11. There is a dire need to bring about a change in the public attitude towards the prison institutions and their management. This is possible through an intensive publicity programmes using the media of press, platform and propaganda
12. The Apex Court in **State of Gujarat & another v. Hon'ble High Court of Gujarat**[47] observed, "Reformation and rehabilitation is basic policy of criminal law hence compulsory manual labour from the prisoner is protected under Article 23 of the Constitution. Minimum wages must be paid to prisoners for their labour."

10.4 Women & Children

1. Women Prisoners should be escorted by women staff only.
2. The Guidelines of the Supreme Court for the children of women prisoners mentioned in the case of **RP Upadhyay vs. State of AP and Ors**[48] should be followed strictly.
3. The women prisoners should be treated more generously and be allowed to meet their children frequently. This will keep them mentally fit and respond favourably to the treatment methods. A liberal correctional and educational programme seems necessary in case of women delinquents. Their children should not be denied any rights or devoid of basic needs.

10.5 Health and Sanitation

1. There should be medical examination of the prisoners at the time of their entry to the jail in the prescribed format and thereafter, a regular check up may be undertaken by the jail authorities. The records of the prisoners may be maintained properly.
2. Better sanitation facilities, hygiene and potable drinking water should be provided in all the prisons. The prison conditions should be made more humane for the handicapped, the aged and mentally ill prisoners.
3. Better food, rooms and clothing should be provided. Mechanical cleaning, treatment and maintenance of sewage plants and septic tanks must be done.

11. CONCLUSION

The degree of civilization in a society can be judged by entering its prisons.

-Fyodor Dostoyevsky

[47] AIR 1998SC 3164

[48] Writ Petition (Civil) No.133 of 2002

The cause of social change is the psychology of man himself. Man is by nature a lover of change. The causes of social change are diverse, and the processes of change can be identified as either short-term trends or long-term developments. The mechanisms of social change can be varied and interconnected. A drastic and positive change is immediately required in the Criminal justice and prison system. The object of Criminal Law is not just to protect the society from crime and criminals but also to reform the wrongdoers. Indeed, It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed as held in **Sevaka Permual v. State of Tamil Nadu**[49]. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process will be stern where it should be. But let us not forget that tormenting the criminals won't eradicate the crime. They belong from that very society which we are part of and by becoming a prisoner they don't cease to be a person.

Prisons should offer conditions that are compatible with human dignity and conducive to social mainstreaming and a person in custody in a civilized society should be treated like any other human being outside the prison. Of course no luxuries are to be provided but the inhuman treatment meted out to most prisoners worldwide is not acceptable. In the present day, punitive methods of treatment of prisoners along are neither relevant nor desirable to achieve the goal of reformation and rehabilitation of prison inmates. No doubt few extreme and adamantine criminals do not deserve another chance but the concepts of correction, reformation and rehabilitation should come to the foreground and the prison administration must function in a curative and correctional manner. Human Rights legislations and more awareness will hopefully facilitate a change in the correctional system of the country which in turn will help in safeguarding prisoners' rights. A lot needs to be done, thankfully the task is underway but a long road lies ahead. Prisoners must be assisted to improve themselves—not by admonition to follow moral precepts, but by being instilled with the authentic inner desire to change. People are not permanently criminal and it is possible to restore a criminal to a useful life, a life in which they contribute to themselves and to the society.

'Hate the sin, not the sinner' – Mahatma Gandhi

[49] AIR 1991 SC 1463