

Access to Justice for Undertrial Prisoners: Problems and Solutions

-By R. Sreekumar¹

There are altogether too many prisoners waiting trial in Indian prisons. As per the latest comprehensive statistics² available on prisons in India, there are 1,93,627 undertrial prisoners as against 63,975 convicts constituting 71.2% of the total prison population in India. The range varies from a low of 12.1% in Tamil Nadu to a maximum of 98.7% in Dadra and Nagar Haveli.

The Constitution of India, the Universal Declaration of Human Rights and the Standard Minimum Rules for Treatment of Prisoners clearly specify the standards of treatment with prisoners on trial. But realities in jails transmit an entirely different tune. Let us briefly examine the realities inside any prison.

- **A. Prison violence** -

Prisons are often dangerous places for those they hold. Group violence is also endemic and riots are common. In Sao Paulo, Brazil, on 2nd October 1992, atleast 111 people were killed and 35 wounded by military police who were called in the House of Detention after a scuffle broke out between two gangs of prisoners allegedly over payment for marijuana. In a three day riot and standoff in the Chappra District prison in Bihar towards the end of March 2002 6 prisoners died in the shootout that occurred when commandos of the Bihar Military Police were called in to quell the riots. Meek and first time offenders are tortured and made to do all the menial tasks. Failure to comply sees them sleeping in front of smelly and overflowing toilets in the night.

- **B. Criminalizing effect of a prison** -

With hardened criminals being around and in the absence of scientific classification methods to separate them from others, contamination of first time, circumstantial and young offenders into full-fledged criminals occurs very frequently. It is an oft given quote that Prisons are Universities of Crime where people go in as under-graduates and come out with Ph.Ds. in crime.

- **C. Homosexual abuse** -

Prisons are institutions that lodge people of same sex. Being removed from their natural partners, forces the prisoners to look for alternative ways to satisfy their sexual urge. This often finds vent in homosexual abuses where the young and feeble are targeted. Resistance from the side of prisoners leads to aggravated violence on them. At times, prisoners are

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² *Types of Inmates in Prison Statistics 2000*, National Crime Records Bureau, Ministry of Home Affairs, Government of India at page 21. Referred to hereafter as *Prison Statistics 2000*. **P.S.** Figures for the year 2000 are not inclusive of data from the three newly carved states of Chhattisgarh, Jharkhand and Uttaranchal.

subjected to massive homosexual gang-rapes. Apart from causing severe physical injuries like the rupture of anus and spreading sexually transmitted diseases including HIV/ AIDS, it also induces severe trauma in prisoners forcing some of them to commit suicide. If they do not, they carry a lot of anger and frustration in themselves which they take out on the next innocent prisoner who gets admitted. Recently the Human Rights Watch, America has come out with a report titled – *No Escape: Male Rape in U.S. Prisons* that documents the prevalence and the traumatic effect of this menace on its victims in the prisons of the United States of America.

- D. Health problems -

Most of the prisons face problems of overcrowding and shortage of adequate space to lodge prisoners in safe and healthy conditions. Most of the prisoners found in prisons come from socio-economically disadvantaged sections of the society where disease, malnutrition and absence of medical services are prevalent. When such people are cramped in with each other in unhealthy conditions, infectious and communicable diseases spread easily. A sample study conducted by the National Human Rights Commission of India in early 1998 revealed that **76% of deaths in Indian prisons were due to the scourge of Tuberculosis.**

- E. Mentally ill prisoners -

Though miniscule, mentally ill prisoners constitute another percentage of population, which is largely ignored and forgotten by both the outside world and those inside.³ But given the nature of the illness and prevailing social attitudes, they form the most hapless victims of human rights violations.

The most infamous case in India is that of Ajoy Ghose who spent 37 years in prison, till November 1999. He was arrested for murdering his brother in 1962. Subsequently he was certified as insane and after his mother's death in 1968, nobody came to visit him. Everybody simply forgot him. While he was in prison, the trial judge and all the witnesses died. His life was the ultimate vicious circle. He could not be acquitted unless tried. Since he was legally a lunatic, he could not be tried! In November 1999, some group brought him to the notice of the Supreme Court and it took the Chief Justice of India to transfer him from the Presidency jail of Calcutta to the Missionaries of Charity home. Mr. Ghosh's life is the ultimate sacrifice to the Indian Justice system. Too many people fall into this coil without recourse or ability to get out.

Even for a normal person, prolonged incarceration might lead to a mental breakdown, the atmosphere being such. Many, on the verge of such collapse, do attempt suicide. Sir Alexander Patterson while giving evidence before the Select Committee in 1930 {quoted at page 229 of the Royal Commission on Capital Punishment [1949 – 53]} stated – "...I gravely doubt whether an average man can serve more than ten continuous years in prison without deterioration."⁴

³ Mentally ill prisoners constituted 0.1% of the total prison population for the year ending in 2000. Source: *Prison Statistics 2000* at page 21.

⁴ Quoted in *Preface of Report of the All India Committee on Jail Reforms* Vol. I [1980-83], Ministry of Home Affairs, Government of India at page vi. This reported shall hereafter be referred to as the Mulla Committee report after the name of its Chairperson – Mr. Justice A.N. Mulla.

- F. Drug abuse -

After Murder, Attempt to murder and other serious anti-personal offences, people booked under anti-drug laws constitute a substantial percentage of the prison population.⁵ Being in prison and cut off from the free world, sees and increased desperation to get the banned substances to satisfy their addiction to drugs. This also increases the danger of fresh prisoners being inducted into drug abuse since 'prison is an environment where there is a captive, bored, largely depressed population eager for some release from the grim everyday reality.'⁶

- H. Effect on the families of prisoners -

Those imprisoned are unable to look after their families. In the absence of the main breadwinner, the family is many a times forced into destitution with children going astray. This combined with the social stigmatization and ostracization that they face, leads to circumstances propelling children towards delinquency and exploitation by others. It is an inexorable circle. The problems become acute when they belong to the socio-economically marginalized and exploited sections of the society. The dominant class does not fail and loose time in taking advantage of this situation to exploit the remaining family members to the fullest possible extent. This can take the form of rape or forced prostitution of the prisoner's wife and/ or his daughters. It is easy to imagine what are we then leading to from here onwards.

Specific problems faced by Undertrial prisoners and their reasons -

- Their Right to Speedy Trial as recognised by the Supreme Court in *Hussainara Khatoon [I] vs. Home Secretary, Bihar*⁷ is violated due to protracted delays. This delay is due to all kinds of reasons such as -
 - Systemic delays.
 - Grossly inadequate number of judges⁸ and prosecutors.
 - Absence or belated service of summons on witnesses.
 - Presiding judges proceeding on leave.
 - Remands being extended mechanically due to lack of time and patience with the presiding judge.
 - Inadequacy of police personnel and vehicles which prevents the production of all prisoners on their due dates.
 - Many a times, the escorting police personnel merely produces the remand papers in the courts instead of actually producing the prisoner in front of the magistrate. This practice is widely reported, notwithstanding the strict requirement of the law in Section 167[2][b] of the Criminal Procedure Code, 1973 [CrPC] which says that - 'No

⁵ In the year 2000, 24.9 and 15.3% convicts and undertrials constituted that segment of the prison population that was in under the Narcotic Drugs and Psychotropic Substances Act, 1985. Source: *Distribution of Convicts and Undertrials under various Crime heads in Prison Statistics 2000* at pages 23 - 24.

⁶ Vivien Stern, *A Sin Against the Future*, [1995] Penguin, London at page 122.

⁷ (1980) 1 SCC 81.

⁸ The Judge to population ratio in India is one of the lowest in the world.

Magistrate shall authorize detention in any custody under this section unless the accused is produced before him.’

The following table highlights the period of detention for the year 2000⁹ -

Period of Detention	Number of Undertrials	Percentage of the total undertrial population
Upto 3 months	78,316	40.4
Upto 6 months	43,799	22.6
Upto 1 year	34,419	17.8
Upto 2 years	22,488	11.6
Upto 3 years	9,629	5.0
Upto 5 years	4152	2.1
Above 5 years	824	0.4

Even though the figures say that there are just 824 prisoners awaiting their trial for more than 5 years, it is not reason for carelessness and apathy. Let us not quickly forget that Ajoy Ghose was one of them.

- Right to bail is denied even in genuine cases. Even in cases where the prisoner was charged with bailable offence, they are found to rot in prisons due to exorbitantly high bail amount. The spirit of the Supreme Court in *Moti Ram & others vs. State of Madhya Pradesh*¹⁰ is violated constantly. The Law Commission analysed this in detail in its 77th report on congestion of undertrials in prisons.
- Some of the judges even at the High Court level are not following the guidelines laid down by the Supreme Court on bail and grant of the same is dependent upon the attitude of each judge. Standards cannot become prisoners of the whims and fancies of individuals. Authority is to be exercised with responsibility.
- Large number of persons including women and children are detained under Section 109 of the CrPC for failure to furnish requisite security for keeping good behaviour. The police usually pick them up “because the number of cases had to be brought up to the specified figure”.¹¹ The authorities refuse to release them without bail whereas the standing law on Section 110 says that you cannot ask for bail from such persons, only the history ticket is required.
- Even today, the order of Dr. A.S. Anand - former Chief Justice of India on holding **Special Courts in Jails** for prisoners involved in petty offences and willing to confess to their guilt is not being implemented at least in Madhya Pradesh. If implemented by the High Courts and followed judiciously, it can bring lot of succour.
- In the absence of a system, that takes a proactive role in providing legal services to prisoners their Right to effective Legal Aid is also violated.

⁹ *Period of Detention of Undertrials in Prison Statistics 2000* at page 28.

¹⁰ AIR 1978 SC 1594.

¹¹ This was mentioned by no less than one of the most respected stalwarts of the Indian Police - Mr. K.F. Rustomji. Source: *The Undertrials of India*, Tour Note No. 15 by Shri K.F. Rustomji - Member, National Police Commission.

Solutions –

We need not look far. All that needs to be done is to compile the recommendations and suggestions given by the various expert groups and institutions¹² and start implementing them. Following are some of the major recommendations given till date –

- Undertrial prisoners should be lodged in separate institutions away from convicted prisoners. There should be proper and scientific classification even among undertrial prisoners to ensure that contamination of first time and petty offenders into full fledged and hardened criminals does not take place.
- Under no circumstance should they be put under the charge of convicted prisoners.
- Institutions meant for lodging undertrial prisoners should be as close to the courts as possible.
- Provisions of Section 167 of the CrPC with regard to the time limit for police investigation in case of accused undertrial prisoners, should be strictly followed both by the police and the courts.
- Automatic extension of remands has to stop which are also given merely for the sake of the convenience of the authorities. Mere convenience of the authorities cannot supersede the Constitutional guarantees under Article 21.
- All undertrial prisoners should be effectively produced before the presiding magistrates on the dates of hearing.
- The possibility of producing prisoners at various stages of investigation and trial, in shifts should be explored.
- Video conferencing between jails and courts should be encouraged and tried in all states beginning with the big Central jails and then expanding to District and Sub jails.¹³
- A District level Review Committee consisting of the following should be constituted to review the cases of undertrial prisoners –
 - District Judge [who is also the ex-officio chairperson of the District Legal Services Authority] – Chairman
 - District Magistrate – Member
 - District Superintendent of Police – Member
 - Public Prosecutor – Member
 - Prison Superintendent – Member Secretary

It should be statutory committee and should visit all Central and District prisons in the district at least once a month and meet every undertrial prisoner present on the day. It should, thereafter, hold a meeting to review the cases of all undertrial prisoners in the prisons under its jurisdiction and see that no such prisoner is un-necessarily detained in

¹² These include the Mulla Committee in its Chapter on *Undertrial and other Unconvicted Prisoners* at page 170; Law Commission of India inter alia through its 77th [Delay and Arrears in Trial Courts], 78th [Congestion of Undertrial prisoners in jails] 120th [Manpower Planning in Judiciary – A Blueprint] and 154th [The Code of Criminal Procedure Volumes I & II] reports; National Human Rights Commission of India through its Annual Reports for the years 1996 – 1997 and 1998 – 1999 and the Supreme Court through its judgement in *Hussainara Khatoon vs. Home Secretary, Bihar* series, other important cases and its latest judgement titled *P. Ramachandra Rao vs. State of Karnataka* (2002) 4 SCC 578.

¹³ Please see Annexure – IA for details.

the prison. Alternatively, prison superintendents/ jailors in-charge of the prison should send an updated list of all such prisoners to the committee on a regular basis.

Such committees are apparently doing very good work in Tamil Nadu. Source: Mr. Chaman Lal, Special Rapporteur – National Human Rights Commission, New Delhi.

- A State level Review Committee should also be constituted with the following composition –
 - A Judge of the High Court [who may also be the Chairman of the State- Chairman Legal Services Authority]
 - Home Secretary/ Secretary dealing with prisons in the Secretariat – Member
 - Inspector General of Police – Member
 - Director of Prosecution – Member
 - Inspector General of Prisons – Member Secretary

This should also be a statutory committee and should meet at least once every three months to review the position of undertrial prisoners in the State as a whole. It should also sort out problems of coordination among the various departments resulting in delay in trials.
- The District Magistrate should constitute a committee consisting of representatives from the local police, judiciary, prosecution, district administration and the prison department at a fairly high level, to visit the Sub jails under their jurisdiction atleast once every month and review delay in cases of prisoners if any and adopt suitable measures.
- Preventive sections of the CrPC, especially Section 109, should be reviewed and amended suitably to restrict their use only in very genuine cases. The cases of prisoners being tried under Section 109 should be heard with due promptness and concluded within 5 months.
- Police functions should be separated into investigation and law and order duties and sufficient strength be provided to complete investigations on time and avoid inordinate delays.
- The criminal courts should exercise their available powers under Sections 309, 311 and 258 of the CrPC to effectuate the right to speedy trial. In appropriate cases jurisdiction of the High Court under Section 482 of the CrPC and Articles 226 and 227 of the Constitution of India can be invoked seeking appropriate relief or suitable directions to deal with and prevent delay in cases.
- With undertrial prisoners, adjournments should not be granted unless absolutely necessary.
- Utilise the existing provision in CrPC for **Honorary Judicial Magistrates** and use it imaginatively. Request experienced criminal lawyers to work as part-time judges on a particular stipulated number of days on the pattern of ‘Recorders’ and ‘Assistant Recorders’ in the United Kingdom. This should be in synchronization with the scheme of **Fast Track Courts** that are running for some time now.¹⁴

¹⁴ Please see Annexure – IB for details.

- Order of Dr. A.S. Anand – former Chief Justice of India on holding **Special Courts in Jails** for prisoners involved in petty offences and willing to confess, should be actively taken up by the High Courts and implemented in all districts.¹⁵
- There should be a progressive and massive **Decriminalization of offences** so that many of the wrongs, which are now given the status of crimes, are dealt with as compoundable tortuous wrongs remediable with a claim for compensation.
- The class of **Compoundable offences** under the IPC and other laws should be widened.
- **Alternatives to imprisonment** should be tried out and incorporated in the IPC.¹⁶
- Remand orders should be self-limiting and indicate the date on which the undertrial prisoners would be automatically entitled to apply for bail.
- Computerise the handling of criminal cases and with the help of the National Informatics Centre, develop programmes that would help in managing pendency and delay of different types of cases. The High Courts should take an active interest in helping subordinate courts to speed up cases.
- There should be an immediate increase in the number of judges and magistrates in some reasonable proportion to the general population. It should be atleast 107 judges per million of the Indian population.

Bail –

- Certain offences under the IPC, which are at present non-bailable, should be made bailable and the CrPC should be amended accordingly.
- Offences under other laws punishable with 3 years imprisonment should be made bailable with due exceptions, where necessitated.
- Amount of bail should not be unreasonably high and arbitrary.
- The CrPC should be amended and the responsibility of proving that releasing a person on bail might endanger the security of the society, should be put on the prosecution. It should no longer be left to the whims, fancies, impressions, biases, prejudices and discretion of the concerned authorities. Let there be more concreteness and objectivity in its application to give effect to the Objectives of the law on Bail. Otherwise, scrape all the provisions on bail.
- Accused persons having a settled social life and permanent abode should be released on personal recognizance. They may further be placed under the supervision of probation officers, or Gram Panchayats or NGOs recognised by the government for this purpose.
- Magistrates, prosecutors and police personnel should receive training in bail jurisprudence to sensitise them to differentiate between cases where releasing a person on bail is not safe and where preference should be given to release certain types of people on bail.

Provision of legal services –

- Recruit, train and post committed law officers to all jails, in numbers proportionate to the prison population.

¹⁵ Please see Annexure – IC for details.

¹⁶ Please see Annexure – ID for details.

- There should be no restriction on the number of interviews sought by undertrial prisoners for the sake of legal assistance.

We cannot conclude here and assume that if all the recommendations are put into practice, then we shall be successful in enabling undertrial prisoners to access justice. Unfortunately there lies our ignorance. The Committee set up by the Home Office of the British government to review the sentencing framework for England and Wales in its report titled – **Making Punishments Work**, notes that –

“An overview of the present framework reveals limitations and problems. The most compelling of these are the unclear and unpredictable approach to persistent offenders, who commit a disproportionate amount of crime, and the inability of short prison sentences (those of less than 12 months) to make any meaningful intervention in the criminal careers of many of those who receive them. The gradual erosion of the approach set out in the Criminal Justice Act 1991, with its emphasis on linking punishment to the seriousness of the offences under sentence, and the resulting muddle, complexity, and lack of clear purpose or philosophy, are further grounds for reform.”¹⁷

Here I would like to bring to the notice of this learned and serious gathering the opportunity for discussing and accepting a pragmatic proposal. I submit from my own personal experience and that of experts from world over that our perception of justice has to necessarily move from retributive and deterrent to **Restorative**. In the given constraints, I shall limit its scope in the present paper and briefly introduce the topic in the following terms.

At the abstract level, “restorative justice is fundamentally concerned with restoring relationships, with establishing or re-establishing social equality in relationships.”¹⁸ At a more concrete level, restorative justice “involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance.”¹⁹

¹⁷ *Executive Summary* in *Making Punishments Work. Report of a Review of the Sentencing Framework For England and Wales* [July 2001] Home Office, Britain, at page ii.

¹⁸ J.J. Llewellyn and R. Howse, *Restorative Justice – A Conceptual Framework* (Ottawa: Law Commission of Canada, 1998) Quoted in May Leung, *The Origins of Restorative Justice*, at page 2, downloaded from the website of the Canadian Forum for Civil Justice, Faculty of Law, University of Alberta, Canada.[<http://www.law.ualberta.ca/centers/civilj/fulltext/leung.htm>]. Hereafter referred to as May Leung, *The Origins of Restorative Justice*.

¹⁹ Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* Herald Press, Waterloo, Ontario, Canada at page 181. Hereafter referred to as Howard Zehr, *Changing Lenses*. Quoted in May Leung, *The Origins of Restorative Justice*, at page 2.

The most basic principles of restorative justice are –

1. Holding the wrongdoer directly accountable for the individual victim and the specific community affected by the wrong act;
2. Requiring the wrongdoer to take direct responsibility for making "things whole again" to the degree that this is possible;
3. Providing the victim(s) purposeful access to the courts and correctional processes, which allows them to assist in shaping the wrongdoers' obligations; and
4. Encouraging the community to become directly involved in supporting victims, holding wrongdoers accountable, and providing opportunities for wrongdoers to reintegrate into the community.²⁰

It scores over the retributive and deterrent forms in many ways. May Leung has summarized the comparisons made by Howard Zehr of looking at justice through the Retributive and Restorative lenses in the form of the table reproduced below.²¹ The comparisons are as follows –

Retributive Lens	Restorative Lens
Blame-fixing central	Problem-solving central
Focus on past	Focus on future
Needs secondary	Needs primary
Battle model; adversarial	Dialogue normative
Emphasizes differences	Searches for commonalties
Imposition of pain considered normative	Restoration and reparation considered normative
One social injury added to another	Emphasis on repair of social injuries
Harm by offender balanced by harm to offender	Harm by offender balanced by making right
Focus on offender; victim ignored	Victims' needs central
Victims lack information	Victim and offender are key elements
Restitution rare	Restitution normal
Victim's "truth" secondary	Victim's suffering lamented and acknowledged
Action from state to offender; offender passive	Offender given role in solution

²⁰ May Leung, *The Origins of Restorative Justice*, at page 2.

²¹ May Leung, *The Origins of Restorative Justice*, at pages 4 – 6.

State monopoly on response to wrongdoing	Victim, offender, and community roles recognized
Offender has no responsibility for resolution	Offender has responsibility in resolution
Outcomes discourage offender responsibility	Responsible behaviour encouraged
Rituals of personal denunciation and exclusion	Rituals of lament and reordering
Offender denounced	Harmful act denounced
Offender's ties to community weakened	Offender's integration into community increased
Offender seen in fragments, offence being definitional	Offender viewed holistically
Sense of balance through retribution	Sense of balance through restitution
Balance righted by lowering offender	Balance righted by raising both victim and offender
Justice tested by intent and process	Justice tested by its "fruits"
Justice as right rules	Justice as right relationships
Victim-offender relationships ignored	Victim-offender relationships central
Process alienates	Process aims at reconciliation
Response based on offender's past behaviour	Response based on consequences of offender's behaviour
Repentance and forgiveness discouraged	Repentance and forgiveness encouraged
Proxy professions are the key actors	Victim and offender central; professional help available
Competitive, individualistic values encouraged	Mutuality and cooperation encouraged
Ignores social, economic, and moral context of behaviour	Total context relevant
Assumes win-lose outcomes	Makes possible win-win outcomes

In the end I would like to conclude this paper with the following submissions –

Firstly, lack of simple improvements and refusal to reform a diseased system is indicative of lack of political will, vested interest in retaining an essentially damaging and corrupt system; disrespect for human dignity and for the law laid down. Reform is an indication of the State's commitment to upholding the given right of each person in the nation. It is a measure of the willingness of the state to abide by the principles of its own constitution, laws and the rule of law.

Secondly, the State may have its financial constraints and its priorities in expenditure, but as the Supreme Court held in *P. Ramachandra Rao vs. State of Karnataka*, “the law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty’ or administrative inability.” As Gandhiji and Pandit Nehru had said in the context of prison reforms which stands true here also, it must not be thought that these changes will involve extra expenditure and require a different type of men to work the new system. Additional expense at this stage will mean economy in the long run.

Let us know that “Wherever combined determination is based on innate goodness... anything is possible.”²²

Thirdly, there is abhorrence in the general circles of the society at the mere mention of prisoners. For many, they are to be avoided like plague and hence a callous and unbothered approach is fine and delay in trial or violation of other rights does not amount to anything much. Anybody and everybody in prison are there because they have committed some heinous offence and hence deserve to be punished severely. General members of the society do not have any responsibility for prisoners. This attitude on part of all concerned also adds to injustice for undertrial prisoners.

What is not realised is the universal fact that all of us are potential criminals. We too have committed many immoral or illegal acts. The differences between them and us are that –

- In their case, the potential crossed the threshold of thought into action.
- Some of us have managed to evade the law all this while or ensure that no one ever got to know about our immoral and illegal acts. That does not give us any moral superiority over those who have been caught or have been illegally framed.

Let us remember that ‘Every Saint had a Past and every Sinner has a Future.’

Lastly, even from a civil liberties perspective, it is important for us to be responsible and take action since anyone of us can be in a prison tomorrow even for absolutely no fault of ours, like the way it happened during the Internal Emergency imposed between 1975 – 1977.

May All Beings Be Happy.

²² Kiran Bedi, *It's Always Possible – Transforming One of the Largest Prisons in the World* [1998] Sterling, New Delhi at page 390.

Annexure - I

A - Video Linkage between prisons and courts for undertrial prisoners

One of the major problems faced by undertrial prisoners – is the never-ending delay in the commencement and conclusion of their trial. There are many reasons for this. The courts and the jails are overburdened with cases and prisoners, respectively. For example, on an average, a Metropolitan Magistrate in Delhi has to deal with about 70 cases in a day and the jail staff in Tihar jail sends nearly 1200 prisoners to the different courts in Delhi. Due to a shortage in the number of escort vehicles and police personnel all over the country many prisoners are not produced in their respective courts either on time or on their due date.

But advancement in the field of communication technology is being effectively put into use to overcome the above mentioned problems. Through the **Integrated Services Digital Network [ISDN]** technology, Courts and prisons can now be connected through video linkage. All that needs to be done is to put a video camera and a television set in a separate room in the prison complex where, all the prisoners who have to be produced in a particular court on that particular date, are assembled. Simultaneously, another video set is put up in the chamber of the presiding magistrate. At the appointed time, the magistrate enters his chamber and the prisoners are produced before the video camera, one by one. If the matter is concerning a simple extension of the remand of the prisoner, this is done instantly and the next date for production is assigned. For this simple act, the prisoner need not be transported all the way upto the courts, nor mobilize all the financial and manpower resources. At the same time, the magistrate and the prisoner can talk to each other, face to face and the magistrate can personally enquire whether the person has filed his bail application or not, find out his period of stay in the jail, details of the crime he is alleged to have committed and other personal details. Where the magistrate feels that it is a deserving case, he can release the prisoner on bail too.

This technology can be further tested and improvised to conduct full-fledged trials from prisons itself.

The Advantages of introducing this scheme -

1. All the prisoners can be produced on a timely basis.
2. It obviates the need to produce remand prisoners in courts. The extension of remand can place electronically from the prison itself.
3. There is a reduction in the number of adjournments, which is often the result of an accused not being present at all or on time at the hearing.
4. It opens the possibility of digitizing documents and court records thereby systematizing, simplifying and speeding up the whole process.
5. Speedy trial of cases can be ensured due to the time saved in the whole process.
6. An early trial can help check the overcrowding of jails.
7. Speedier adjudication can also check the contamination of first time offenders into becoming full fledged criminals.

8. Magistrates can now personally observe the prisoners and interact with them directly instead of mechanically signing the extension of remand papers forwarded by the court staff and the escorting police personnel.
9. Prisoners get to speak freely to the Magistrates to vent their grievances without fear of retribution due to the one-to-one communication facility.
10. They do not have to wear shackles during the journey to and from courts, to prevent them from escaping.
11. The police do not have to worry about sparing men who are already in short supply, to escort the undertrials to courts or worry about prisoners trying to escape during transit.
12. Congestion in the jail vans and court lock-ups leading to unhealthy and insecure conditions will be reduced greatly.
13. Safety and security of the prisoners transported to and from courts will vastly improve since it will minimize the interaction and fights between warring gangs in the jail vans during transportation and in the court lock-ups.
14. Prisoners will be relieved of repetitive periodical strains, which they are subjected to while being taken to courts just for the sake of extending their judicial remands.
15. The menace of smuggling in prohibited/ contraband articles like drugs, currencies, weapons, telecom equipments, etc. will be contained because of reduced visits of prisoners to the outside world till they are released on bail or discharged or acquitted.
16. Most importantly, it saves a lot of financial and manpower resources.

This would require a slight modification to the CrPC. Section 167[2][b] of the CrPC has to be amended to read as follows - "No Magistrate shall authorize detention in custody under this section unless the accused is produced before him either in person or through the medium of electronic video linkage." To begin with, this amendment can be brought in by way of an Ordinance of the Governor too and can later on be incorporated into the CrPC by the legislative assembly. It happened this way in Andhra Pradesh. It requires an active coordination between the High Court of the state and the police and prison departments.

B - Fast Track Courts

The Union government has directed all the state governments to constitute Fast Track Courts [FTCs] to speed up the trial of undertrial prisoners. The FTCs are to take up on a priority basis, Sessions cases pending for over two years and other criminal cases involving undertrials. Accordingly from 1st April, 2001, all undertrial cases from the district and subordinate courts are to have been transferred to the FTCs for speedy disposal. Additionally, about 10 Lakh Sessions cases out of the 2.4 Crore pending cases are also to be transferred to the FTCs. The Centre has allocated Rs. 202.27 Crores for the establishment of 1,734 FTCs to make them functional by 1st April, 2001 and has obtained the consent of the Chief Justices of the High Courts and Chief Ministers for the creation of these courts. The progress of these courts will be monitored by the High Courts.²³ The courts will be required to refrain from adjournments except in emergencies. A fast track court is expected to

²³ The Hindu [Delhi edition] dated 3rd December, 2000 at page 3.

complete recording of evidence within a week. Judges and lawyers are expected to be patient and cooperative failing which, fast track courts will serve no purpose.²⁴

C - Special Courts in Jails

In a letter dated 29th November 1999, sent to the Chief Justices of all the High Courts, the then Chief Justice of India - Dr. A.S. Anand had asked them to organise Special Courts in jails popularly known as **Jail-Adalats** to dispose off, cases of undertrial prisoners who were willing to confess to their crimes that fell within the definition of **Petty offences**. For the purposes of jail adalats, petty offences mean and include the following:

- a. Offences punishable under sections 160, 279, 294, 298, 323, 334, 336, 337, 338, 341, 342, 343, 346, 352, 354, 355, 358, 403, 417, 421, 422, 423, 424, 427, 428, 447, 448, 482, 483, 486, 494, 497, 498, 500, 501, 502, 504, 506 [Part I], 508, 509 of the Indian Penal Code; and
- b. All offences under any Act other than the Indian Penal Code which are punishable with upto two years imprisonment.

Where the prisoner confesses to his crime then depending upon the period already spent by him in jail and the seriousness of the charge against him, the presiding magistrate may either release him instantly or order him to be released after spending some more time in jail.

Jail adalats have been organised in a number of places and as of 2nd February, 2001 more than 8000 such cases were disposed off all over the country after these courts started functioning from early 2000.

Some of the benefits of this scheme are as follows -

- Speedy trial and disposal of cases which also reduces the workload of judges.
- Prevents the contamination of first time offenders by hardened criminals into professional criminals.
- Reduction of overcrowding in jails to some extent.

Encouraged by the success of such jail adalats, the Union Law Ministry has urged and advised the states governments and Union Territories to make space for exclusive courts in jail premises. In a communication sent to the states it has also advised them to set up **legal aid cells** inside the jails. It has further directed that state legal service authorities should constitute panels of advocates including lady advocates who would be assigned to the legal aid cells in the jails to give advice to the inmates and draft legal documents once or twice a week.²⁵

But there are some problems with this scheme of jail adalats. Once a person confesses just for the sake of getting out of the prison even when he is really not guilty, a permanent record is entered against his or her name. This may not enable him or her to get a

²⁴ The Indian Express [Delhi edition] dated 4th March, 2001 at page 4.

²⁵ The Times of India [Delhi edition] dated 2nd February 2001 at page 5.

government job or possess a passport. Additionally, the police may haunt and harass him for any crime that is committed in their locality after their release. It would be better if one could apply to be released on Personal Bond or on Probation even after confessing.

D - Alternatives to Imprisonment

Imprisonment is the punishment which is most commonly imposed on people who are sentenced upon conviction. But experts and leading prison reforms committees have come to the conclusion that –

- It destroys people's lives; creates social outcasts and leaves them as misfits.
- Despite the heavy financial costs²⁶ involved in imprisoning people, it fails to reform and rehabilitate criminals.
- Imprisonment does not guarantee a reduction in the crime rate either.
- It helps in the promotion of a first time offender into a professional and hardened criminal.

But some of the major Alternatives to Imprisonment can be –

1. Verbal sanctions, such as admonition, reprimand and warning.
2. Conditional discharge.
3. Economic sanctions and monetary penalties, such as fines and day-fines.
4. Confiscation or an expropriation order.
5. **Restitution to the victim or a compensation order.**
6. Suspended or deferred sentence.
7. Release on Probation under judicial supervision.
8. **A Community service order.**
9. Referral to an attendance centre.
10. House arrest.
11. Some combination of the measures listed above.²⁷

The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of the society and the interests of the victim, who should be consulted whenever appropriate. Such schemes will succeed only with the active cooperation of the police, higher judiciary and the community outside [which will include the families of the offender and the victim, schools, and other secular religious institutions].

Community Service has succeeded very well even in a developing country like Zimbabwe²⁸ and even Andhra Pradesh has amended the IPC and included it as one of the sentencing options.

²⁶ The prison budget sanctioned for the year 2000 was Rs.804.639 Crores! Source: *Prison Statistics 2000*.

²⁷ Please refer to the **United Nations Standard Minimum Rules for Non-Custodial Measures** [The Tokyo Rules], for further details. Website address: http://www.unhchr.ch/html/menu3/b/h_comp46.htm

²⁸ Vivien Stern, *Alternatives to Prison in Developing Countries*, [1999] International Centre for Prison Studies, King's College and the Penal Reform International, London.