Hail jail, no bail!

There was a time when the principle ‘bail not jail’ guided the prison administration in this country. Now it is the opposite – ‘jail not bail’. The original principle was based on an understanding that the vast majority of those incarcerated came disproportionately from the poor, particularly Dalits and Muslims. If the criminal justice system was slanted against the poor and the doing of justice in a substantial sense was nigh impossible, to lessen the discrimination accused persons were not to be put behind bars unless it could be shown that he would abscond or otherwise interfere with the administration of justice. All this has now been thrown to the winds. In a mad frenzy, policemen and judges are putting accused persons behind bars in ever increasing numbers and keeping them there by denial of bail.

The overwhelming majority of the prison population are undertrials. They will stay there for many years waiting for their trials to begin. Many of the persons languishing in jail are accused in bailable offences. This is because legal aid from the point of arrest guaranteed in many decisions of the apex court is not available. Thousands of accused persons languish in jail despite being granted bail because their surety amounts are too high.

As a result the prisons are over populated by 250 percent. In some prisons, persons sleep in shifts occupying the 3 x 6 feet space on the floor reserved for them. Overcrowding to this extent is per se cruel, inhuman and degrading. No undertrial symbolises this perverse fascination of the State with the unnecessary incarceration of people awaiting trial, than Dr Binyak Sen, a pediatric specialist who was working in the most backward tribal regions of Chhattisgarh when he was arrested on the “terrorist” charge that he had carried a letter from a Maoist in prison to some person outside. Dr Sen had always functioned openly as a doctor. The police raid of his premises found nothing incriminating. He stays with his wife and children in Raipur. There was no chance whatsoever of him absconding. He would have cooperated fully with the prosecution. But he has now been in jail for about a year. In jail, the authorities gave him a difficult time when he tried to get reading material. His children have lost their father, the tribals have lost their doctor and the human rights movement has lost their leader. And the nation has lost its sense of right and wrong.

What should be done? Piecemeal reforms will have no impact because the rot is very deep and pervasive. What is needed is radical reform but pending that the State could at least make a radical one-time gesture. On Republic Day or Independence Day the State could release tens of thousands of poor persons, Dalits, Muslims and women accused in offences other than grave crimes. A large-scale release of women accused or convicted of the offence of murdering their husbands could be done. A study of the women languishing in prison will show how unjust our criminal justice system is. Many have killed their husbands as a result of the ‘battered women syndrome’ where the husband came home drunk and beat his wife and children day after day. How many women languish in Indian prisons today on the charge of murder in failed attempts to commit suicide where the baby children in their arms perished and they survived? How many Dalits are in jail resisting atrocities and the forcible taking of their lands? A sociological study of those languishing in prisons will affirm what everybody knows, that the criminal justice system victimises the victim. That the rich can get away with every conceivable crime by bribing the police and the prosecutor is common knowledge.

If the prison system was made to terrrrose the working people it has succeeded in doing so. It is perceived as an engine of oppression. Like the Indians feared the British, the poor today fear the Indian criminal justice system.

Colin Gonsalves
LETTERS TO THE EDITOR

FARMER SUICIDES

From valour to Hunger 6

Once famous for their role and sacrifices in the freedom struggle, the people of Bundelkhand are caught amid one of the worst droughts in its history
Bharat Dogra

INDEFENCE OF INNOCENCE

A woman, Shanti Devi, serving a 20-year-long sentence writes to President Pratibha Patil from Mirzapur Jail in Uttar Pradesh and seeks reprieve

Uttarakhand: Inventing Naxal threat 21

A team of rights group that visited Haldwani to meet Prashant Rahi, a jailed journalist, was turned away by muscle flexing state administration that swears to stamp out Maoist threat
Radhika Menon

A daughter’s plea 23

Innocent journalist, Prashant Rahi’s daughter Shikha Rahi writes about her father’s travails in the Uttarakhand jail

INSIDE GHAZIABAD JAIL

What happens behind the formidable walls of jails is simply a mockery of the law where human beings languish in humiliating and degrading slavery
Kumar Baadal

My days in prison 26

A small journalist’s sojourn through the big, bad world called Delhi’s Tihar Central Jail unfolded an entire savage world
Iftikhar Gilani

STATE REPRESION

‘M’ for Muslims 31

A Kolkata power corporation employee, Aftab Alam Ansari points to a new trend where police indiscriminately picks up Muslims to brand them as terrorists
Aanchal Khurana

WHERE THE RIFLES RULE

Assam Rifles is beyond the law as it lets loose a reign of terror
Meihoubam Rakesh

CHILDRIGHTS

Arresting child abuse 12

Victims of child sexual abuse stand very little chance of getting justice and moving on with their lives
Arun Kumar Sahoo

LAW & JUDGMENTS

Defending the right to legal aid 15

A human rights lawyer obtains a landmark order that upholds the constitutional right for legal aid in case of indigent and poor undertrials

PRISON PLEAS

Letter from Tihar 17

A Kashmiri youth, Parveez Ahmad, narrates in a letter how police turned him from a gentleman to ‘bombman’

PRISON REFORMS

Primitive prisons set the clock back 32

The need for prison reforms has conveniently been forgotten after Independence, leaving this raj relic to rot and become virtual hell
Dr Upneet Lalli

INTERVIEW

Where’s there’s a will, there’s a way 37

Kiran Bedi talks of her tenure as prison chief and efforts made by her to ameliorate the lot of poor and hapless inmates to
Aanchal Khurana
Where kicks-and-blows rain
Police lock ups are products of a misplaced ethos vis-à-vis police, crime and punishment in India
Abid Shah

Jails that fail justice
Shabby, overcrowded, heartless and subhuman, prisons in India defeat the very purpose set for them under the law
Vijay Hiremath

Arm poor with legal aid
Lack of an institutional mechanism to ensure legal assistance for poor continues to afflict the justice delivery system
Rebecca Gonsalvez

Worst jail jitters trap women
Among all sorts of prisoners women become the worst sufferers once they land up in prison
Sheela Ramanathan

Landmark orders on prisoners’ plea
Some of the important prison related case laws emanating both from Supreme Court and High Courts

Lashes of hunger
A study of prison diet system that has served as a tool of punishment continues robustly
Murali Karnam

Hunger strike in AP jail
A report on Kadappa central Jail by the Commonwealth Human Rights Initiative team that visited the jail

Taking prisoners off the eyes of law
Lawful custody warrants anybody facing trial to be made present before a magistrate every two weeks. Yet this is being avoided
RK Saxena

Lock-ups ought to look up
Police lock-ups are in a pathetic state
Grace Pelly

Discipline and punish
Respect for prisoners’ rights is a requirement of the Constitution
Yogendra Aldak

Video linkage leaves prisoners in cold
Video linkages between jails and courts in Andhra Pradesh have grossly curtails requirements of law vis-à-vis rights of undertrial since it robs him of counsel’s presence and help
Murali Karnam

Women prisoners’ rights
Women prisoner’s rights leave much to be desired on the part of the government and prison administration
Grace Pelly

Justice Express leaves many stranded
Despite miscarriage of justice on the fast lane of fast trace courts has not deterred UPA higher ups to continue with their predecessors favourite
Vijay Hiremath

Victims of Circumstances
While responding to a PIL, the Supreme Court delivered a set of guidelines to protect the rights of women prisoners and their children in jail
Debashis Banerjee
CONTENTS

JUVENILES

Rehabilitating undertrials 83
The Prayas team shares its experiences on its work within the criminal justice system it has adopted to reintegrate ex-prisoners back into the community

HEALTH IN PRISON

Where HIV virus festers 87
Jail custody has among other things been festering ground for HIV and AIDS
Sujata Krishnamurthi

FOREIGN VOICES

Little girl’s long haul 92
Story of a minor girl from Congo, who fled home in the wake of turmoil in her country but ended up in an observation home of Delhi’s Tihar Jail and later at a custodian’s place
Vulcanina

TRIAL & EXECUTION

Waiting for the hangman’s noose 94
Executing Perarivalan would be a retrograde step for human rights in India
Thiagu

‘Take juvenile off the gallows’ 96
Human rights lawyer Colin Gonsalves writes to President of India to seek pardon or commutation of death sentence passed by trial court and confirmed by Supreme Court in the famous Om Prakash Lakra case who as per his school certificate was a minor at the time of triple murder allegedly committed by him

JUVENILES

Juveniles and jails 80
Despite legislation to protect juvenile prisoners, children continue to languish in prisons
Maharukh Adenwalla

REALITY BYTE

Tall talk of Arthur Road jail SSP 86
In Bombay Central Prison, better known as the infamous Arthur Road Jail are in short supply and tussles between gang members are frequent
Sujata Krishnamurthi

WORDS & IMAGES

One-woman-show 99
Kiran Bedi’s stint as Inspector General of Police (Prisons) in Delhi might have been short-lived, yet she wrote rather a long account of this in what looks like one-upwomanship
Aanchal Khurana

Hope and Despair in Iran 101
Nobel laureate Shirin Ebadi writes about what befell Iran and Iranians in her book Iran Awakening
Mallika Iyer

GUEST COLUMN

Ebb and flow of greed! 103
A discredited hydroelectric project that was discarded 15 years ago has been revived in Nepal
Gopal Siwakoti ‘Chintan’
"E x pand your vision, and see that inside every culprit is a victim crying for help. If you heal the victim, you will eliminate crime from the planet," says Sri Sri Ravi Shankar. If we go by the philosophy that culprits are victims of their own circumstances, then the best way of reducing re-offending is by ensuring that the prisoners are able to get back to the wider community as useful and law abiding members. This is possible if they have a job and a home to go back to. Rehabilitation is a challenging task and a wide process in which the state has enrolled the help of varied organisations such as Prayas to facilitate this process. During the eighties, Dr Sanober Sahani, a faculty member of the (then) department of criminology and correctional administration at TISS, started visiting Arthur Road Prison for her doctorate thesis concerning rehabilitation of women and children undertrials released into society from custodial institutions. Prayas is a result of her research.

Prayas systematically traces the thread that links the individual undertrial within the custodial institutions and the community. Its initiatives are focused on rehabilitation of persons vulnerable to or affected by crime or prostitution. Normally, when prison law and order is discussed, convicts take centre stage and undertrials are sidelined as they are considered temporary. This is in spite of the fact that they constitute the majority within custodial institutions (jails, remand homes and juvenile justice homes) which are punitive and isolated from the outside community. Little differentiation is made between first-time offenders and seasoned criminals. Seasoned criminals especially those in for larger crimes are treated better and small transgressors are looked down upon. As such, there is a temptation to graduate to serious crimes.

Undertrials are far more vulnerable to exploitation than their seasoned counterparts when they are released back into the larger community, and in their old circumstances, that had initially encouraged the crime in the first place. Many have no family or community to go back to and are vulnerable to anti-social elements. Many are lost in the big city; they lack special skills and are devoid of shelter in the new areas. Their encounters with the law are alienating and calculative and their existence is basically based on survival of the fittest.

Service delivery
Prayas concentrates on re-connecting undertrials to their community of origin or employment. The prime focus of its services is on rehabilitation of persons termed as clients having a past or those vulnerable to crime, prostitution and destitution. The organisation is currently working in five prisons, courts and legal aid systems in three districts, two institutions for women who are vulnerable to crime, prostitution or destitution, and rehabilitation centres in Maharashtra and Gujarat. Its work in women's institutions includes introduction of the rehabilitation process after their release both in terms of reuniting them with their families, and assistance in resettlement within and outside Mumbai of those who are destitute.

Services range from legal literacy, home visits, writing of applications to represent requests to the court, working with families and children with the objective of involving them in the rehabilitation process and towards minimising the effect on children respectively. In addition, counseling services, awareness and educative sessions are conducted for prisoners. Through this process, Prayas attempts to establish a pro-social relationship with inmates, which has a positive effect on the post-release work of rehabilitation.

Prayas seeks to establish a clear contact with each client about using a standard set of rehabilitation services evolved over 18 years of work. The organisation uses an 'area-to-area' approach, where undertrials are encouraged to move from the originating areas that foster criminal activity, to original homes where possible or to new more stable contexts. In this transition, Prayas helps finding them safe shelter, skill training and employment. It also seeks to create discussion spaces and provides different forums that act as safety nets. These allow clients to
reflect, mediate their entry into the world, share problem-solving and express themselves within non-punitive contexts.

The rehabilitation process
While working towards rehabilitation of affected persons, social workers pick up cases where the persons are in need of rehabilitative services. These ‘pick-up’ points include prisons, police stations, women’s institutions and public places (railways, streets etc). Once the client has been identified, the process begins. Crisis intervention is a major component of Prayas’ work. It handles medical emergencies, arrests, child support, rations, house repair and shelter. The rehabilitation programme adopts an “area to area” approach.

This involves movement of a person from an area facilitating the person’s involvement in crime or prostitution, to an area offering stability in terms of the family, an institution or a new area. Once the crisis situation is over, the social workers bring in long term developmental goals that include training and vocational development both at the development centers or an outside training institute. After completing a basic level of training, the client is then placed at an NGO for training.

From the beginning, Prayas has had to explore strategies for rehabilitation. Providing gainful employment for released prisoners encountered difficulties. Ex-prisoners were directly employed with employers contacted through well wishers and were willing to provide employment after being appraised of the person’s background. However, the obstacle was absence of work culture, such as regularity to work, discipline at the workplace, self-control and handling money. This was because most of these persons had been deprived of opportunities (including educational, vocational and emotional) that they would ordinarily have been exposed to, making it difficult to get absorbed into the mainstream. Most training programmes require that a person should have completed a basic minimum standard of education, in order to qualify for undergoing that programme. High expectations from the private sector, coupled with lack of expertise, and emotional and behavioral problems resulted in difficulties in functioning on par with the others in the organisation.

Understandably, cases of persons directly employed yielded negative results although there were rare instances where a person settled down well with an employer and acquired a skill set. Mainstreaming is a gradual process in which positive experiences and a conducive environment are essential. Most people have some skills, which could be developed given space and time to adjust. With this in mind, Prayas began a NGO placement programme, a specialised programme for rehabilitation of affected populations through its youth development centers. As a first step forward, the person adopts a new identity — that of a student, thus marking a change from the earlier and murkier identity. This enables a smoother transition into the mainstream society.

At the development centres, a special curriculum has been designed to help the person relearn alternative coping skills, develop and/or upgrade vocational skills, imbibe work ethics, encourage altered methods for handling money, start savings and alter lifestyles. Placement counseling is conducted based on earlier interactions and keeping the client’s interests and talents in mind. Initiation into the placement programme is gradual. It commences with exposure visits suited to their educational background and skills. This is followed by short-term placements, starting from a week to a month — extended if mutually beneficial to both trainee and organisation. A number of them land up working with NGOs when they are unsure about their interests. These short-term placements give the agency an opportunity to supervise and closely monitor the clients, in order to identify his strengths. Simultaneously, the client also gets the opportunity to check out the work environment and accumulate experiences different from those in the past.

Obstacles faced
The Prayas team has to walk on egg shells while working with undertri-
The absence of any laid down law or policy on the issue of rehabilitation of persons in crime or prostitution or their children is a major hurdle towards working in this field.