

IN THE LIGHT OF THE GROWING PRISON POPULATION SHOULD WE LOOK FOR ALTERNATIVES TO IMPRISONMENT?

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This short article analyses imprisonment as a form of punishment and considers if it is possible for any other form of punishment to serve the needs of a criminal justice system. The author has taken the view that imprisonment cannot be removed or replaced. There is no alternative to imprisonment, though there is a large scope for improvement in the system. The problem of the growing prison population can be resolved if effective measures are taken in the right direction. The author has analyzed the system of imprisonment and put forth why no other scheme of punishment can replace it, discussed the problems that plague the system of imprisonment and suggested reforms that are necessary to make the system of imprisonment more effective and in line with the purposes of criminal justice system.

IMPRISONMENT: ORIGIN AND DEFINITION

One of the earliest recorded references to imprisonment can be found in the Bible, "And Joseph's master took him, and put him into the prison, a place where the king's prisoners were bound: and he was there in the prison."¹ In the 16th century, in Britain and colonial America, most offences were punishable by death.² Prisons were used as institutions to hold those awaiting trial or punishment. However, by the 19th century, barbaric punishments and death penalty started to be considered as inappropriate and imprisonment, simple or rigorous became the standard form of punishment. An ethos developed where confinement in prison was preferred over physical harm. The move away from brutal physical punishment towards containment in a prison cell reflected the ascendancy of civilized values, such as rationality, over and above the barbarity of pre-civilised ways of seeing the social world.³

The Supreme Court of India has given a wide interpretation to the term 'imprisonment', it has defined it as, any life under the control of the State, whether within the high walled world or not.⁴ According to the figures of Amnesty

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¹Genesis 39:20 New International Version.

²Introduction to the Death Penalty' <<http://www.deathpenaltyinfo.org/part-i-history-death-penalty>> accessed 1 September 2012.

³Chris Crowther, *An Introduction to Criminology and Criminal Justice*, (Palgrave Macmillan) 205-206.

⁴*Maou Ram Bhiwana Ram v. Union of India* AIR 1980 SC 2147.

IN THE LIGHT OF THE GROWING PRISON POPULATION SHOULD WE LOOK
FOR ALTERNATIVES TO IMPRISONMENT?

international, 139 countries have abolished death penalty as the highest form of punishment.⁵ In countries where it is practiced, it is generally awarded in the rarest of rare cases. Economic and physical sanctions have gradually given way to imprisonment or lesser deprivations of liberty like probation or parole. Punishment is almost synonymous with imprisonment. Thus, the cornerstone of punishment in every criminal justice system is imprisonment.

THE NEED FOR PUNISHMENT

Punishment and deterrence are closely linked. Society has for a very long time believed that some form of punishment is an effective method of behaviour control. With reference to criminal behaviour, punishment supposedly works in two ways. First, it is believed that punishment and its public disclosure reveal to the members of the society what the consequence of criminal behaviour will be. Thus, the threat and fear of punishment should act as a deterrent. This is the informative role. Second, punishment applied directly to the offender should deter him or her from future violations. This is the inhibitory role of punishment.⁶

Theoretically, the most cited justifications for punishment are retribution and reductivism. The reductivists argue that punishment reduces the future incidence of crime, whereas, retributionists argue that the offender must be punished because he deserves it. Retribution means balancing a wrong through punishment. The criminal deserves to be punished and has a right to be punished.⁷ An outcome of both these theories is the Compromise Theory which states that punishment should be imposed only if it is both deserved as well as likely to have a deterring effect. Jeremy Bentham gave the principle of 'less eligibility', which stated that convicts lose their entitlement to the rights enjoyed by law-abiding citizens. Alternatively, it can be argued that loss of liberty is sufficient punishment in itself.

Imprisonment as a form of punishment has been adopted almost everywhere. This is because it successfully meets the requirements of a criminal justice system as well as obligations under international Human Rights treaties, as well as domestic law. This proposition invites the question of what the requirements are, of a criminal justice system. Criminal Justice refers to the agencies of government charged with enforcing law, adjudicating crime, and correcting criminal conduct. The criminal justice system is essentially an instrument of social control.⁸ Law carries with it a sanction. Hence, breaking the law must entail punishment.

⁵'Death Penalty Statistics in 2010' <<http://www.amnestyusa.org/our-work/issues/death-penalty/international-death-penalty/death-penalty-statistics-2010>> accessed 1 September 2012.

⁶Curt R. Bartol, *Criminal Behaviour - A psychological Approach* (5th ed.) 389.

⁷*ibid* at 5.

⁸Larry J. Siegel, *Criminology* (Wadsworth, 7th edn) 475.

The right of society to punish is said to lie in the social contract. Although, this idea dates back to the ancient Greeks, it gained its greatest currency during the Age of Enlightenment in the seventeenth and eighteenth centuries and is associated with Thomas Hobbes (*Leviathan* 1651), John Locke (*Two Treatises on Government* 1690), and Jean Jacques Rousseau (*Du Contract Social* 1762). If one person transgresses against the right of others, one has broken the social contract, and society has the right to punish (Mickunas 1990).⁹

The question of the actual effect of deterrence on criminal behaviour has never been conclusively resolved. However, it is reasonable to say that the threat of punishment does prevent a significant number of people from violating the law.

WHY IMPRISONMENT CANNOT BE REPLACED

Any system of law must be morally justifiable, only then can it derive legitimacy. Thus the quantum of punishment, its nature and offences that invite punishment must be proportionate and acceptable to the society at large. Punishment is after all in the nature of an intrusion, it involves putting a person through discomfort and pain – be it psychological, physical or emotional. Thus, the threshold of justifying it must be carefully decided. Punishment must be able to give law enough force yet it must be counter balanced by the human rights of the accused and the moral standards of the society. Imprisonment is the only form of punishment that meets these criteria; hence, no alternative can completely replace the institution of imprisonment.

Theoretically, imprisonment is capable of (1) incapacitation; (2) rehabilitation; (3) punishment or retribution as well as (4) deterrence. Any form of punishment stricter than imprisonment has met with serious objections, such as the practice of stoning in Iran. Even capital punishment executed by hanging, fire squad, lethal injection or electric chair is under heavy criticism by human rights activists. It also poses the problem of punishment for minor offences. Physical harm or death for minor offences is disproportionate. There are wings which propagate community service, in house detention and wider use of probation as punishment. However, these punishments might not create a fear of breaking the law.

Even if it is argued that fear of imprisonment does not reduce crime, the question whether lesser forms of punishment will satisfy or give enough incentive to law abiding persons to be on the right side of the law also remains answered in negative. In countries where economic conditions are poor, law is used as a mechanism of social engineering and for setting moral standards of a society. In the recently introduced Motor Vehicles Bill in the Indian Parliament, imprisonment has been added as punishment to curb increasing cases of drunken driving.¹⁰

⁹Joycelyn M. Pollock, *Prisons Today and Tomorrow* (Aspen publications, Maryland, 1997) 5.

¹⁰The Motor Vehicles (Amendment) Bill, Number XXXVI Section 185 (2007).

IN THE LIGHT OF THE GROWING PRISON POPULATION SHOULD WE LOOK
FOR ALTERNATIVES TO IMPRISONMENT?

The purpose of prison is punitive. It is with time being seen as a correctional and rehabilitative institute as well. If we look the history of development of the institution of imprisonment - it was conceived with the purposes of rehabilitation. Rehabilitation is a utilitarian justification for the use of punishment, because it seeks to use punishment as a means to the end of controlling lawlessness. In this sense, it is similar to deterrence and incapacitation, which also posit that punishment can be used to control crime. David Rotham, a prominent historian of the prison, has noted that when communities in the United States were transformed from small, stable colonial villages to large, diverse and dynamic urban cities, Americans witnessed dramatic social changes which challenged their conventional views about the causes of crime.¹¹

Crime began to be viewed not as a result of natural depravity but as a consequence of social disorder. Breakdown of families and communities was failing to instil citizens with moral fibre. Thus, reformers of this period set out to create a new form of punishment that was capable of meeting these goals. The punishment devised was the penitentiary.¹² The prison was envisioned as an institution that could change offenders through hard labour, repentance, isolation and discipline. The prison was seen as a new punishment fitting a new society. However, by the end of the Civil War prisons had become overcrowded, and brutal corporal punishments were being used to keep the prisoners in line. Despite the failings of the penitentiary, the basic premise that offenders could be changed was unshaken.¹³

PROBLEMS WITH THE SYSTEM OF IMPRISONMENT

I. OVERCROWDING

The fact that prisons today face a problem of overcrowding cannot be denied. According to the 8th edition of *The World Prison Population List*,¹⁴ more than 9.8 million people were in prisons in 2008. It also reported that prison population had increased in 71% of the countries. In Norway, the pressure has not led to a significant increase in prison population, but to a very sizeable waiting list: people have to 'queue up' to serve their sentence. The problem of overcrowding creates bad conditions in prisons, lax in security, violation of human rights, and deprivation of prisoners of access to basic living conditions and causes riots and abuse as well. This in turn leads to physical illness, socially disruptive behaviour, and emotional distress. In a fifteen year project on prison crowding, Paulus (1998) concluded

¹¹Jody L. Sundt, 'Rehabilitation Model', *Encyclopedia of Crime and Punishment* (Vol. I Sage Publication, London) 1360.

¹²*ibid*

¹³*ibid*

¹⁴Roy Walmsley, 'World Prison Population List', (Jan. 2009), <http://www.prisonstudies.org/info/downloads/wppi-8th_41.pdf> accessed 1 September, 2012.

that increasing the number of residents in correctional housing units significantly increased the negative psychological and physical reactions in inmates.¹⁵

The Time magazine in 1983 reported that, 'This spectacular increase has created appalling living conditions for many inmates, who are sleeping in gymnasiums, day rooms, corridors, tenets, trailers and other forms of makeshift housing.' It further reported that new prisons cannot be built quickly enough to accommodate new inmates and the construction bill of prison and jail construction amounted to about \$4.7 billion.¹⁶

The justice system (in United States) employs nearly 2 million people.¹⁷ Around 15 million people are arrested every year, including almost 3 million for serious felony offences.¹⁸ The system is so big because it must process, treat and care for millions of people each year. The maintenance of prisons and convicts takes up a huge amount of the taxpayer's money. However, since no state can survive without a government the cost of maintaining the government has to be borne. Similarly, the cost of maintenance of prisons has to be borne to maintain an effective criminal justice system in the society.

Research on overcrowding and its relationship to inmate violence, health, stress, prison disciplinary problems, and recidivism is not conclusive. There lies the difficulty of comparing one prison population with another. One institution might host more violent offenders, thus affecting the impact of overcrowding (Durham 1994). Secondly, living in overcrowding may have long-term effects which may not be detectable until several years (Durham 1994). In recent years there has been increased publicity about the incidence of HIV and Tuberculosis infections among inmate population. One of the reasons may be that Tuberculosis is highly infectious and housing inmates densely increases the likelihood of spreading of the disease.¹⁹ As far as psychological effects of imprisonment are concerned, research²⁰ has shown that prisons do not cause permanent harm to the psychological well-being of inmates.²¹

In his survey of state correctional administrators, Vaughn (1993) found that states employed a variety of strategies to deal with the problem of overcrowding. They ranged from constructing new prisons or increasing the size of existing prisons

¹⁵Curt R. Bartol, *Criminal Behaviour - A Psychological Approach*, (5th edn).

¹⁶Michael S. Serrill & William R. Doemer, 'A Growing Crisis Behind The Bars'(Dec. 5, 1983), <<http://www.time.com/time/magazine/article/0,9171,951015,00.html>> accessed 2 Sept, 2012.

¹⁷*ibid*

¹⁸Kathleen Maguire and Ann Pastore, *Sourcebook of Criminal Justice Statistics*, 1995 (Washington, D.C.: U.S. Government Printing Office, 1996) 3.

¹⁹Joycelyn M. Pollock, *Prisons Today and Tomorrow* (Aspen publications, Maryland, 1997) 66.

²⁰Zamble and Porpino, *Coping, Behavior, and Adaptation in Prison Inmates* (1988) 151.

²¹Curt R. Bartol, *Criminal Behaviour - A psychological Approach* (5th edn) .

IN THE LIGHT OF THE GROWING PRISON POPULATION SHOULD WE LOOK
FOR ALTERNATIVES TO IMPRISONMENT?

through expansion projects or double bunking to the increased use of community based correctional services. The most prevalent response has been construction. One of the main contributors to overcrowding is the problem of under trials being detained. This problem has been elaborated upon in the subsequent parts of this essay. Some countries, such as India, have recognized the enormity of this problem and are taking steps to reduce the number of under trial prisoners.

II. ISOLATION

An inmate may be isolated either as a form of punishment or for his protection. Research has demonstrated that individuals respond differently to solitude; some show great tolerance and often welcome the quiet solitude while others experience great stress and anxiety, even after relatively short periods of isolation.²² In general, however, research shows that most individuals are able to tolerate and even adjust to isolation, if the isolation is short in duration, such as a few days.²³ Prisoners may also face the problem of reintegrating with society after being released. The elderly may not have a support system once they are released. The duties of prison staff must not end after a prisoner is released. The criminal justice system should therefore pay particular attention to finding them appropriate accommodation on release.²⁴

ALTERNATIVES TO IMPRISONMENT

I. REDUCTION IN CRIME

In his book, 'The Rich Get Richer and the Poor Get Prison', Jeffrey Reiman argues that while justice should be a two way street, criminal justice effectively goes only 'one way':

Individuals owe obligations to their fellow citizens because fellow citizens owe obligations to them. Criminal justice focuses on the first but looks away from the second. (1990:124)²⁵

Imprisonment cannot be replaced in toto. It is a necessary institution for the survival of any civic society. Rather than looking for alternatives to imprisonment, a more productive solution is to take efforts to cure the root of the problem. Even if a more effective alternative method of punishment is set up for offenders, it will only distribute prospective inmates from prisons to another institution or subject them to

²²*ibid* at 397.

²³*ibid*

²⁴United Nations Office on Drugs and Crimes, Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment <http://www.unodc.org/pdf/criminal_justice/07-80478_ebook.pdf> accessed 2 September 2012.

²⁵Dee Cook, *Criminal and Social Justice* (Sage Publications, London) 5.

another form of punishment. It will not lead to reduction in the number of offenders. The Dutch criminologist Willem Bonger argued that criminality has its roots in relative deprivation and in the aggressive values of a competitive society.²⁶ Why crimes are committed is a very complex question. However, a definite proportion of offences can most certainly be said to be committed because of social injustice.

Government publications also acknowledge a correlation between crime and social injustice. A 1967 Report states that, 'From arrest records, probation reports, and prison statistics a "portrait" of the offender emerges that progressively highlights the disadvantaged character of his life. The offender at the end of the road in the prison is likely to be a member of the lowest social and economic groups in the country, poorly educated and perhaps unemployed.'²⁷ Karl Marx stated that there is a need to reflect upon the alteration of the system that breeds these crimes, instead of glorifying the hangman who executes a lot of criminals to make room for new ones.²⁸

An example of the same is the Baby Falak case in India.²⁹ In January 2012, a battered 2 year old girl child with fractured skull and arms, human bite marks on her body and cheeks branded with hot iron was brought into hospital by an adolescent girl. However, the teenager who has been arrested for committing culpable homicide not amounting to murder of the child was a victim of human trafficking and prostitution. Angry, frustrated and poor, she took out her frustration on the baby. Statistics indicate that most prisoners come from socially and economically weaker sections.

Making headway in economic and social welfare will lead to reduction in crime. An effective solution to overcrowding lies in taking out policies to educate masses, increase employment, improving living conditions, strengthening family ties by reducing the need to migrate to urban areas and other policies to uplift the living standards of the society.

II. REDUCTION IN THE NUMBER OF UNDER TRIALS

A second solution lies in reducing the number of under trial and pre-trial prisoners. According to World Pre-trial Imprisonment List of 2008,³⁰ two and a quarter million

²⁶R.A. Duff & D. Garland, *A Reader on Punishment* (1stedn 1994) 45.

²⁷'The Challenge Of Crime In A Free Society: A Report By The President's Commission on Law Enforcement and Administration of Justice' (US Government Printing Office, Washington, DC, 1967) 44 and 160.

²⁸Karl Marx, 'Capital Punishment – Mr. Cobden's Pamphlet – Regulations of the Bank of England' (Feb. 18, 1853) <<http://www.marxists.org/archive/marx/works/1853/02/18.htm>> accessed 2 Sept 2012.

²⁹'Teen who brought baby Falak to hospital - villain or victim?', (February 05, 2012) <<http://www.ndtv.com/article/india/teen-who-brought-baby-falak-to-hospital-villain-or-victim-173426>> accessed 2 September 2012.

³⁰Roy Walmsley, World 'Pre-trial/Remand Imprisonment List' (January 2008) <<http://fondationinternationalepenaletpenitentiaire.org/Site/documents/Cape%20Town/WPTRIL%20published%20January%202008.pdf>>accessed 2 September 2012.

people are held in pre-trial detention and other forms of remand detention. United States, India and Russia lead the list. The countries in the Oceania have a lower ratio of under trial or pre-trial prisoners, but nonetheless, it adds to the congestion in prisons. In Indian prisons in 2010, the share of under trials was a staggering 74 percent.³¹

Imprisonment is meant to be a form of punishment for convicts. However, a large number of accused spend more time in prisons awaiting a trial than the maximum sentence that they could have been awarded for the offence they have been accused of. This is not just in violation of human rights and natural justice but also dilutes the purpose of a prison. Criminal justice systems function on the universal norm of innocent until proven guilty, at the same time, the course of trial must be unhindered and speedy. Persons awaiting trial or undergoing trial must not be imprisoned unless they are a threat to the public security.

Judiciary must be allowed wide discretion in cases relating to grant of bail. There are situations where bail is granted to the accused, however, he or she is unable to pay bail bond. Instead of remanding these persons to prison, they must be engaged in community service. The legislature must necessarily ensure that there is a separate system of speedy trial set up for offences which are non-bailable.

The Ministry of Law and Justice in India launched a Mission Mode Programme in January, 2010 for reduction of under trial prisoners. It aims at identifying under trial prisoners to link them with Legal Service Authority with a view to ensure their release.³² By July 2010 around 92,000 prisoners were released as a result of bail or discharge.³³ Such initiatives at frequent intervals are necessary in order to successfully deal with the problem of overcrowding.

III. ALTERNATIVE PUNISHMENT FOR MINOR OFFENDERS

Alternatives to incarceration are perceived as useful for non-violent offenders.³⁴ Community service had originated in England in the late 1960s. United States and Canada began to introduce similar programs within two years.³⁵ In 1970 the Wootton Committee prepared the Report on Non-Custodial and Semi-Custodial Treatment of Offenders, recommending that community service be used as a supplement to

³¹National Crime Records Bureau, 'Prison Statistics India 2010' <http://ncrb.nic.in/PSI_2010/CHAPTER-4.pdf> accessed 3 Sept 2012

³²'UndertrialProgramme' (August 16, 2011) <<http://doj.gov.in/?q=node/209>> accessed 3 September 2012.

³³'92,000 Undertrial Prisoners Released Across India' (May 27, 2010)<<http://www.igovernment.in/site/92000-undertrial-prisoners-released-across-india-37660>> accessed 3 September 2012.

³⁴J. Pollock, *Prisons Today and Tomorrow* (Aspen publications, Maryland, 1997) 71.

³⁵Dana Greene, 'Community Service', *Encyclopedia of Crime and Punishment* (Vol. I Sage Publication, London) 279.

probation and imprisonment, with the aim of creating productive penalties. The Criminal Justice Act, 1970 and The 1973 Powers of Criminal Courts Act are the legal origins of community service in United States.

Since 1953, Namibia has had a largely unused law, allowing community service to replace prison sentences for up to five years. Kenya, Swaziland, Malawi, and Lesotho have provisions for a penalty which allows a court to transform a short prison sentence into public work carried out outside prison.³⁶ In Zimbabwe, a group of reform minded officials worked together to find a solution to overcrowding and poor conditions in prison. Drawing on an analysis of the prison population showing that nearly two-thirds of those in prison were serving sentences of three months or less and were therefore minor offenders or fine defaulters, they set out to construct an alternative.³⁷ They ordered community service for all those whose prison sentence was one year or less. The community service scheme was developed with meticulous care given to every aspect of implementation. Prison population came down from 22,000 to 18,000 between the years 1993 to 1997. A survey conducted in 1995 and 1998 showed a high level of satisfaction on the part of the representatives of all those involved in the scheme - judges, magistrate, staff, and supervisors of offenders on community service.³⁸ This scheme ensured commitment from a wide range of social players as it was not implemented by a government department but by a coordinating committee, which brought together criminal justice agencies and outside organizations. However, the judiciary in Zimbabwe worked hard to clarify exactly when the alternative can be used rather than prison and trained the magistrates in using it.³⁹

Replacing short sentences with community service will reduce overcrowding. However, it is important that these community services are closely supervised. If supervision is lax or if an offender manages to avoid his service, the punishment will lose its deterrent effect. Seriousness of offences and community service also needs to be balanced carefully. The offender must not develop a mind-set which leads him into thinking that taking the risk of committing an offence is worth it because the punishment he might be subjected to is soft.

There are certain offences, on the first commission of which preventive measures can be looked at. Most appropriate offences of such kind can be of drug abuse and alcoholism. Juveniles are also a category of offenders who need to be treated sensitively. For drug offenders, sentences can be waived on successfully finishing a course on drug rehabilitation, after which they can be mandatorily directed to a rehabilitation centre for a specific period of time. Recent innovations such as

³⁶Viven Stern, 'Alternative Punishments in Sub-Saharan Africa', *Encyclopedia of Crime and Punishment* (Vol. I Sage Publication, London) 20.

³⁷*ibid*

³⁸*ibid*

³⁹*ibid*

boot camps provide that convicted offenders reside in a correctional facility and participate in a program meant to instill discipline and responsibility.⁴⁰ In his survey of prison administrators, Vaughn (1993) found that, in addition to the increase in the length of sentences, the practice of incarcerating drug offenders was found as one of the reasons of prison overcrowding.⁴¹ For drunken driving offenders, their cars may be installed with ignition interlocks with breath analyser devices. For juvenile delinquents, prisons may be in the form of boarding schools, so that their time is utilized productively.

A system of imposing fines can also be detected. A more sophisticated way of relating fines to the ability of offenders to pay them is by means of a system of day fines.⁴² In this form of fining, the seriousness of the offence is first expressed in terms of a number of "days" or "units". The average daily income of the offender or the average daily surplus of the offender is then determined. The actual fine is calculated by multiplying the number of days (units) by the average daily income or average daily surplus of the offender.⁴³ But again this system has to be limited a particular class of offences looking at the seriousness of the crime.

Prisons are treated as correctional facilities in a lot of states, prisoners who serve long sentences must be educated or given vocational training, so that when they are released, they are empowered to earn their livelihood and are not forced to commit crimes again. The first documented vocational program in United States was started in May 1826 (Wines and Dwight 1867). Every Sunday, lessons in reading, writing and arithmetic were provided. In 2011, The Indira Gandhi National Open University (IGNOU) offered its course at prisons in Madurai, Coimbatore and Tiruchi in India and a large number of prisoners enrolled for undergraduate courses.⁴⁴ Educating prisoners opens economic opportunities for prisoners once they are released. For habitual offenders, services of therapists must be provided. Faith based rehabilitation programs can also be introduced.

CONCLUSION

Overcrowding of prisons is a defect in the penal system which can be corrected

⁴⁰Paul F. Cromwell and others, *Community-Based Corrections* (5th edn, Wadsworth) 19.

⁴¹J. Pollock, *Prisons Today and Tomorrow* (Aspen publications, Maryland, 1997) 62.

⁴²United Nations Office on Drugs and Crimes, 'Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment' <http://www.unodc.org/pdf/criminal_justice/07-80478_ebook.pdf>accessed 2 September 2012.

⁴³Hans Thornstedt, 'The Day-Fine System in Sweden', 1975 *Criminal Law Review*, 307-312; Gary M. Friedman 'The West German Day-Fine System: A Possibility for the United States' (1983), 50 *University of Chicago Law Review*, 281-304; Tapio Lappi-Seppala 'Public Perceptions of the Dayfine System; An evaluation of the 1999 dayfine reform' JFT 3-4/2004.

⁴⁴'Good response for IGNOU Courses in Prisons', (September 12, 2011) <<http://www.thehindu.com/news/cities/Madurai/article2446372.ece>>accessed 3 September 2012.

through socio-economic reforms. These reforms will gradually but effectively reduce the number of offenders. There is no requirement for completely ousting imprisonment as a form of punishment. Such a move will only serve to shake the foundations of the criminal justice system. Punishment in any form - whether it is based on specific deterrence, incapacitation, or rehabilitation - is a reaction to crime. As a result punishment does little to prevent crime from occurring in the first place. Thus, a crime control strategy that does not address the forces that generate crime in the first place is solely incomplete. Furthermore, as Elliot Currie (1998: 71) has observed, "Even the best efforts at the rehabilitation of offenders will be undermined unless they are linked to a broader strategy to improve conditions in the communities to which offenders will return."⁴⁵

The number of under trial prisoners also shows that the problem lies in slow pace of trials and not in the system of imprisonment. Article 9.3 of the International Covenant on Civil and Political Rights⁴⁶ provides that: "It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement." In addition, Article 14.3 of the ICCPR stipulates that those tried on a criminal charge are entitled to a trial without undue delay. Unacceptably large numbers of prisoners in various countries are under-trials. Countries need to introduce reforms to ensure speedy trials. Additionally, accused may be subjected to lesser amount of restriction on their freedom by putting them under electronic surveillance or a system akin to probation. They may be asked to sign bonds in order to prevent them from interfering with evidence and for being present whenever the investigating authorities and the Court require them. Procedural reforms within the judiciary will go a long way in reducing the number of prisoners.

Problems with every system are detected with time; this does not mean that the system is a failure in itself, but that it needs to evolve so that it keeps serving the purpose it was constructed to serve. The problem of overcrowding in prisons is solvable, provided that reforms in the correct direction are introduced and executed.

⁴⁵'Community Service', *Encyclopedia of Crime and Punishment* (Sage Publication, London) 1356.

⁴⁶Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966; entry into force 23 March 1976; hereinafter referred to as "ICCPR".