

# “No one does not forget such outrages on a human being – let them never be forgotten!”

-M. Gorky

## Extracts from the Tour Notes of K.F. Rustamji, Member, National Police Commission

Every year, 1.5 million people are put into India's 1,219 jails. Any man, woman or child who is arrested on suspicion of having committed a criminal offence, who is poor and has no one to give bail, is clapped into jail as an undertrial. For these undertrials, there is nothing but waiting and waiting, till a court finds time to take up the case. Months and years pass. Premature old age may overtake them; young people are subjected to all the violence and perversion of a jail. They live for the day when judgment will be pronounced, when perhaps, as happened in one case. They will be sentenced to only 10 days of

imprisonment, after spending years in jail as an undertrial!

There is no law which specifies how long a person can be kept in custody before the case is taken up for trial or how long the trial should continue. Each magistrate has 1,200 – 1,800 cases on file. They have no time to look at the undertrials. One who was fined Rs. 11.50 for ticketless travel and could not produce the amount, spent months in jail. About 50 per cent of undertrial are in any case acquitted after trial! Hundreds of them are dumb, simple persons caught in the web of the law, unable to understand what has happened, what the charge

against them is, or why they have been sent to jail.

In Muzaffarpur Jail in 1978, there were girls sent there when the ashram for destitute women was closed down. They were in 'protective custody' tearful, unwilling, and positively wanting no protection at all... In Bombay Central Prison, there were girls arrested under Section 100 of the Bombay Police Act. According to this Act, any police officer can arrest a woman *suspected* of soliciting. The fine is about five or ten rupees, but because the courts are busy, the girls may spend days in jail, may get raped and be burdened with children.

There is no doubt that the action to 'protect' girls under the Suppression of Immoral Traffic Act is utterly immoral. It is easy to put a girl in jail for five years on the ground that she is being given 'protection'... But what about the man who telephones for a call girl, the men on the streets who make advances? Are they not 'soliciting'?

Then there are hundreds of men caught for small smuggling deals and boys caught in house thefts who have to wait years and years for trial. D. Ramachandran, a perceptive police



officer in Bombay, agreed that the big shots of crime, the gangsters who control the underworld, were all out, but the small men who had been trapped, unable to get their cases heard month after month, were inside.

Many more are charged with ticketless travel, crossing the railway line, selling illicit liquor, possessing weapons or some such minor infraction of the law.

*Usha Kumari* Age given as ten but to me she looked seven or eight. She is half the size of the other women inmates and they are all small. She is supposed to have picked up a chain in a cinema and was picked up for theft. There is no Children's Act in Bihar so children are treated as adults.

*Reena Kumari* She does not know what the charge against her is but presumably it is soliciting. She was arrested in 1976 and sent to a protection home. When that closed down, she went to an aftercare home and from there to jail because she was a lost person who had no home. Here is a little girl, almost a child, lost, defenceless, not knowing how to fight, with nobody to help her. Every time she was produced in court, the court had no time to see her.

*Bhola Mahto* He does not remember how long he has been in jail. Probably nine years, perhaps 13 – he has lost count. For the last six years, it has not been possible to find out which criminal case he is wanted in. His file is untraceable. Meanwhile, he has lost his wife and sons. Four letters were sent by the jail authorities to the District Judge that this man seems to be lost property. What should be done? The last letter said he has been misbehaving of late and threatened to go on fast if his file was not found. A great deal of persuasion had been used to keep him quiet. He was produced in court but the magistrate did not see him.

*Bablu Rai* A Naxalite, he has spent seven years in jail without any charge sheet. His case illustrates the easy method of detaining anybody. There is no need of MISA, COFEPOSA or any other pose. You can put a person in jail

and just say he or she is an undertrial.

In Muzaffarpur, 70 per cent of the 1,000 in jail are undertrials. The word 'overcrowding' is not enough to describe the atmosphere of the jail. 42 of these undertrials have been waiting more than five years for their sessions trials to start. Here are a few cases.

*Jankidevi* A young chamar girl who has been seven years in jail as an undertrial. She looks a dark beauty – frightened, shy, despairing. She has been prosecuted for infanticide of her new born child. She maintains that it was still-born and the villagers conspired to give evidence against her. There is a son with her, who has spent his whole life in jail, never seen the outside world. How can one look back and find out what happened? Perhaps she was raped and did not want the child of the man who had humiliated her. Perhaps she was desired by someone powerful, resisted, and he took revenge by sending her to jail. Her caste would have made her a readymade victim. What damage would occur to society if she were sent out, without bail-just to live?

*Itwaria Ahir* She is completely vague about what has happened to her. She behaves as if she has been hit on the head with a big object and is dazed by the blow. Even the jail authorities do not

know what the charge against he is. The police explained – she is wanted as a witness in a certain case. She refused to give an undertaking that she would appear as a witness, therefore she has spent five years in jail under Section 171, Criminal Procedure Code! She has a beautiful little daughter aged four, born in jail.

In Bihar and West Bengal, women who have been raped and reported it to the police, have been jailed so that they may be easily available as witnesses! There, they become victims of molestation by jailers and policemen.

In 1979, the Supreme Court passed orders for release of the Bihar undertrials. I wonder how they took this news. Those who have nowhere to go must have felt deprived of the food and shelter of the jail. What will that harijan girl do, burdened with a child born in jail? How will the old adjust? The releases, just as much as the imprisonment, typify the dilemma of the poor. Whatever happens, it only means more suffering for them.

The basic defect of our entire criminal justice system is that it is all slanted against the poor... I have come to the conclusion that the majority of people in our jails ought not to be there at all, while the majority of those who ought to be there are living outside as free men.

## CONVERSATION

"Live burn away".

*"Out of the ashes of my pyre shall arise my children."*

"Children can be torn and fed to the wind."

*"Still the winds will echo the song of freedom."*

"Freedom is the crumbs they throw."

*"Freedom is the bread we steal."*

"Beggars they've made us. Beggars and thieves."

*"Thieves perhaps, but beggars we can never be."*

" 'Never' promises a tomorrow to us who are without a today."

*"Tomorrow is our only concern; we crawl today to walk tomorrow."*

"We are those who live in black. We who die before dawn."

*"From the mounds of black corpses shall new children be born."*

"What a birth that which dwells among the dead."

*"What a death that which rushes on, for fear of the sun."*

"What use the sun to us who are blind?"

*"Blind are only they who refuse to see the sun."*

**Thirty Umrigar**