Kumarappa-Reckless Award Oration

delivered at

40th All India Conference of Indian Society of Criminology

on

19th January, 2018

at

Gujarat National Law University

Gandhinagar

on

Decoding Conversations and Restating Criminology in India

By

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'Decoding Conversations and Restating Criminology in India'

By G. S. Bajpai[1]

It's indeed a special moment for me! With all humility and a great sense of achievement, I thank all those instrumental in having me here to receive the highest honour in the field of Criminology in India. I also take this opportunity to express my gratitude to the fraternity in the Indian Society of Criminology, my teachers, colleagues and well-wishers, who at different stages of my career supported me to the extent that I am here today before you delivering this prestigious oration.

The Present Paper

Nothing happens on the Earth that does not challenge Criminological imagination. Criminology is a mysterious discipline. Other than in the formal world, it exists more and more in popular conversations of the laymen when they try to understand crime and criminals in their own extraordinary ways. People in India in general have an amazing sense to explain criminality around them. They cause criminology in their own way. Tremendous insights are generated to the experts in this process. This paper is purposely designed to be an ambitious one. It sketches the concerns and critiques of Criminology, in a society which tends to face challenges that were not present, at least in the present shape, when this subject was contemplated. The paper decodes Criminology from everyday happenings from all around. The similar ideas were echoed during 'VIIth Annual Conference of the Indian Society of Criminology', where Justice V. R. Krishna Iyer said, "*A hungry householder, forlorn child, a deserted wife, a bond slave, a permanent dweller or unemployed proletarian may commit an act which comfortably co-exists with slum life and agrestic indigence*." In the same vein, Havelock Ellis also said, "*Every society has the criminals that it deserves*."

The underlying idea of this paper is to boldly audit the progresses made so far and the directions which we can take to make the engagement more

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productive and meaningful. At times, a mild turbulence may be created by challenging the conventional notions and ideas held by many of us. But in the end it would attempt to point towards the road ahead.
The Paper is divided into the following sections:
I – Mapping Criminology: Growth & Development
II – Criminological Concerns

I - Mapping Criminology: Growth & Development
A range of factors operated to bring Criminology in the existence in India. I propose to deal with some pertinent stages impacting the course of Criminology in general, and since the last three decades in particular. Much before the formal beginning of Criminology in India, we tend to find traces of Criminology related conversations in many other forms. The most spectacular development in this regard was the setting up Criminology as a full-fledged subject and department; with the largest number of faulty members, as the Department of Criminology & Forensic Science, at the University of Saugar in 1959. This happened after great initiatives of Justice G. P. Bhatt, K. F. Rustam ji, and followed by Prof. D. P. Jatar. Criminology and its development in India was largely due this seat of learning, which gave impetus to other institutions to follow suit.

Though in a limited form, the teaching of Criminology had started in the late 30's. It started in 1940 at the Jail Officers Training School at Lucknow and thereafter many Institutes/Universities, like—Christian College, Indore (1950); Madras School of Social Work (1952, 1962); Tata Institute of Social Sciences Bombay (1954); Bhagalpur University, Bhagalpur (1956); Institute of Social Sciences, Agra (1957); University of Saugar, Sagar (1959); Kashi Vidya Peeth, (started in 1963 and discontinued now); Madras University, Chennai (1965); Karnataka University, Dharwad, (1970); Maharaja's College, University of Mysore; and so on—have introduced teaching of Criminology at various levels. Later, University of Lucknow, Banaras Hindu University, Varanasi and Bundelkhand University, Jhansi (2002); M. S. University, Thirunelveli (2003); and the National Institute of Criminology and Forensic science, Delhi, in affiliation to Guru Gobind Singh Indraprastha University, Delhi (2004); have introduced Post-Graduate level teaching in Criminology and Forensic Science. The arrival of Police Universities too boosted Criminological education in many ways. Raksha Shakti University in

2009 became the first Police University in India, to offer courses in Criminology; followed by Sardar Patel University of Police, Security and Criminal Justice, Jodhpur, in 2012, which also offers Masters Courses in Criminology. Later in 2017, a Police University at Ranchi was set up, which also has Masters Courses in Criminology. In 2017, Gujarat Forensic Sciences University (GFSU), launched a Master's Programme in Criminology, with a specialisation in Forensic Psychology. Besides these institutions, teaching of Criminology, at a very limited level (in the form of a special paper), continued in various departments of Law/Psychology/ Sociology/Social Work/Anthropology, etc. in many Universities.

The organisation of Criminology in India is found at following levels:

(a) Independent Departments of Criminology: They are–Department of Criminology and Correctional Administration which is now Centre for Criminology & Justice; Tata Institute of Social Sciences, Mumbai (1954); Department of Criminology, University of Madras, Chennai (1965); Department of Criminology and Criminal Justice, M. S. University, Thirunelveli (2003); Department of Criminology & Criminal Justice, Rani Channama University, Belgavi (2011); and School of Criminology, Tamil Nadu Open University runs M. A. in Criminology & Criminal Justice Administration. The Mangolore University offers M.S.W. with specialisation in Criminology. There is another category where Post-Graduate courses in Criminology are conducted by other Social Sciences departments. The Department of Sociology, Banaras Hindu University, Varanasi and Department of Social Work, University of Lucknow, are such departments[2].

(b) Joint Departments of Criminology and Forensic Science: These are- Department of Criminology and Forensic Science, Dr. Harisingh Gour University (formerly University of Saugar); Department of Criminology and Forensic Science, Karnataka University, Dharwad; Institute of Forensic Science and Criminology, Bundelkhand University; and the National Institute of Criminology and Forensic Science, Delhi.

(c) Diploma Courses: Faculty of Law, University of Lucknow; Jaipur Law College; and University of Rajasthan have such courses. More recently Departments of Law in: Utkal University; Manipur University; Aligarh Muslim University; Punjab

[2] These two departments are reportedly discontinued now

University, Chandigarh; Punjabi University, Patiala; University of Jammu; Guru Ghasidas University, Bilaspur; and Jai Narayan Vyas University, Jodhpur have introduced Diploma Courses in Criminology.

(d) Criminology as a Special Paper: The Post-Graduate departments of Sociology, Social Work, Psychology, Law, and National Law Universities in the country also offer the subject of Criminology, as a paper in the curriculum.

(e) Regular/Distance Education Courses: There are correspondence courses in Criminology. The Department of Criminology and Forensic Science, Dr. Harisingh Gour University (formerly University of Saugar), conducts a Post-Graduate Diploma in Criminology and Police Administration. The Department of Criminology and Criminal Justice Administration, M. S. University also has a correspondence course in Criminology and Police Science. Also available are PG Diploma in Criminal Law, Criminology and Forensic Science at the Tamil Nadu Dr. Ambedkar Law University, Chennai; and PG Diploma in Criminology and Police Administration, Madurai Kamraj University.

(f) Criminology in Training Institutions: There are specific training institutions where Criminology forms a part of the training programmes, for the functionaries of Criminal Justice Administration. These include: National Institute of Criminology and Forensic Science, New Delhi; National Institute of Social Defence, New Delhi; Indian Institute of Public Administration, New Delhi; SVP National Police Academy, Hyderabad; State Police Academies, Training Colleges and Schools; Jail Training Schools; and Regional Correctional Institutes also have a fairly wide coverage of Criminology.

(g) LL.M. (Pro)/LL.M in Criminology or LL.M. in Police Administration: The National Law University Delhi, launched unique and first of its own kind Courses in the country, which primarily cater to the needs of service professionals, in the most flexible way.

Significant Developments

Research Intensive Centres in Criminology: In 2007, Centre for Criminal Justice Administration was created at National Law School, Bhopal[3]. Similarly, the Centre for Criminal Justice at National University of Juridical Sciences, Centre for Criminal Justice and Human Rights at National Law University, Orissa, and Centre for Criminology & Victimology at NLU Delhi[4], are some of the many units at various National Law Universities.

These Centres, unlike University Departments, mainly focus on Research in Criminology and Criminal Justice.

Landmark Publications: Without a doubt, the launch of 'Indian Journal of Criminology' by the 'Indian Society of Criminology', in 1973, was a promising beginning to establish scholarly traditions in Indian Criminology. The Journal 'Criminology & Criminalistics' from the 'National Institute of Criminology & Forensic Science', was another publication fully devoted to the field of Criminology. The 'Indian Police Journal' from BPR&D also promoted Criminological writings, significantly. Launched in 2017, the online 'International Journal of Cyber Criminology', is available for reference. Recently, the 'Journal of Victimology & Victim Justice' by CCV, National Law University, Delhi, has also been announced. There is a significant and substantial growth in Criminological literature, as seen in terms of books, research reports and other forms of writing, which include blogs and Police briefs.

The e-Pathshala initiative by the MHRD and UGC, to develop online content and video lectures for various subjects in India, is a highly remarkable initiative, laudable for numerous reasons. The 'Centre for Criminology and Victimology' at the National Law University Delhi, received the responsibility of this mega project; and accomplished this monumental task by completing 475 online textual content and video lectures. This was prepared with the involvement of over 100 authors and academicians, from across the country, representing many centres of education. This platform provides free access to quality reading material, including videos for 15 Law papers, which are taught at Post-Graduate level in Criminology.

Impact of 'National Law School Movement' on Criminology

Post 2000's, India witnessed a remarkable growth in the emergence of National Law Universities, in many states.[5] These elite institutions followed an

[3] The author was the first incumbent at this Centre in 2007

[4] The author was the first incumbent at this Centre in 2016.

[5] Currently 22 National Law Universities exist in various states.

interdisciplinary model of teaching Legal Studies, and resultantly Social Sciences finding a place in these institutions. While, Criminology as a subject also figured in these Universities; teaching of Criminology and Research, got a place in most Law universities with varying degrees of emphasis. I note that NLIU Bhopal is probably the only Law University, which included a full course in Criminology at the Undergraduate level. I not only had the privilege to teach there, but also to have set up the their first of its kind 'Centre for Criminal Justice Administration'. This Centre carried out significant researches and activities from 2007-2010, at the University. It is also noted with a tremendous sense of achievement, that I became the first full-time Professor in Criminology & Criminal Justice, in 2011, at the National Law University Delhi.

This assignment gave me and the field of Criminology a great degree of fillip at Law schools, as later I was able to set up a dedicated 'Centre for Criminology & Victimology' at NLU Delhi. Research at this Centre and at another Centre on Death Penalty, together has made tremendous contributions to contemporary criminal justice discourses in the country.

Police University Initiative and Criminology

The establishment of Police Universities at Ahmedabad, Jodhpur and Ranchi, also provided an impetus and relevance to Criminology; as these Universities started Post-Graduate courses in Criminology, and made arrangements of instituting faculties for Criminology.

Civil Society Organisations are conducting significant work in the areas— Crimes against Women, Juvenile and Elderly; Human Rights Protection; and against Human Trafficking and Crimes Prevention. Thus, Criminology Institutes in the country ought to forge ties with them, to be able to understand ground realities, for providing solutions easily applicable.

II - Criminological Concerns

The essence of Criminology lies in its ability to address topical issues, through all its knowledge paraphernalia. To be relevant, Criminology ought to engage with contemporary realities by examining them with the most relevant perspectives, keeping the nature of society and criminal justice response in mind. This section therefore outlines few concerns that Criminology is required to address.

This is the core section of the paper, which takes up the following emerging Criminological concerns for analysis:

A. Over-Criminalisation & Punitive Regimes
B. Wrongful Prosecution and Incarceration
C. Criminalisation of Triple Talaq
D. Factoring Criminology
E. Promoting Criminology in the Higher Education System
F. Criminology & Public Policy

A. Over-Criminalisation and Punitive Regime

'New Punitiveness' as introduced by Mark Brown and John Pratt (2005), is something that current Criminology ought to consider, especially in India. Penchant for being punitive, gives rise to over-criminalisation. While popular trends in Worldwide Criminology gravitate towards decriminalisation, the Indian state seems to be going in the other direction. More and more acts are being added in the ambit of what constitutes criminal behaviour. Even civil matters or misdemeanours are met with stern criminal reactions by the State. The State which is growing to be a punitive regime, where the arrest and over-incarceration are the preferred choices. This trend defies Criminology and its relevance. Over-Criminalisation, incessant arrests and punitive preferences—throw host of Criminological questions. Deviances like adultery, pornography, drug use and prostitution, need to be decriminalised. Moreover the current controversies on adultery and punishing the exercise of *Triple Talaq* by criminal law, leave lot of work for Criminologists to present a robust critique—of these troubling policy questions. While the progressive and positive Criminology moves towards a therapeutic jurisprudence and restorative justice, reliance on punitive regime and excessive criminalisation are of critical cause of concern.

B. Wrongful Prosecution and Incarceration

It has almost become quite mechanical to see people getting arrested, found guilty and later acquitted on appeal, in so many cases, and this process invariably makes unfortunate detainees lose precious years for no reasons. The issue of wrongful prosecution and incarceration has largely remained unaddressed. Hence, Criminologists are paying active attention to this issue, all over the world. The victimisation of wrongfully prosecuted people is an emerging concern in Criminology. As the existing laws in India did not provide much, it is for

Criminologists to take this issue and develop a framework for compensation and rehabilitation for these people.

Article 14(6) of the 'International Covenant on Civil and Political Rights' (ICCPR) deals with the issue of wrongful conviction:

"*When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.*"

168 State parties, including in India, have ratified the ICCPR. However, only few Countries have brought Laws to deal with the issue. Miscarriage of justice is a broader term that is often associated with wrongful convictions and wrongful prosecution. The term *Wrongful Prosecutions,* as commonly understood, are instances where the Judiciary exonerates the accused. It is about accused who have been alleged to be offenders, were tried and incarcerated after a substantial period of time spent by him, as under trial or as convict.

Differentiation between the conclusive innocent vs. not guilty beyond reasonable doubt.

The definition of 'miscarriage of justice' and the 'notion of innocent' were widened by the UK Supreme Court in a landmark ruling.[6] This majority judgement ruled that the requirement of inclusive innocence is highly inhibitive, even in the event of not proving their innocence beyond reasonable doubt, the accused would be entitled to compensation.

To quote Justice Baroness Hale:

"*Innocence as such is not a concept known to our criminal justice system. We distinguish between the guilty and the not guilty. A person is only guilty if the state can prove his guilt beyond reasonable doubt…if it can be conclusively shown that the state was not entitled to punish a person, it seems to me that he should be entitled to compensation for having been punished. He does not have to prove his innocence at*

[6] *R (on the application of Adams) (FC) v Secretary of State for Justice,* [2011] UKSC, 18.

his trial and it seems wrong in principle that he should be required to prove his innocence now."

The Indian State does not provide for any legislative framework to provide compensation and rehabilitation in case of wrongful prosecution. Despite the fact, that it has ratified the ICCPR Convention. The arrangement made in the existing 'Code of Criminal Procedure' provides for a very limited arrangement of compensation in very limited cases. The acquitted persons, irrespective of a trial court or appellate court, are left to suffer at their own expense since the Law does not provide any relief in such cases. Those acquitted, whether from the trial court, or upon appeal from the higher court, are left to find no recourse or legal redressal available to alleviate their sufferings.
While the instances of wrongfully prosecuted and acquitted persons continue to soar, the Supreme Court has occasionally dealt with this issue; and directed the accused to be the compensated for the wrongful prosecution and conviction.[7]

In this case, the accused individuals were implicated in a case under TADA and the Arms Act. The Supreme Court ordered Rs. 5000 to each accused as compensation to be paid by the State of Haryana. The Court also ordered the Haryana Government to recover the amount from the erring police officials. In another case *Mohammed Zahid* v*. Government of the National Capital Territory of Delhi AIR 1998 SC 2023,* the Supreme Court found the Delhi Police tampering the police record and other evidences to fabricate a false case. In a trial that lasted for 7 years, the Supreme Court ordered a sum of Rs. 50,000 to be paid as compensation to the victim. The State Government was also allowed to recover the amount from the guilty Police Officials.

The data provides (Annexure 1) some chilling accounts of the extent of victimisation of exonerees, by the criminal process itself. As many as 22 cases included in this analysis are those where the accused spent 1.5 years to as many as 2 or 3 years as accused, before found not guilty by the apex court. In 37% of the cases (N=14), the period of incarceration was 11 to 15 years or more and

[7] *Daulat Ram v. State of Haryana,* AIR 1995 SC 1998.

36.6% of the cases (N=8) were in the bracket of 6 to 10 years. A conjoint analysis of all the cases which come under the category of wrongful prosecution illuminates some common features and a combination of the following factors; namely: they are a religious minority, illegal arrest, false implications, forced confession, torture, fabricated evidences and a struggle that goes very long until the case reaches to the final appeal stages (this may take from a few years to more than two decades).

Consequences and Victimisation

That an ordinary citizen in India has been called to the police station, is enough to create apprehensions about him/her in the society. Moreover, having spent a few months or years in jail, the return to normalcy by the acquitted ones is beyond easy. Stigmatisation, to the extent of rejection of the exonerees, and their family is the worst form of victimisation that the family of such persons, have to invariably undergo. We have examined various instances compiled by the friends in the 'Innocence Network in India', which depict that even the children of exonerated persons studying in schools had to experience a sense of rejection, rather consistently.

State of Victimisation

The social consequences for those accused of terror crimes are far worse than those wrongfully arrested and charged with other types of crimes. These include: stigmatisation of accused, isolation even subsequent to acquittals, inability to gain employment as the past always resurfaces, and lastly, the fear of being arraigned for another terror crime. The family members of those accused of terror crimes also face special problems—stigmatisation, discrimination at school and college, loss of the earning members of their families, etc. They are penalised for no fault of theirs.

The testimonies of the wrongfully prosecuted are heart-breaking to hear. The testimony of Wasif Haider[8] is noteworthy in this regard. He said, "*Social boycott and stigma still continues…I am a jobless man. No one is ready to give me a job because of my past. I can't start my business because no one wants to deal with a terrorist, no matter I*

[8] Accused as Hizbul Mujahideen operative for the offence of waging war against the nation and the provisions of National Security Act.

was honourably acquitted by the court."[9] There is concomitant loss of dignity for the acquitted as the exonerated victims depend on the charity of people, as they do not have any job opportunities.

Impacts on the family of the acquitted victims is equally deplorable. They have to restart their lives from scratch – stripped of any advantages of their toil and labour collected over the years; they are further burdened by an extra baggage of moral stigma of being a 'suspected terrorists'. The mother of the one of the acquitted victims reportedly said that "*My son is born again."*[10]

According to Adrian Grounds, "The miscarriage of justice entailed acute psychological trauma at the time of initial arrest in custody, involving experiences of overwhelming threat. In addition, there was chronic Psychological trauma: years of notoriety, fear, and isolation in their claims of innocence."

The psychological costs of this happening were found to be detrimental, through a study conducted on 18 male exonerates. Majority of them (N=15) were wrongly convicted of murder and sentenced to life imprisonment; ten having served 11 years or more. Six made false confessions under interrogation pressure. The exonerees, suffered from serious psychological disorders, like "enduring personality change after catastrophic experience" and PTSD. In 16 of the 18 cases, there was evidence of depressive disorders, panic disorder, and paranoid symptoms. Adrian Grounds said that "a strong clinical impression of irreversible damage that could not be substantially remedied."

Custodial torture and prolonged confinement invariably result into severe consequences. The cases examined by the 'Innocence Network of India' stated that Amanullah and Munawwar, who were incarcerated for 3.5 years in Jaipur jail; suffered from severe depression and insomnia. They were prescribed Trika and Libotryp, during their stay in the jail. Even when JTSA team met him in late 2011, Amanullah broke down several times, recalling the horrors of torture. Munawwar, suffered from partial paralysis as a result of the severe anxiety and stress.

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[9] 1st People Tribunal on Innocent Acquitted, Report of the Jury, Innocence Network, India.

[10] Here, the exonerated victims were acquitted after 12 long years of incarceration. Majid Maqbool, *Twelve Years a Terror Accused: The Story of a Shawl Weaver From Kashmir*, The Wire, 20.02.2017, Available at: https://thewire.in/110584/mohammad-hussain-fazili-blast-terror-kashmir/.

Md. Aamir Khan, who has spent 14 years in jail for multiple cases, also battles depression and insomnia. Many are also reported to suffer from guilt for the suffering and trauma their families have gone through, holding themselves responsible.

Impunity for Police and Investigating Agencies

There does not exist enough data related to this, as far as the liability issue in wrongful arrest, custody and prosecution is concerned. Section 197 of the 'Criminal Procedure Code' (CrPC), requires previous sanction for registering a case against any public servant. Similar provisions exist in the UAPA Law.

Anti-Terror Laws and their Susceptibility to the Wrongful Process

The entire gamut of anti-terror legislations has a very different set of provisions in contradistinction to the standard Criminal Law. These provisions endow excessive powers to the executive; fetter judicial scrutiny; limit the civil liberties of the accused and impact, in a multifaceted manner, the treatment of the accused under anti-terror laws. It is also seen that in combating terrorism laws, even though due process is juxtaposed with crime control,[11] the State has always tilted towards the crime control aspect. Some scholars, while studying this aspect of the 'Counter Terrorism Acts', notably point out that issues of terrorism are placed out of the ordinary policies and programmes of crime control[12] and in the realm of 'sacred' national security.

Wrongful Prosecution in Perspective

A reflective analysis of the cases of wrongful prosecution in India brings certain peculiarities in cases related to anti-terror laws. The analysis is about the grave consequences of wrongful prosecution in such cases. The conviction rate has been disproportionately low in terror cases, though the charges have been high. It is reported that in the earlier regime of anti-terror legislation, 'Terrorist and Disruptive Activities (Prevention) Act', around 77,500 people were arrested and the rate of conviction was less than 1% ('People's Union for Civil Liberties 2007').

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[11] Crank and Gregor. (2005) *Counter - Terrorism After 9/11: Justice, Security and Ethics Reconsidered*, Cincinnati, OH: Lexis Nexis and Anderson Publishing.

[12] Cyndi Banks. (2008) 'Ethics and the "War on Terrorism"', *Criminal Justice Ethics Theory and Practice.* 2 Edn. Sage Publications, p. 263.

A holistic view of the cases of wrongful prosecution in India and the testimonies of victims of wrongful prosecution reveals that—wrongful prosecution is not an episodic occurrence or necessarily malicious. It is not merely happening on account of technical errors or wrong judgment of the public bodies involved. It poses a hypothesis that wrongful prosecution is a structural outcome.
It is something inherent in the nature of criminal law and the criminal process in terror related cases, which increases the likelihood of the phenomenon of wrongful prosecution.

Excessive Power and the Ensuing Abuse of Power:
There has been widespread acknowledgment of the fact of misuse of anti-terror legislations, because of the provisions prevalent in the anti-terror law. In the US, Justice O' Connor in the case of *Hamdi v. Rumsfeld* (2004) stated that the President is authorised to use "*All necessary and appropriate force*" against "*Nations, organisations, or persons*" associated with the terrorist attack. For instance, under the present central anti-terror legislation in India, the 'Unlawful Activities (Prevention) Act, 1967, sec. 43D' is a contrasting departure from the standard criminal law in India. This departure gives excessive power to the investigating agencies and consequently curtails the already downward adjusted civil liberties of the accused, under the standard criminal law. These provisions translate to an increased duration of police custody and detention during investigation[13]. Also the Standard Bail Provisions not being applicable to the accused and slopping towards denial of bail[14] provisions like this—inhibit the judicial power to decide impartially, and as it is posits a limitation on their role in the criminal justice system. These aspects lead to long incarceration, which affects victims in multifaceted ways. This excessive power has been conferred on the executive agencies, which leads to victimisation of both the accused and the suspects under the Act.

It is a rather discouraging contrast, though the role of the investigating agencies under the anti-terror law intensifies vis-a-vis standard criminal law, in a criminal justice trial and the effect of their role on the accused

[13] The Unlawful Activities (Prevention) Act, 1967, Sec. 43 D (2)(a).
[14] The Unlawful Activities (Prevention) Act, 1967, Sec. 43D (4), 43D (5), 43D (6) and 43 D(7).

intensifies too; but they tend to behave in an extremely dubious way. Their role intensifies because they are the first checkpoints of ensuring that no innocent is wrongfully prosecuted, as the investigating agencies are the ones who have the onus of classifying an 'offence as a terrorist act'; undertake aegis of the very anti-terror setup. The present anti-terror law in India, has an immensely expansive definition of what constitutes a terrorist act; such that even the *'likelihood'* of causing terror in minds of people comes within the ambit of a terrorist activity. This leads to excessive power in the hands of the investigating agencies to describe the acts with very tenuous links or no links at all, to the main terrorist strikes, if any, as one of the terrorist act. This leads to an incremental increase in the number of the wrongfully prosecuted victims. One of the major examples of this case is *State of Tamil Nadu v. Nalini*[15], where the Central Bureau of Investigation (CBI), filed a charge sheet against 26 people under the Standard Criminal Law, Indian Penal Code, 1987, and the anti-terror law of the 'Terrorist and Disruptive Activities (Prevention) Act', 1987. The Special Court under the anti-terror law convicted all of them. However, the Supreme Court set aside the conviction under anti-terror law of all the accused, holding that the required intent of the anti-terror law was not met at all. The Supreme Court decided this case in 1999 and the purported *'terrorist act'* as classified by CBI was done in May, 1992. Hence, the acquitted victims were incarcerated for about seven years.

Extensive Reliance on Confession

Another peculiarity of cases of wrongful prosecution is that confession of the accused, forms the main evidence for convicting them. Mostly confession forms the bedrock of a prosecution story. Acquitting courts have rejected confessions due to lack of corroborative evidence, impossible explanations and breach of statutory safeguards mandated for recording of confession. However, it should not be forgotten that the Judiciary rejects the prosecution story after years of incarceration and condemnations.

It has been held by the judiciary, time and again, that confessions alone cannot be made the only ground for conviction.[i] Corroboration is specifically necessarily where confession is retracted.[ii] These principles are often

[15] *State of Tamil Nadu v. Nalini and ors.* AIR 1999 SC 2640, famously called as the Rajiv Gandhi Assassination case

completely overlooked by the judiciary while convicting the accused in anti-terror cases.[iii] Judiciary's neglect and continued reliance on confession incentivises the investigating officers for extracting confession, by any means. The provision of admissibility of confession to the investigating officers, albeit with safeguards, makes torture and abuse inevitable.

The victims of wrongful prosecution have testified and said in their interviews that they were made to sign on blank papers,[iv] by subjecting them to torture (Innocence Network India 2016). Subsequently these blank papers are produced as their confession in Courts.[v]

In '*Serial Train Bombing Case of 6 and 7 December, 1993'*, Mohd. Nisaruddin's wrongful prosecution presents an excruciating reality. He spent more years of his life in jail than outside. He was released by the Supreme Court after 23 long years of incarceration,[vi] after having been convicted and sentenced to life imprisonment by lower courts. More shockingly, the only evidence against him was custodial confession, without any independent witness.[vii] The Supreme Court acquitted the victim on the ground that the confession was not voluntary and it was not recorded as per the Law, and absence of any material evidence other than the victim's confession itself.[viii]

Most of these confessions are obtained under torture and duress, which make retraction of confession a normal occurrence in cases of wrongful prosecution.[ix] It is not only the victim who is tortured, but his family members are also kept under arrest and tortured in order to extract confession from the victim.[x]

In '*Kanpur Rioting Case of 2001',* Haider spent eight years in prison because of wrongful prosecution (Innocence Network India 2016). Haider was tortured continuously for three days. He was subjected to extreme physical torture including electricity shocks, and was attacked over his religious identity.[xi] After being unable to bear anymore; Haider finally gave in to the torture, agreeing to confess on video camera to whatever the Police wanted (Innocence Network India 2016).

Another problem in allowing the admissibility of confessions is that legislated safeguards or the procedure as mandated by law to allow confession to police—are rampantly bypassed by police officers.

As observed in '*Akshardham Case'*[xii], the investigating official admitted that he did not assure the accused that, by not making the confessional statement it will not put them in an adverse position, which is mandated by Law. The Supreme Court denied confession in *Akshardham case*[xiii] also because it found out various discrepancies during recording of confessions in this case, like—caution against confessing and confession of the accused were in different papers, unlike in cases of confessions of the prosecution witness.[xiv]

Many times, the accused are not even given reasonable time to reflect on their confessional statement,[xv] despite the fact that they are in the police custody before making confession. It has been observed by the Supreme Court, and rightly so, that the cooling time should be given to the accused to let them think over their confessional statement.[xvi] It should be ensured that accused people are completely freed from fear and any possible influence of the Police, before allowing the confession.

These cases demonstrate that the *'safeguards'* or the procedure given for recording of confessions are not followed by the investigating agencies. The neglect of Judiciary renders it as an empty exercise.[xvii] Thus, making the torture committed by police inevitable.

The 'National Human Rights Commission of India' (NHRC), too has expressed that admissibility of confessions made to investigating agencies would increase the chances of torture in securing confessions. Moreover, if confession is not admissible, then the investigating authorities will be under pressure to come up with credible and better evidence.

Further, it is to be highlighted that there are similar number of Magistrates available in a district as the number of police officers eligible to record the confessions. Moreover, the confession of accused[xviii] has to be recorded before a magistrate within 48 hours, under criminal law. Hence, there is no rationality in making the confessions to the police officer as admissible.

Torture

Extended period of detention increases the risk of torture. Torture is not only illegal but it is also counterproductive and ineffective. Torture by the State, alienates the citizens and breeds contempt and discord for the Law and the State. This diminishes the legitimacy of the State. The account of torture that victims bear in cases of wrongful prosecution is horrific. There are accounts of being stripped, tied, beaten all over, made to eat faeces, sleep deprived, kept in isolation, etc. ('The Citizen 2016, Innocence Network 2016'). Use of electric shocks, needle piercing and severe dehydration also constitute forms of torture ('Innocence Network India 2016'). The prime reason for torture is admissibility of confession in terror-related cases. Victims of wrongful prosecution have testified that they confessed just to avoid further torture done to them and/or their family members ('Innocence Network India 2016'). The acquitting courts have recorded that retracted confessions exemplify grave physical and psychological torture by police to victims, done for extracting confession.[xix] The retracted confessions portray a horrific events of torture like piercing of pins,[xx] made to eat faeces, etc. ('Masood and Ehsan 2017'). Mohd. Nisaruddin as mentioned above, was acquitted after 23 years of incarceration in '*Serial Train Bombing Case, 1993'* ('Innocence Network 2016'). The only evidence against him was confession at all the stages of judiciary till the Supreme Court finally acquitted him.[xxi] Torturing him included—making him stand for four days, chained, sleep deprived and kept in isolation for 73 days—to extract confession.[xxii] Another victim of wrongful prosecution, Wahid Sheikh, who was acquitted after nine years of incarceration has testified the gruesome torture that he underwent ('Innocence Network 2016'). He was tortured when he refused to confess to the terrorist crime of the '*Mumbai Train Blast Case of 2006'* and did not initially sign the papers given by the Investigating Officer. According to his testimony he was beaten, stripped naked, water boarded, all while his body was upside down; subject to gas, electric shocks and his skin was burnt.[xxiii]

It is also a fact to be noted that torture continues even after the accused have been convicted by the Lower Court. Often, they are kept in solitary confinement.[xxiv] The exonerated victims have recounted their horrific prison conditions: not given drinking water, compromised hygiene, and reduced diet ('Innocence Network 2016'). Not only the testimonies of the exonerated

victims, but also a State Government appointed Commission, '*Advocate Ravi Chander Report*', confirmed the tortures committed on accused under anti-terror laws ('Radiance Views Weekly 2009').

One of the defences made for the use of torture as advanced as is done, by the investigating agencies is that—it is an effective way to extract information to thwart imminent terrorist attacks or to catch other terrorists. I argue that torture is an ineffective way and serves no purpose, especially in cases of anti-terror situations. It is very well known, that many of those victims of torture tend to divulge unnecessary information or false information, just to avoid being tortured. Besides being ineffective, torture of the 'terror accused' is contrary to the rights of—not to be punished before conviction [ICCPR, Art. 9(3)], the presumption of innocence [ICCPR, Art. 14(2)], and right to due process [ICCPR, Art. 14 (3)]. Torture undermines the entire edifice of Law. The 'Torture Convention'[xxv] has raised the level of prohibition on '*Jus cogens'*, which has been recognised by major juridical bodies. [xxvi]

Torture is used to extract forced confessions to satisfy public impulse that the case at hand has been solved; only to find the accused released after years of incarceration. This is one of the main sources of wrongful prosecution in India. Apart from the substantive and moral problem with torture, some scholars rightly note its futility. Scholars argue that torture is only effective on civilian population and not on terrorists (Clarke B, Imre Rand Mooney T 2009: 58-60). They further propound that torture can effectively stop people from taking the first step towards being a terrorist (Clarke B, Imre Rand Mooney T 2009: 58-60). However, it works in a counterintuitive way especially in anti-terror mechanisms. It works towards actually solidifying a portrayed victim ideology of terrorist organisation (Clarke B, Imre Rand Mooney T 2009: 58-60). Terrorist organisations establish themselves mainly as a collective victim of some part of the modern and majority process: social, political or modern process (Clarke B, Imre Rand Mooney T 2009: 58-60). So, one great tactic to destroy and dismantle terrorist organisations is to take away this argument from their ideological position.

As seen, torture is neither effective for anti-terror actions nor is it morally justified. It uncovers a social slippery slope, in which powerful groups dehumanise their victims. The accounts of torture of people in custody

('accused') are horrific all around the world, be it in India or Abu Ghraib prison, Iraq, or the Guantanamo detainees, USA.

Investigating Agencies

The role of investigating agencies cannot be sufficiently emphasised. They are the first exposure for any detained person to the criminal justice system, and rather its beacon directing the proceedings. Their practices are highly impactful on the occurrence of wrongful prosecution, for instance, the practice of getting police witnesses, erodes and compromises the credibility of the investigation heavily. In most cases police is unable to present an independent witness,[xxvii] where it is highly probable to find one. The High Court of Delhi in '*State (G.N.C.T.) of Delhi v. Saqib Rehman @ Masood and Ors'*[xxviii] noted the caution that must be exercised while relying on police witnesses. The prime investigating agencies of India, i.e. 'The Anti-terrorist Squad' and 'Central Bureau of Investigation', are equally participative in the cases of wrongful prosecutions. For instance, it was discovered in '*Malegaon Blast Case'*, that the purported witnesses present at the time of the collection of samples of the prime investigating agencies, were actually not present at the claimed time.[xxix]

Apart from fabrication of evidences, they have been found to torture the accused. In the '*Mecca Masjid Blast Case'*, erring police officers were indicted of committing torture by '*Advocate Ravi Chander Commission'* ('Radiance Views Weekly 2009'). The National security laws grant *de facto* immunity from prosecution, to the investigating officers.[xxx] Additionally, some of the police officers guilty of wrongful prosecution are promoted, let alone inquired against.[xxxi]

Robinson's 'Theory of Empirical Desert', gives one plausible explanation of their behaviour. He says that the practical side of applications of criminal law, is characterised by its efficiency in terms of accelerating the processes of arrest (Robinson: 2009). Hence, the success of the criminal justice system is seen in terms of number of arrests made, number of people put to trial and number of conviction achieved. This has been ingrained into the law enforcement agencies.

Judiciary

The analysis reveals that the Judiciary has mostly mechanically rejected bail in terror-related cases ('Innocence Network India 2016'), as they readily accept the prosecution story. They have rejected bail even when the incarcerated has complained of torture or when the judiciary has itself noted illegal detention. This results in longer periods of incarceration, thereby rendering the incarcerated vulnerable to torture and abuse. For instance, in the '*Mulund Blast Case of 2003'*,[xxxii] the trial court rejected his application, even when a judicial report had already confirmed his illegal detention for about a month.[xxxiii] It is evident by the fact that these cases' convictions were upheld by High Courts and were only overturned by the Supreme Court. Thus, manifesting a troubling fact, that even Courts accept low-grade evidence in terror-related cases ('Innocence Network India 2016').

The judiciary readily accepts the prosecution story despite several loopholes. In '*Akshardham Case'*, the Supreme Court while acquitting the accused, categorically highlighted how the High Court held the retraction of confession of the accused to be *Ex-facie* unbelievable without giving any reasons.[xxxiv]

Sadly, the Supreme Court of India has not yet accepted the 'Case of Compensation' to the exonerated victims coming under anti-terror laws. It has given the rationale that the grant of compensation to the exonerated victims will have a demoralising effect on the investigating agencies, who would remain under a constraint of being made liable to compensation despite the judiciary agreeing to the veracity of the evidence collected by them.[xxxv]

Compensation and Rehabilitation - Need for Legal Framework

The present Laws in India do not offer any arrangement for addressing the victimisation of the wrongfully prosecuted people. The author, acting as Amicus Curiae, gave many suggestions to devise a system of assistance and rehabilitation, for the wrongfully prosecuted persons. The 'New Zealand System' calculates the harm suffered by the wrongfully prosecuted persons in following terms:

Non-Pecuniary losses

- Loss of Liberty;

- Loss of Reputation (taking into account the effects of any apology to the person by the Crown);
- Loss or interruption of family or other personal relationships; and
- Mental or Emotional harm.

Pecuniary losses

- Loss of Livelihood, including loss of earnings, with adjustments for income tax and for benefits received while incarcerated;
- Loss of future earning abilities;
- Loss of Property or other consequential financial losses resulting from detention or imprisonment; and
- Costs incurred by or on behalf of the person in obtaining a pardon or acquittal.

The Innocent Network in India suggested the following:

- Monetary Compensation, based upon a 'set minimum amount for each year served', as well as un-liquidated damages based on other factors, like quantifiable material damage, emotional trauma, opportunity cost, etc.
- Provision of Immediate Services, Including:
  (a) Financial support for basic necessities, including subsistence funds, food, transportation;
  (b) Help securing affordable housing;
  (c) Provision of medical/dental care, and psychological and/or counselling services;
  (d) Assistance with education and the development of workforce skills;
  (e) Legal services to obtain public benefits, expunge criminal records, and regain custody of children.
  (f) Official Acknowledgement of a Wrongful Conviction.
  (g) Fixing the criminal liability of the wrongdoers.

C. Criminalisation of *Triple Talaq*: When should we make use of the criminal law?

With the ruling of the Supreme Court, the practice of *Triple Talaq* has been banned in India. The Indian Government moved a Bill to punish this practice with three

years of imprisonment. The issue is not whether this is good or bad. The issue is whether this exercised the principles of criminalisation. The said principles of criminalisation are those sacrosanct postulates, which the policy makers ought to consider before deciding to criminalise. Going by the discourse around, it seems that the crucial test of criminalisation in this case failed. When should we make use of the criminal law? 'Crimes, Harms, and Wrongs' offers a philosophical analysis of the nature and ethical limits of criminalisation. Generally, harm-based prohibitions, proscriptions of offensive behaviour, and 'paternalistic' prohibitions aimed at preventing self-harm, and developing guiding principles for these various grounds of state prohibition—are the considerations in this process. *Talaq* being the 'matter of marriage as a social contract' would entail difficult questions in the event of criminalisation. Given the nature of adjudication, proofs and requirement of standard of proof in a criminal case, it will be tough call for women who would be burdened to prove the charge beyond reasonable doubt.

Since the beginning of the issue, scholars have suggested that rather than criminalisation, the legislature should have adopted the path of including it as an act of infliction of domestic violence under the ambit of the 'Domestic Violence Act, 2005', wherein it could have been categorised as verbal and emotional abuse, covered under S.3 of the Act. This would provide greater number of avenues for women to seek resort to against the injustice inflicted on them, due to the arbitrarily callous attitude of their husbands. This would have opened up the path of multiple reliefs, like protection against violence, right to residence in marital home, maintenance, medical facility, compensation, etc.

These options are not available under the current Bill, which only consists of a provision of 3 years of jail imprisonment for the husband. Overall, the bill seeks to bring Muslim women on equal footing in the society by ensuring they get their due share of rights. It favours women, to get custody of their children, accompanied with the obligation on the husband to pay sustenance allowance to the wife and his children. However, the Bill suffers from some inherent flaws, which arose firstly because at the time of its drafting it, was not consulted with Muslim women and the AIMPLB. In fact, the idea of this having a criminal character is in itself flawed, since marriage under Islamic Law is purely a civil contract between two adults. Hence, it must follow the procedure, which is civil in nature.

The bill is proving to be highly discriminatory against Muslim men, because in such cases, Muslim husbands would be prosecuted even without his wife's assent, for pronouncing *Triple Talaq*; whereas a Hindu man who rapes his wife while they are separated will not be prosecuted unless his estranged wife agrees. This creates dual standards for men, among different religions. On one hand the legislature claims that it is in consonance with the SC decision of declaring it unconstitutional, on the other hand the AIMPLB has voiced its concerns, as it believes that this Bill goes contrary to the protection granted by the Constitution.

Apart from that, it takes away the additional layer of judicial oversight, that was present in the case of offences related to marriages; to prevent third parties from seeking redressal of wrongs committed between two private parties. By making the practice of *Triple Talaq* a cognisable offence under S.7 of the Muslim Women Bill ('Protection of Rights on Marriage'), it gives police officers the power to conduct an investigation without bringing it to the notice of the concerned magistrate; forthwith, the moment a police officer receives a complaint, without waiting for the magistrate's order. This has raised fear in Muslim men becoming soft targets, who the police can arbitrarily throw in jail for three years based on anybody's complaint. This gives the police an additional handle to incarcerate Muslim men. Moreover, there have been certain inconsistencies within the Bill itself, with the most glaring internal contradiction found in Sections 5 and 6. These discuss post-divorce issues such as a "subsistence allowance" for the woman upon whom instant *talaq* "is pronounced" and the "custody of her minor children"; as if her marriage is dissolved by the mere pronouncement of *talaq-e-biddat*. The drafters of this Bill talk of post-divorce matters ignoring the fact that the pronouncement (instant *talaq*) has already been voided in S.3 and cannot result in a divorce.

Here, the Government fails to address the issue of how women are supposed to provide for themselves and their children, when their husbands are pushed into jail for three years. This would ultimately amount to indirect punishment to wronged women, whose cause this government claims to champion. Criminal prosecution of the husband will result in ending the marriage without securing the wife with a surety of her economic rights. It is believed that this Bill might end up suffering similar flaw as in case of S.498A, which has turned out to be a futile piece of legislation.

Though this Bill seeks to guarantee a definite safeguard for women, acting as a shield from the torturous deeds and whimsical behaviour of their husbands; yet it fails to take into consideration the interests of poor, illiterate Muslim women. In case of not having adequate legal representation, it would be difficult for them to prove in court that *Triple Talaq* was actually given. Alternatively, even once the husband is sent to prison, the women would be deprived of shelter and sustenance, if the husband is unable to support in the absence of any constant source of income, when behind the bars.

Such criminal recourse ultimately closes all doors of possible reconciliation, even in scenarios wherein the couple may have been ready in the beginning to forego the animosity generated. Such penal policy can be considered as interference in personal matters, as this takes away the opportunity from the errant husband to reconcile. Thus may, in the longer run, have the effect of instilling sense of insecurity and alienation among the Muslim community.

The landmark judgement of the Supreme Court declaring the practice of *Triple Talaq* as unconstitutional was indeed applauded. However, the single-step criminalisation of the same is something that needs legislative reconsideration, in a manner that the primary objective of safeguarding the rights of Muslim women is not defeated.

D. Factoring Criminology

To be relevant, Criminological conversations need to become relevant at various stages of adjudication. There is sufficient scope for Criminologists to give inputs about the social investigation regarding the accused, victim impact assessment, bail consideration, sentencing probation hearings.

Criminology also needs to influence sentencing. A research at NLU Delhi,[16] has recently shown that very little is known about the way the mitigating factors are identified and evaluated in deciding the quantum of punishment in death adjudication. Criminologists are well versed with the way criminal behaviour is accentuated and mitigated, and the factors along with their influence that can very well be ascertained by them in an objective fashion. Thereby, becoming a useful contribution.

[16] *Matters of Judgments*, (2017), Centre on the Death Penalty, NLU Delhi Press

Decoding the Society and People in Terms of Criminogenic Factors

I envisage Criminology to be contextual and alive to contemporary social realities, having a bearing on crime trends and responses to it. This is so, as our academic engagements in Criminology invariably fail to understand co-occurring developments, and moreover miss crucial contexts in understanding crime and its structuring. Criminologists need to shape their conversations, alongside the crucial social data and their implications to crime. Regrettably enough, plenty of socio-economic data is coming from various institutions talking about the social health and mood of people in this country.

Criminologists ought to connect their research and arguments based on these social realities. An apt example is 'World Inequality Report 2018', which largely remains unexplored by Criminologists. Consider the reported finding, that—the top 1% of income earners received 6% of the total income in the early 1980s, close to 15% of it in 2000, and receive 22% today. What does it mean to be a Criminologist?

This Report paints a picture of social disarray, wherein the access to resources varies for people, on account of their economic positioning in the society. Thus, a poverty-induced society tends to limit people's choices and access to what the constitution promises. Further, India ranked 130 out of 188 countries, on the 'Human Development Index'. Similarly, the 'World Happiness Report 2016', published by the Sustainable Development Solutions Network (SDSN), a global initiative of the United Nations, places India at 118th in the list. The report said that India was among the group of 10 countries witnessing the biggest happiness declines, along with Venezuela, Saudi Arabia, Egypt, Yemen and Botswana.

India shockingly comes below Somalia (76), China (83), Pakistan (92), Iran (105), Palestinian Territories (108) and Bangladesh (110). Implications of this data suggest that an unhappy country, with a stark income inequalities, social disparity and poor social health naturally becomes a place prone to crime and disorders of all varieties.

Criminology cannot establish its credibility as a pragmatic Science, unless it engages itself meaningfully in answering the questions of deviance and crimes being faced by the present society. For instance, the recent verdicts of the Court acquitting all 15 accused in the 2G Spectrum Case or the acquittal of Talwars in Aarushi Murder Case; throws manifold types of questions before us and provides a definite track to evaluate the way our Criminal Justice works. Legality was satisfied and criminality seems to 'have been allowed' in these cases? How do the verdicts in these cases reflect on the failures of the criminal justice system and helplessness of the courts? Doesn't this argument need to be taken forward? What are the Criminological implications of the verdicts in these cases, like the 2G Spectrum Case? This ought to serve as a challenging proposition to Criminological imagination.

An underage juvenile, barely 16 years old, murdered his parents in Noida this December 2017 and around the same time, another teenager raped a 65 year old woman. Yet another raped a young woman in Delhi. While media published these stories in tandem with the murder at Ryan School a couple of months ago in the same year (September); but how would Criminologists explain this criminality by juveniles, and what prescriptions will they have in such situations. Criminology cannot escape these questions. When it is unable to properly deal with such questions or unable to explain, it is often misused by different sorts of media; wherein false and populist impressions are created, which are more often than not misleading.

Criminology in India in the past decade or so has had another daunting challenge to face, that of decoding cyber criminality in its most conspicuous manifestations. There has been an exponential growth of around 350 percent in this category, in India. Cyber bullying, stalking, revenge porn and defamation, all are becoming rampant with not much substantial theoretical clues about them. Thus theorisation and applied research into this field has now become imperative. The tradition of 'Critical Criminology' in India is yet to emerge. The mainstream thinking of Indian Criminology maintains the State's notions of crimes. For far too long Indian Criminology has been obsessed with the State's conception and construction of 'crime'. This is why we have yet to gain a 'social reality brand' understanding of crime.

While mapping these concerns, I also find some developments happening in the present society, which need deserved attention. Like the rise in—instances of regulating free speech and attacks on religious minorities, often led by vigilante groups. Mindless invoking of Sedition Law in many cases, and violence against Dalits and minorities, pose a serious Criminological concern to dwell upon. Dalits and Adivasis continue to face widespread abuse. According to official statistics released in August 2017, more than 45,000 crimes against members of Scheduled Castes and almost 11,000 crimes against Scheduled Tribes have been reported during this period. Dalits in several states have been denied entry into public and social spaces, and faced discrimination in accessing public services.

We still do not have enough idea about the UAPA, AFSPA or MCOCA kind of laws, which have the potential to undermine fundamental freedoms. Impunity provided under such Laws pose a threat to Human Rights of the citizens. It becomes difficult, if not impossible, to prosecute public officials. Section 197 of the 'Criminal Procedure Code', bars courts from recognising any offenses (except sexual offenses) alleged to have been committed by public servants; in the discharge of their official duties unless the Central or a State Government permits prosecution. Recently, a special court discharged Gujarat police officer Rajkumar Pandian, from a 2005 extrajudicial killing case, under this provision. Pandian was the 12th defendant, discharged in this case.

In July 2016, the Supreme Court of India, in a decision ordering an investigation into 1,528 cases of alleged extrajudicial killings in Manipur State; ruled that the AFSPA does not provide immunity to Security Force Personnel, who use excessive or retaliatory force. It said further that every alleged extrajudicial killing should be investigated. The confession of a Manipuri police officer subsequently disclosed that—he had acted on orders, to kill more than 100 suspected militants between 2002-2009. Thereby exposing how Police had adopted illegal practices long associated with the Army and Paramilitary Forces. Authorities continue to use Sedition and Criminal Defamation Laws to prosecute citizens who criticise Government officials or oppose State policies. In a blow to free speech, the government in 2016 argued before the Supreme Court in favour of retaining criminal penalties for defamation. The court upheld the law. In the same vein, in January 2016, the

new Juvenile Justice Act came into force, permitting prosecution of 16- and 17-year-olds in adult court when charged with serious crimes such as rape and murder.

The law was enacted despite strong opposition from children's rights activists and the National Commission for Protection of Child Rights. It is noted with concern that a regime of victimization is growing so visibly. According to statistics released in August 2017, reports of crimes against children in 2015 rose by 5% compared with the previous year. The crime against children in 2016, in comparison to 2012, increased by 300 per cent.

On the 'Death Penalty' front, there were no executions in 2016, but around 385 prisoners remained on death row. Most of the prisoners belonged to marginalised communities or religious minorities. Indian courts have subsequently recognised and surmised that death penalty has been imposed disproportionately and in a discriminatory manner against disadvantaged groups in India.

In India, we also do not have enough rational yet to allow adultery to come under the ambit of being considered as an offence, as this law becomes too arbitrary against menfolk at large, in general. Similarly, the need to criminalise marital rape is also becoming a critical issue in the Indian society, an impending concern for Indian policies to consider. The issues relating to the rights of members of LGBTI, i.e. lesbian, gay, bisexual, transgender, and intersex people are also of crucial importance. The Supreme Court referred to a larger bench, a petition challenging Section 377 of the Indian Penal Code, which criminalises consensual same-sex relations. In June, five people who identified themselves as members of the LGBTI community filed another petition in the Supreme Court asking for Section 377 to be struck down.

Criminology in a Risk Society

The India Risk Survey 2016 (IRS 2016) is an attempt to showcase the views and perceptions of business leaders, policymakers, experts, as well as professionals across various sectors, scales, and geographies regarding—strategic, operational, and safety risks to businesses. The IRS expresses an escalating concern towards crime and its related disorders affecting business interests. There is an

impending need for Criminologists to find ways to address this crucially significant matter, which has far reaching implications. 'Information & Cyber Insecurity', has been ranked as the second biggest threat to businesses in India, for two consecutive years. Its high ratings point to the fact that this is a persistent risk to both private and government sectors, in a high-technology driven global economy; wherein there is a growing trend in the rise in cyber-aided hacking. Information insecurity along with infringement of intellectual property and corporate fraud, remain some of the crucial concerns in business strategy, across various sectors and geographies. 'Crime' has jumped to 3rd position in 2016, from its 5th ranking in last year's India Risk Survey. The National Crime Records Bureau (NCRB) data for 2014 shows an increase of 8.9 per cent, in crime over 2013. The risk of 'Political & Governance Instability' has been ranked at No. 6 in the IRS 2016 this year. The above figure indicates that the top five risks that impacted the Indian Business Environment over the span of last year include, 'Strikes, Closures & Unrest', 'Information & Cyber Insecurity', 'Crime', 'Terrorism & Insurgency', and 'Corruption, Bribery & Corporate Frauds'. 'Corruption, Bribery & Corporate Frauds', which held No. 1 position in 2015 and 2014 survey results, slipped to No. 5 position this year. The rise in category of 'Strikes, Closures & Unrest, can be attributed to major unrests in the form of *Jat* and *Patel* (to name a few) demand for reservations in education and government jobs, etc., in the last few months along with the persistent threat of labour unrest in manufacturing zones. 'Information & Cyber Insecurity' has maintained its second rank in this year's survey as well.

Improving the enforcement of social legislation in a Country like India is crucial for social change, and reforms that are purported to be achieved through various social enactments. These social interventions for reforms through legislations are highly important so far as crime against women, children, weaker sections, etc. are concerned. Notably, criminal research is generally not geared to contribute to improving the enforcement of these legislations. By and large the scene relating to enforcement of these laws is unsatisfactory and a sad state of affairs, to say the least. Hence, there is huge scope of research to be conducted in criminology and of an applicable nature, towards improving the situation.

Strengthening the institutional means that deal with criminals and prisoners, is highly imperative and pertinent, as far as criminology is concerned. Laws are created day in and out, yet the associated institutions largely remain and have remained inefficient in fulfilling the mandate of these laws. This situation is evidently seen in cases of domestic violence, juvenile justice, and other sectors. A criminological evaluation with an objective of conducting a social audit of these institutions can be highly useful and instrumental towards this cause. Similarly, the failure of correction is largely due to the inefficiency of non-intuitional correction in India. This framework involves many aspects and interventions which predominantly fall under the domain of criminological research. The research has to test the application and feasibility of Restorative Justice Model, and Community Sentence, after care-guided-probation.

Critique

While critiquing the role of Criminologists, Roger Hood raised the concern that "whether criminologists themselves have not had some part to play in the growing disillusionment with criminological knowledge?." He also attributed the ambivalence of criminologists about their involvement in the penal system. Another level of critique is wherein criminologists are believed to have failed to defend the prestige of their discipline; or wherein they cave in to pressure of bringing research funds and conducting researches that they know to be criminologically flawed; or accept contracts for research which is quite dirty. Roger Hood regards the development of theory as a legitimate criminological enterprise.

Richard Ericson in his essay "The Culture and Power of Criminological Research" (2005), regards Criminology as a policy field. He further identifies criminology as a moral rhetoric of justice and finds criminological policing to be highly significant when the applied knowledge of criminology is utilised in a risk management problem. Moreover, categorisation of criminology as a legal field is another significant facet in this aspect. The use of criminological knowledge in the practical concerns of the Criminal Justice System is a major area of its application in the society. Criminologists can significantly contribute to this mechanism of criminal law by factoring the role of social institutions, and also in terms of giving inputs through criminological behaviour based research at various stages of

criminological justice. The decision to consider something in terms of criminalisation or decriminalisation, is also part of this discussion.

Criminology as a system is another debate that is growing in its importance, as many professions in the society can have significant contributions to criminological matters. This multidisciplinary, multi professional, and multi institutional notion of criminology is truly remarkable. The organisation of criminology especially in the US, Australia, and Canada is based on different criteria namely legal, psychological, anthropological, and social work based. Garland (2005), observes that modern criminology is a composite, eclectic, multidisciplinary enterprise. Hence, going by the emerging trends, criminology seems to continue to grow as a multidisciplinary and interdisciplinary social science, presently and in the times to come.

To be able to contribute to the policy regime, criminology requires criminologists to serve as translators. This translation refers to the simplification of ideas, flowing naturally from criminological research to the professional institutions. Often, criminologists fail to perceive the direct impact of their research in terms of its applicative abilities, because of lot of their work is technocratic. The most remarkable instance uniting criminology research with policy focus was undertaken by the U.K. based home office, where the University researchers' in league with professionals in the home office—carried out significant policy based research. This trend has been continuing with tremendous success. In a nutshell the idea is to make criminological rhetoric into a pragmatic and applied research, in order to improve the discipline's professional status.
The one area where criminology has been highly impressive is in the field of policing. The term 'criminology policing' was used by Richard Ericson in his writing, to denote the utilisation of criminological research into making policing more and more effective, especially from the view point of crime prevention.

Criminology needs to become a problem solving instrumentality. It needs to be taken to people, giving them an access to its usability in their lives; so as to make their lives free from the fear of crime and criminals, by prompting community safety to its maximum. Criminology should facilitate in helping the state promote the 'rule of law'. It also should function in a way so as to work for the betterment of the society, wherein conflict management and

restoration becomes easier; and tolerance is promoted to ease the process of rehabilitation and reformation of criminals. Criminology has to target lessening of the stigmatisation levelled by the process of criminal justice.

E. Promoting Criminology in the Higher Education System

Sadly, not much has been done instrumentally to promote criminology as a field of applicative study, in the emerging higher education scenario of the country. Resultantly, the discourses around criminology do not feature as a part of the mainstream thinking, in higher education systems. The popular idea of opening up many more independent departments in the Universities too, did not find much constructive support. Perhaps, the arguments remain that the alumni of this field may not find many takers for them. Though difficult to comprehend, but the natural argument would then be to think of criminology as more and more in terms of being an interdisciplinary subject with different foci. Therefore, we need to work progressively and increasingly in this direction, and preferably with mainstream social sciences and institutions to sensitise and promote criminology as an applicative field. I believe that criminological research and contributions still get better recognised and acknowledged when they form part of a major social sciences discipline. Criminology needs to be foregrounded and established upwards from this focal point location. In the last over a decade of my stint at two major Law Universities, I achieved this goal, with reasonable degrees of success. While being at both the Law Universities, I reshaped my criminological understanding to suit its teaching and further research to law students. I further enhanced this knowledge by curating and developing criminology courses around requirements of it as a law subject. I have been teaching Criminal Procedure to the best of law students in the country, and my course on this subject has always received interested and great attention; as I subtly brought together criminological and victimological contents to make the discourses highly relevant, interesting, and contemporary. The growing argument in law to make criminology contextualised, fits aptly with this experimentation. My teaching at the law university not only attempted to bring criminal law, criminology, and victimology together as an amalgamated entity, but it also adds a new dimension in understanding law more holistically. For instance, my discussions at law school on victimological approach to criminal procedure, criminology of sentencing, criminal behaviour and criminal justice,

wrongful prosecution, and police administration have been widely acclaimed and received well all across. As a criminologist, it is imperative and even eventual that your research abilities are at advantage, keeping you at a vantage point as compared to people belonging to other sister disciplines. Hence, I further fine-tuned my research aptitude to contribute to aspects of legal research. Now my courses and workshops in empirical legal research receive huge attention across the country; to the extent that NLU Delhi has set up a full-fledged Centre on empirical legal research, which is anchored by me.

Raising professional skills among students of criminology is quite imminent and imperative. We need to take criminology to its grassroots' problems, and work our way upwards to generate awareness of it as a legal field. I therefore, advocate various models for criminological intervention in this regard, which lay in the nature of criminology as a subject not offering focus on a perspective and resultant skill development. I hereby, suggest the following four models of criminology, which would promote acceptability and market dimensions of criminology from the perspective of its employment generation:

1. Criminal Law Intensive Model
2. Criminal Psychology Intensive Model
3. Social Work Intensive Model
4. Research Methods Intensive Model

F. Criminology & Public Policy

Roger Hood in 1959 stated that "penal policy should be based on criminological research into the nature of offending, the efficacy of existing penal measures, and a review of penal philosophy". In its finality, criminology ought to explore its linkages with the larger goals of public policy and specifically to the penal policy. In the larger sense, the responsibility of a criminologist is to demonstrate the wider applications of criminological research as part of development planning, social policy, and social change. For instance, not much thinking or deliberating exists in a progressive manner amidst criminology conversations of the manner in which it can contribute to developmental goals. Criminology in India further needs to go beyond its existing framework to adopt the methodology of other general social sciences. A wide range of social

statistics is available relating to various aspects of people, social life, demography, economy, and governance. Much of criminology can be decoded from this data to offer crucial insights into the different aspects of these issues and further by underscoring criminogenic implications emerging from these issues.

Criminologists need to show to the courts in the country that they can contribute to so many issues concerning criminal cases, which involve various questions demanding research and solutions. This is possible only if criminologists try to submit policy briefs in connection with various criminological issues, before the courts in India. The courts too on occasions engage criminologists as Amicus Curiae to further help the courts in its dealings. In this instance I had a similar opportunity, when the Delhi High Court appointed me as an Amicus Curiae[17] to conduct a research relating to criteria for the) determination of fine, the issue relating to suspension and compensatory aspects of wrongful prosecution. I share this with great satisfaction that it was probably the first time that a criminologist in India was approached to make oral and written submissions before a division bench of Delhi High Court. The Court finally gave an order, wherein the report submitted by the Amicus Curiae was not only accepted by the Court, but also recommended to the Law Commission of India for taking necessary considerations into the matter.

The vision document for criminology in this country should be the preamble of the Indian constitution, which needs to be shaped in a manner that it becomes instrumental in the promotion of the rule of law in general and in propagating social justice in particular.

[17] *Babloo Chauhan @ Dabloo* v. *State (Govt. of Nct of Delhi),* 2017 SCC OnLine Del 12045.

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i. See *Hari Charan Kurmi and Jogia Hajam v. State of Bihar*, AIR 1964 SC 1184.
ii. *State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600.
iii. See *Adambhai Sulemanbhai Ajmeri and Ors. v. State of Gujarat*, High Court of Gujarat, Criminal Appeal Nos. 2295-2296 of 2010 and 45 of 2011 and *State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600.
iv. *State v. Md. Aamir Khan*, Sessions and District Courts in Delhi, Ghaziabad, Rohtak and Sonepat, Nov. 2000 to Jan. 2012: Testimony of Aamir Khan who was wrongfully prosecuted for 14 years (Innocence Network India 2016). Also, in State *(G.N.C.T.) of Delhi v. Saqib Rehman @ Masood and Ors*, Crl. L.P. 234/2011, Crl. M.A. 5649/2011, Crl. M.A. 5650/2011 & Crl. M.A. 5651/2011.
v. *State v. Md. Aamir Khan*, Sessions and District Courts in Delhi, Ghaziabad, Rohtak and Sonepat, Nov. 2000 to Jan. 2012 (Innocence Network India 2016).
vi. *Mohd. Jalees Ansari and Ors. vs. Central Bureau of Investigation*, AIR 2016 SC 2461.Supreme Court of India, Justice Kalifulla and Justice U. U Lalit , 11 May 2016.
vii. *Serial train bombing case of 6 and 7 December, 1993,* TADA Special Court at Ajmer, February 28, 2004 (Innocence Network India 2016).
viii*. Mohd. Jalees Ansari and Ors. vs. Central Bureau of Investigation*, AIR 2016 SC 2461.
ix. See *Malegaon Blast Case,* MCOCA Special Court Greater Mumbai headed by Shri VV Patil, 25th April, 2016: the victims were acquitted after 10 years of being charged (Innocence Network India 2016).
x *Malegaon Blast Case:* Dr. Farookh Makhdoomi testified that he and his wife were kept in illegal custody and tortured to extract confession. Torture was confirmed by the higher investigation agency of National investigation Agency (NIA) (Innocence Network India 2016).
xi. *Kanpur Case*: Testimony of Sayed Wasif Haider (Innocence Network India 2016).
xii. *Adambhai Sulemanbhai Ajmeri v. State of Gujarat*, (2014) 7 SCC 716, para 93.
xiii. *Id.*
xiiv. *Id*, at para 82.
xv. *Adambhai Sulemanbhai Ajmeri and Ors. v. State of Gujarat*, (2014) 7 SCC 716, para 85: Only 15 minutes were granted to accused when they were making confession after 11 months.

xvi. See *State of Rajasthan v. Ajit Singh and Ors*, (2008) 1SCC 601, *Sarwan Singh Rattan Singh v. State of Punjab*, 1957 SCR 953.

xvii. *Adambhai Sulemanbhai Ajmeri v. State of Gujarat*, (2014) 7 SCC 716, para 83: Judicial officer's statement on recording of confession.

xviii. On the basis of data collected from Indian government websites.

xix. *Adambhai Sulemanbhai Ajmeri v. State of Gujarat*, (2014) 7 SCC 716.

xx. *Id*: Retracted confession of A - 4, Ex – 780 in the case.

xxi. *Mohd. Jalees Ansari and Ors. vs. Central Bureau of Investigation*, AIR 2016 SC 2461.

xxii. *Serial train bombing case of 6 and 7 December, 1993*: Mohd. Nisaruddin was wrongfully prosecuted and was in incarceration for 23 years (Innocence Network India 2016).

xxiii. *Mumbai Train Blast 7/11 Case*: Testimony of Wahid Shaikh (Innocence Network India 2016).

xxiv. *Jaipur SIMI Case*: Testimony of Munawar Qureshi, Amanullah Ansari and Mohammad Yunus (Innocence Network India 2016).

xxv. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Article 2 (2).

xxvi. *ICJ Democratic Republic of the Congo v. Belgium*, ICJ Rep. 2002; *Regina v. Evans and Ex Parte Pinochet,* House of Lords 24 March 1999; Even the Supreme Court of India has emphasized to prevent police torture, *State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600.

xxvii. See *Kurla Simi Case* (Innocence Network India 2016).

xxviii. Crl. L.P. 234/2011, Crl. M.A. 5649/2011, Crl. M.A. 5650/2011 & Crl. M.A. 5651/2011.

xxix. *Malegaon Blast Case* (Innocence Network India 2016).

xxx. The Unlawful Activities (Prevention) Act, 1967(UAPA), Sec. 49.

xxxi. *Mecca Masjid Blast case* (Innocence Network 2016).

xxxii. *Mulund Blast Case* : Adnan Mulla was wrongfully prosecuted in this case and incarceration for 12 years (Innocence Network India 2016).

xxxiii. Report by Principal Judge, Shri T.V Nalawade, said that Adnan Mulla was in illegal detention from 5.5.03 to 9.6.03 (Innocence Network 2016).

xxxiv. *Adambhai Sulemanbhai Ajmeri v. State of Gujarat,* (2014) 7 SCC 716.

xxxv. *Id.*

Annexure - I

Instances of wrongly Prosecution: Supreme Court Cases

S. No.	Case	No. of Accused Person(s) (Only Those who got acquitted)*	Nature of Offence	Ground(s) of Discharge	Time Spent in Prison
	Akshardham Temple Attack Case	6	Various Sections of IPC including Terrorism	Insufficient evidence to support prosecution story	Ranged from 5 to 11 years 4 People – 11 years Others spent 5 years and 7 years each
	Aurangabad Arms Haul Case	1	Illegal Possession of Arms	Acquaintance to the culprits does not amount to a crime	10 Years
	The Kurla SIMI Case	8	Involvement in Unlawful Activities	Insufficient or bad evidence produced by the prosecution	Hard to determine as the accused were granted bail
	Malegaon Blast Case	9	Various Sections of IPC including Terrorism	Insufficient/ Lack of Evidence	5 Years
	Mecca Masjid Blast Case	4	Terrorism	Insufficient/Lack of Evidence	1 Year 6 Months
	Serial Train Bombing	1	Various Sections of	Insufficient/Lack of Evidence	23 Years

	Case		IPC, TADA etc.		
	Mulund Blast Case	1	Terrorism	Insufficient/Lack of Evidence	12 Years
	Mumbai Train Blast Case (7/11)	1	Various Sections of IPC including Terrorism	Case not fit for trial, No evidence to link the accused to the crime	9 Years
	Jaipur SIMI Case	11	Various Sections of UAPA including involvement in Anti-National Activities	Insufficient/Lack of Evidence	3 Years*
	Haren Pandya Murder Case	3	Various Sections of IPC and POTA	Insufficient/Lack of Evidence	8 Years
	2002 Tiffin Bomb Blast Case, Ahmedabad	2	POTA	Lack of Evidence	14 Years
	2004 Hyderabad, Delhi and Rajasthan Bomb Blasts	4	Various charges of TADA	Insufficient Evidence to establish any link	23 Years
	Dhal Singh Dewangan Murder Case	1	Murder (302 under IPC)	Insufficient Evidence to establish any link	4 Years 6 Months
	Seeni Nainar Mohammed Murder Case	6	Various Charges under TADA	Lack of evidence against the accused	20-23 Years
	Ashok Kumar Rape Case[18]	1	376(2)g, Gang Rape	Lack of evidence to link the accused to the	10 Years

[18] AIR 2003 SC 777

				crime	
	Jinish Lal Sha Rape Case[19]	1	366 A of IPC	Lack of evidence to support prosecution story	12 Years
	Sudhakar v. State of Maharashtra Rape Case[20]	1	372(2)g of IPC, Gang Rape	Lack of Evidence	5 Years
	Mohan Lal Rape Case[21]	1	376 of IPC, Rape	Prosecution failed to prove the case beyond reasonable doubt	6 Years
	Sudhansu Sekhar Sahoo Rape Case[22]	1	376 of IPC, Rape	Lack of evidence to support prosecution story	9 Years
	Babri Masjid Anniversary Train Bomb Blast Case	1	Various Charges under TADA	Lack of Evidence "(Casual use of TADA)"	23 Years
	Deelip Singh Rape Case[23]	1	376 of IPC, Rape	Prosecution failed to prove consent, lack of evidence to support prosecution story	7 Years

The Volume of Time spent in prison by the Acquitted persons

Detention in Years	Frequency	Percentage
Up to 5 years	6	27.27
6-10	8	36.36
11-15	4	18.18
15 and more	4	18.88
	22	100

[19] AIR 2003 SC 2081
[20] AIR 2000 SC 2602
[21] AIR 2003 SC 698
[22] AIR 2003 SC 698
[23] AIR 2005 SC 203