Democracy in Jail

Over-representation of Minorities in Indian Prisons

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Based on data from the *Prison Statistics India,* this article demonstrates an over-representation of minorities such as Muslims, Adivasis, and Dalits in Indian jails. It offers an anthropological and sociological analysis of this over-representation. The authors connect it to structural–political factors, a connection the scant Indian literature rarely makes. They relate the data to literature on over-representation of minorities in jails in Western democracies, about which scholars use terms such as "penal democracy" and "punishing democracy." The authors then draw on recent memoirs of imprisoned Indian "terrorists," and argue that their imprisonment generates a notion of democracy that is conceivably an alternative. At its heart is the identification imprisonment generates amongst fellow humans through a shared vocabulary of injustice, pain, human finitude, and vulnerability.

We thank the anonymous reviewer for her/his encouraging, critical comments on this article and asking questions which allowed us to state the argument more clearly. We are also thankful to Santosh Kumar Singh, Ambedkar University and Kashiful Huda of *TwoCircles.net* for offering feedback on an earlier version. Errors, if any, are entirely ours.

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As soon as the annual report *Prison Statistics India* (PSI) is published by the National Crime Records Bureau (NCRB), Ministry of Home Affairs, many newspapers report each year that Dalits, Muslims and other minorities are over-represented in Indian prisons (Rukmini 2014; *Indian Express* 2015; *Wall Street Journal* 2014). Such reports also appear in weeklies and fortnightlies such as *Frontline* (2015, 2016), *India Today* (2014, 2016), and *Tehelka* (2013). However, follow-up analyses by journalists—such as Rukmini (2014) and Vajpeyi (2013)—are rare. Scholars have so far not paid sufficient attention to the PSI data, much less drawn implications from the data to shed light on the health and working of Indian democracy. A noticeable exception is Raghavan and Nair (2013). However, their analysis is limited to Maharashtra. Furthermore, they do not foreground analytical connections between democracy and the prison data they have meticulously gathered. An in-depth, sustained, scholarly analysis of the PSI data at a pan-India level, inquiring into its connections with the ideals and practices of democracy, is, we maintain, urgently needed.

The aim of this article is twofold. First, it offers a detailed, multipronged analysis of the PSI data from 1998 to 2014. Since the data prior to 1998 is not available, we limit ourselves to that period.[1] We analyse the prison data along anthropological and sociological coordinates of communities such as Adivasis, Christians, Dalits, Muslims, and Sikhs. We compare their percentage in prison populations with their respective proportion in the total population. This comparison is undertaken at a pan-India level as well as at state levels. We must point out that our focus on communities by no means implies that other factors—such as gender, income, age, nature of offence, and educational capital of the detainees, which the PSI records—are not significant.

Our analyses show that in comparison to their percentage in the total population, Adivasis, Christians, Dalits, Muslims, and Sikhs are all well over-represented in prisons. We focus our analyses on Adivasis, Dalits, and Muslims. Given the relatively smaller size of Christian and Sikh communities, the data does not allow their comparison at the state level. Of these three communities, Muslims are even more over-represented than Scheduled Castes (SCs) and Scheduled Tribes (STs).

The second aim is to preliminarily analyse what over-representation of minorities in prisons entails in understanding the theory and praxis of democracy. The scant literature on the disproportionate representation of minorities in Indian jails simply mentions this fact without offering a convincing explanation for it. The implied and inferred explanations in the literature often highlight religious–cultural factors. In contrast, we analytically connect over-representation of minorities in jails with structural–political factors. We also, therefore, compare our data with the data on Australia, Canada, France, the Netherlands, the United Kingdom (UK), and the United States (US). The comparison shows a discernible correlation between democracy and the disproportionate representation of minorities in prisons in these democracies. To analyse such correlations in Western democracies, scholars have used terms such as "penal democracy" (James 2007) and "punishing democracy" (Hartnett 2011). Scholars (who are also activists) refer to a prison industrial complex (PIC) to show a "symbiotic" relationship between the PIC and the military industrial complex (Davis 2011: 84–86).

Recognising the value of such literature, we make a related but different argument. This article's title has (at least) a double meaning. We suggest that the disproportionate representation of minorities in jail means that democracy itself is in jail. But we also mean that a different notion of democracy blooms amongst those jailed, individuals/communities outside jail, as well as some jail officials. This notion of democracy is neither ceremonially electoral nor seasonally arithmetic (as in accounts of pollsters); it is instead substantive and enmeshed in suffering, pain, care, and the acknowledgement of human finitude and vulnerability. The anthropologist Talal Asad (2012: 56) calls it "democratic sensibility as an ethos." When imprisoned in 1942, Abul Kalam Azad, the anti-colonial philosopher and India's first Minister of Education, alluded to it in the vocabulary of *ihsas* (feelings). Such a democracy or democratic sensibility as an ethos in jail, we contend, has the potential to re-signify election-centric democracy that in the name of fighting crimes, terrorism or protecting the "nation," imprisons itself. To demonstrate this point, we use recent memoirs by prisoners to move away from abstract data to the very touch of life and death as encountered in jail. We focus on the memoirs of Mufti Abdul Qayyum and Mohammad Amir Khan. Both were jailed on charges of terrorism. Qayyum was framed as a mastermind of the 2002 Akshardham attack and sentenced to death by the lower courts but set free by the Supreme Court in 2014. Khan was charged for a series of blasts and imprisoned in 1998. Qayyum spent 11 years in jail, and Khan did 14 years. We analyse Qayyum's (2015) memoir in Urdu and Khan's (2016) in English by situating them in select literature on the anthropology of democracy and prison.

Divided into two parts, we pursue the first objective in Section 1 and the second objective in Section 2. In the conclusion, we summarise and reinforce the principal argument. But before we proceed, clarifications about terms like SC, ST, Dalit, Adivasi, and minority are in order here. As is well known, "scheduled"—in relation to both tribes and castes—is an administrative–legal term. In popular parlance, tribes are called Adivasis. However, due to the consolidation of Hindutva, the term *vanvaasi* (forest-dwellers) is being used, to discredit the claim that tribes were earlier inhabitants (as *Adi* means) (Kanungo 2002: 149). While "scheduled" vis-à-vis caste was used under colonial rule, in the case of tribes it was added after independence (Bhatt 2009: 177; Mendelsohn and Vicziany 2009: 8; Xaxa 2014). The term Dalit—meaning exploited or suppressed—is of recent origin. In colonial India, Dalits were referred to as "Depressed Castes," "Outcastes," "Exterior Castes," "Untouchables," and so on. The term emerged from the Dalit Panther Movement in the 1980s (Kanungo 2002: 145; Karanth 1996: 106; Kumar 2014: 20–21).[2]

As a term, "minority" is linked to nationalism and modern state-building projects. According to Killian (1996; also see Bilgrami 2014: 100–01), the onset of nationalism in the 18th century gave rise to "national minorities" like Polish, Lithuanian, Latvian, Finnish, and others. For Liebich (2008: 246), minority signifies "inequality and inferiority, not merely numerical but substantial inferiority." The white minority in South Africa before 1994, therefore, cannot be called "minority" for it monopolised power. To Wirth, minority is

> a group of people, who because of their … cultural characteristics are singled out from the others … for differential and unequal treatment and who, therefore, regard themselves as objects of collective discrimination. (Wirth 1945: 347; Massey 2002: 15–22; Fazal 2015)

For Azad, the lack of access to, and the exercise of political power were central to the notion of minority (Ahmad 2009: 12–18; 2014a).[3] Viewed from this perspective, Dalits and Adivasis may also be thought of as "minorities." Indeed, in 1980, the Rudolphs (2008: 166) used the term minorities to mean Christians, Muslims, SCs, and STs. This also serves as justification for the broader meaning of "minorities" in our title.

1 Sociological Profiles of Detainees

As noted earlier, the data this article is based on is derived from the PSI available online at http://ncrb.nic.in/. Neither the PSI nor do we regard "categories" such as Hindu, Muslim, SC, and ST as mutually exclusive for they overlap. For example, the

Table 1: All-India Percentage of Religious and Social Communities in Prison vis-à-vis Their Percentage in the Total Population, 1998–2014

Year	Hindu	Muslim	Christian	Sikh	SC	ST	Total
	Percentage in Total Population						Population
2001	80.46	13.43	2.34	1.87	16.20	8.20	1,02,86,10,328
2011	79.80	14.23	2.30	1.72	16.63	8.63	1,21,08,54,977
	Percentage in Prison Population						Total Inmates in Prison
1998	66.80	18.76	5.83	4.50	21.21	16.80	1,70,727
1999	67.72	21.38	3.73	3.10	22.36	13.34	2,70,287
2000	65.96	22.77	3.57	3.57	23.38	13.43	2,71,772
2001	68.10	21.90	3.80	3.36	25.72	13.28	3,13,635
2002	69.05	22.10	3.58	3.46	23.57	14.64	3,22,357
2003	68.07	21.64	4.87	3.65	22.66	14.60	3,15,617
2004	69.62	21.52	4.13	3.71	21.99	13.44	3,31,391
2005	71.38	20.49	3.36	3.35	20.83	12.84	3,58,368
2006	71.67	20.77	2.97	3.35	23.33	13.70	3,73,271
2007	71.25	20.49	3.28	3.42	22.37	13.29	3,76,396
2008	71.06	21.10	3.15	3.47	21.50	12.78	3,84,753
2009	70.38	21.25	3.11	3.97	23.07	13.93	3,76,969
2010	70.81	20.88	3.15	3.85	22.01	13.32	3,68,998
2011	70.82	20.13	3.46	3.99	22.11	13.47	3,72,926
2012	70.32	20.02	3.68	4.28	22.22	13.47	3,85,135
2013	69.90	19.68	4.30	4.51	21.72	11.48	4,11,992
2014	70.51	19.64	4.00	4.18	20.64	11.33	4,18,536

Sources: Authors' calculation from the *Prison Statistics India* (http://ncrb.nic.in/); Census 2001; Census 2011.

category "Hindu" in the 2011 Census included SCs and STs. Our analysis does not include the category Other Backward Classes (OBCs), which the PSI gives, but for which we lack corresponding census figures to draw a meaningful comparison.

Table 1 (p 99) shows the percentage of major social and religious communities in the prison population vis-à-vis their percentage in the total population. Given that our data is from 1998 to 2014, we give the percentage break-up of these groups from the census data of 2001 and 2011. Hindus constituted nearly 80% of the total population between 2001 and 2011, while their proportion of the prison population between 1998 and 2014 averaged about 70%, or 10% less than their percentage in the total population. In contrast, Muslims, as a proportion of those in prison, averaged around 21% whereas they constituted merely 14% of the total population. SCs and STs formed 16.6% and 8.6% of the total population respectively, but their proportions in prison averaged around 22% and 13.5% respectively. Christians and Sikhs constituted approximately 4% of the prison population whereas their respective percentage in the total population was 2.3% and 1.8%. If one were to not include SCs and STs in the category of Hindus, the percentage of non-SC and non-ST Hindus would be far lower than the numbers presented in Table 1.

Picture at the state level: While Table 1 establishes the disproportionate representation of minorities at the national level, Table 2 looks at each state. It compares social and religious communities by juxtaposing their average percentage in the prison population against their average percentage in the total population in the states and union territories. The state-level picture largely validates the national portrayal presented in Table 1. However, Table 2 also demonstrates that Hindus are over-represented in prison in states where they are in a minority. For instance, their percentage in the prison population is higher in states such as Meghalaya, Mizoram, and Nagaland where STs are in a majority. Likewise, in Lakshadweep and Jammu and Kashmir (J&K), where Muslims form a majority, the percentage of Hindus in the prison population is higher

Table 2: Statewise Average Percentage of Religious and Social Communities in Prison vis-à-vis Their Percentage in the State Population, 1998–2014

State	Hindu		Muslim		SC		ST		Total	
	Inmates	Population	Inmates	Population	Inmates	Population	Inmates	Population	Inmates	Population
Andhra Pradesh	76.16	88.72	13.97	9.37	21.55	16.31	11.88	6.81	13,742	8,03,95,392
Arunachal Pradesh	34.05	31.50	13.36	1.92	3.66	–	50.86	66.77	77	12,40,848
Assam	55.27	63.04	35.76	32.70	16.50	7.01	15.15	12.43	7,740	2,89,30,552
Bihar	76.48	82.93	22.05	16.72	22.36	15.83	4.74	1.12	35,925	9,35,48,981
Chhattisgarh	82.58	93.90	6.94	1.99	21.78	12.27	33.67	31.13	11,813	2,31,89,501
Goa	62.55	65.94	14.96	7.62	4.50	1.75	3.82	5.34	440	14,03,107
Gujarat	71.85	88.81	25.49	9.40	20.27	6.90	20.08	14.76	10,807	5,55,55,355
Haryana	77.20	87.81	11.05	6.46	23.15	19.80	8.95	–	13,186	2,32,48,013
Himachal Pradesh	88.66	95.29	4.60	2.08	28.88	24.97	4.82	4.92	1,296	64,71,251
Jammu and Kashmir	34.25	28.97	59.43	67.71	6.48	7.47	5.77	11.46	2,111	1,13,42,501
Jharkhand	67.70	68.16	19.36	14.22	17.88	11.97	28.39	26.25	17,636	2,99,66,982
Karnataka	78.32	83.93	16.48	12.60	14.27	16.71	9.95	6.77	11,812	5,69,72,930
Kerala	47.37	55.43	29.24	25.65	13.03	9.45	7.41	1.30	6,364	3,26,23,718
Madhya Pradesh	84.21	91.00	12.52	6.48	20.53	15.41	19.23	20.72	31,961	6,64,87,416
Maharashtra	62.52	80.08	29.29	11.11	20.85	11.07	16.31	9.12	24,275	10,46,26,480
Manipur	61.54	43.38	11.86	8.58	0.81	3.13	23.66	38.00	524	25,11,291
Meghalaya	25.95	12.30	14.51	4.34	25.42	0.54	60.60	86.06	582	26,42,856
Mizoram	4.84	3.11	5.25	1.26	5.56	0.08	91.26	94.44	878	9,92,890
Nagaland	8.56	8.22	15.74	2.12	7.61	–	83.37	87.82	602	19,84,269
Odisha	86.99	93.97	5.76	2.12	24.06	16.85	25.18	22.51	13,183	3,93,89,439
Punjab	38.68	37.76	4.86	1.76	27.82	30.50	14.68	–	16,264	2,60,51,169
Rajasthan	76.71	88.61	18.25	8.80	21.55	17.53	19.25	13.06	14,859	6,25,27,813
Sikkim	41.73	59.25	1.97	1.53	10.08	4.81	24.81	27.60	291	5,75,714
Tamil Nadu	73.44	87.83	13.47	5.72	36.55	19.54	8.42	1.07	17,328	6,72,76,355
Tripura	71.96	84.43	17.14	8.30	20.35	17.61	30.11	31.43	1,092	34,36,560
Uttar Pradesh	71.40	80.13	25.71	18.91	25.31	20.90	5.13	0.34	68,147	18,30,05,131
Uttarakhand	53.18	83.88	30.20	13.02	21.37	18.36	13.09	2.95	3,009	92,87,821
West Bengal	47.47	71.44	48.03	26.19	17.84	23.28	8.94	5.66	17,097	8,57,26,156
Andaman and Nicobar Islands	24.16	69.34	8.32	8.37	0.00	–	3.56	7.87	515	3,68,367
Chandigarh	59.61	79.78	9.34	4.45	25.69	18.23	3.79	–	526	9,78,043
Dadra and Nagar Haveli	86.70	93.77	10.94	3.45	3.46	1.82	67.04	55.97	90	2,82,100
Daman and Diu	87.67	90.19	8.92	7.86	9.96	2.73	15.75	7.31	40	2,00,726
Delhi	70.72	81.83	25.06	12.34	22.14	16.83	1.49	–	12,072	1,53,19,224
Lakshadweep	5.26	3.20	89.88	96.04	0.00	–	63.16	94.66	15	62,562
Puducherry	84.10	87.07	4.80	6.07	25.01	15.93	0.95	–	272	11,11,149
All-India	69.85	80.10	20.83	13.86	22.35	16.43	13.31	8.43	3,42,537	1,11,97,32,653

The population figures, both as percentages and absolute numbers, are averages of 2001 and 2011 data from the respective Censuses of India.

Sources: Authors' calculation from the *Prison Statistics India*; Censuses 2001 and 2011.

than their percentage in the total population. Conversely, in Meghalaya, Mizoram, and Nagaland, the percentage of STs—who form a majority of the total population—in prison is lower than their percentage in the total population. The same holds true for Lakshadweep and Jammu and Kashmir, where the percentage of Muslims in the prison population is lower than their percentage in the total population.

However, in Chhattisgarh, Gujarat, Maharashtra, Odisha, and Punjab, the proportion of Muslims in prison is nearly three times as high as their percentage in the total population of each respective state. In Meghalaya, Nagaland, and Mizoram, the proportion of Muslims in prison is three to seven times more than their percentage in the total population of these states. Other major states where Muslims are significantly over-represented are Tamil Nadu, Rajasthan, Delhi, and Uttarakhand. The states where Muslims are over-represented, but less starkly, are Assam and Kerala where they constitute 34% and 26.5% of the state's population respectively. Of all Muslims in jail throughout India, Gujarat alone accounts for a third (*Times of India* 2016).

Table 3: Comparing Ratios of the Prison Population of Religious and Social Communities against Their Ratio in Total Population, by State, 1998–2014

State	Hindu	Muslim	SC	ST
Andhra Pradesh	0.86	1.49	1.32	1.75
Arunachal Pradesh	1.08	6.95	–	0.76
Assam	0.88	1.09	2.35	1.22
Bihar	0.92	1.32	1.41	4.23
Chhattisgarh	0.88	3.48	1.77	1.08
Goa	0.95	1.96	2.57	0.72
Gujarat	0.81	2.71	2.94	1.36
Haryana	0.88	1.71	1.17	–
Himachal Pradesh	0.93	2.21	1.16	0.98
Jammu and Kashmir	1.18	0.88	0.87	0.50
Jharkhand	0.99	1.36	1.49	1.08
Karnataka	0.93	1.31	0.85	1.47
Kerala	0.85	1.14	1.38	5.70
Madhya Pradesh	0.93	1.93	1.33	0.93
Maharashtra	0.78	2.64	1.88	1.79
Manipur	1.42	1.38	0.26	0.62
Meghalaya	2.11	3.34	47.16	0.70
Mizoram	1.56	4.18	74.09	0.97
Nagaland	1.04	7.44	–	0.95
Odisha	0.93	2.71	1.43	1.12
Punjab	1.02	2.76	0.91	–
Rajasthan	0.87	2.07	1.23	1.47
Sikkim	0.70	1.29	2.09	0.90
Tamil Nadu	0.84	2.35	1.87	7.84
Tripura	0.85	2.07	1.16	0.96
Uttar Pradesh	0.89	1.36	1.21	15.13
Uttarakhand	0.63	2.32	1.16	4.44
West Bengal	0.66	1.83	0.77	1.58
Andaman and Nicobar Islands	0.35	0.99	–	0.45
Chandigarh	0.75	2.10	1.41	–
Dadra and Nagar Haveli	0.92	3.17	1.90	1.20
Daman and Diu	0.97	1.13	3.65	2.15
Delhi	0.86	2.03	1.32	–
Lakshadweep	1.64	0.94	–	0.67
Puducherry	0.97	0.79	1.57	–
All-India	0.87	1.50	1.36	1.58

Sources: Authors' calculation from the *Prison Statistics India*; Censuses 2001 and 2011.

The SCs are most over-represented in prisons in Gujarat (three times as much), Maharashtra (two times), Assam (two times) and Tamil Nadu (two times). The extent of over-representation of SCs, however, is lower than Muslims. In Meghalaya and Mizoram, the representation of SCs in jails is astonishingly high. The SCs are under-represented in prisons of West Bengal and Punjab. States with sizeable populations of STs and their disproportionate numbers in jails are Maharashtra, Gujarat, and Rajasthan. The same holds true for STs in Uttar Pradesh, Tamil Nadu, Uttarakhand, and Bihar. In short, minorities stand over-represented in prisons in most states of India. Gujarat and Maharashtra have a higher representation of all minorities in their prisons.

Table 3 demonstrates the ratio of the percentage of a given social or religious community in prison to the percentage of that community in the total population of each state. We determined the ratio by dividing the percentage of a social/religious community in the prison population by the percentage of the same community in the total population. A value less than one means that the representation of that community in prison is less than its percentage share in the total population. Conversely, a value greater than one means that the representation of that community in prison is more than its percentage share in the total population.

It is not easy to convincingly establish if the over-representation of minorities in jails is directly linked to "crimes" for which they are imprisoned. A more qualitative presentation in fact tells a different story. In their valuable study of Muslim prisoners across Maharashtra, Raghavan and Nair (2013: 12, 15–16) record that prisoners viewed the systems of criminal justice and the police as laden with "discrimination." Of the 339 prisoners they interviewed, most held that the police was "corrupt" and "biased." One respondent told Raghavan and Nair that, once out of prison, "the police 'fix' them in another case," thereby making it nearly impossible for them to exit the world of prisons.

While we cannot conclusively establish the precise cause of over-representation of minorities in prisons, the PSI data on various categories of prisoners possibly offers a clue. The PSI classifies prisoners under four labels: (i) convict, whose crime has been legally established and who is serving sentence; (ii) undertrial, who is "kept in prison (judicial custody) while the charges against him are being tried"; (iii) detenue, who is "detained in prison on the orders of competent authority;" and (iv) others, who are "unspecified" and probably belong to none of the three categories (NCRB 2014: 9, 32). In Table 4 (p 102), we only use two labels: convict and non-convict. While retaining the PSI label of convict, under "non-convict" we club the remaining three: undertrial, detenue, and others. Notably, prisoners labelled "detenue" and "others" in the PSI data form a tiny number of the total prisoners. Our aim is to examine if minorities are imprisoned more under the labels of convict or non-convict.

Table 4 demonstrates that, in most states, the share of non-convicts across social and religious communities (including the majority community) is high. Seven out of every 10 prison inmates are undertrials, or non-convicts. The situation of

Muslims is even grimmer; three-quarters of Muslim inmates are under the label "non-convict." In Bihar, Uttar Pradesh and Delhi, more than 80% of Muslim prisoners are non-convicts.

2 Democracy in Prison

The data in Section 1 establishes that Indian democracy has been unfriendly, if not hostile, to minorities as they are over-represented in prisons. At the national level, the percentage of Hindus in jail is far below their ratio in the total population. However, in some states and union territories where Hindus are in a minority—in J&K, Lakshadweep, Meghalaya, Mizoram, and Nagaland—their proportion in jail is higher than their percentage of the population in those states. This raises a vital question: how can we explain the disproportionate representation of minorities in prisons?

To the best of our knowledge, an adequate academic explanation about the over-representation of minorities in jail is yet to appear. However, one can infer related explanations from debates on "backwardness." In the case of Adivasis and Dalits, their "backwardness" is rarely attributed to their culture or religion; variables invoked are instead economic, sociopolitical, and governmental. In contrast, the "backwardness" of Muslims is traced to their religious-cultural outlook or what Hansen (2007: 50) calls "introversion of Muslims." His phrase "introversion of Muslims" approximates what Mamdani (2002: 767) calls "culture talk." For instance, in *Islam and the Muslims of India*, Gill (2008: 174, 196) noted "theological obstacles to modernity" as a key problem Muslims must overcome. Similarly, Upadhyay (2008: xii) observed how Muslims were steeped in "medieval slumber" and a "medieval psyche."[4] More significantly, unlike the backwardness of Adivasis and Dalits, that of Muslims (methodically aligned to terrorism after 9/11)[5] is linked to the threat against and disloyalty to India. Both Gill (2008) and Upadhyay (2008) analyse Muslims through the prism of attempts to "destabilise" India and to counter "separatism."

This line of explanation is faulty on many counts. It fails, among other things, to account for the over-representation of Adivasis and Dalits in prison at the national level and of Hindus in the few states where they are in a minority.

Table 4: Statewise Average of Prisoners of Social and Religious Communities under Different Categories of Imprisonment, 1998–2014 (%)

State	Hindu		Muslim		SC		ST		Total*	
	Convict	Non-convict	Convict	Non-convict	Convict	Non-convict	Convict	Non-convict	Convict	Non-convict
Andhra Pradesh	35	65	30	70	34	66	28	72	34	65
Arunachal Pradesh	13	87	8	92	12	88	14	86	13	87
Assam	41	59	36	64	40	60	30	71	38	62
Bihar	16	84	11	89	14	86	19	81	15	85
Chhattisgarh	43	57	42	58	47	53	42	58	44	56
Goa	35	65	23	77	21	79	24	76	33	67
Gujarat	36	63	35	65	38	63	40	61	36	63
Haryana	39	61	31	69	38	62	35	65	38	62
Himachal Pradesh	53	47	44	56	50	50	49	51	52	48
Jammu and Kashmir	17	83	8	92	15	85	9	91	11	88
Jharkhand	27	73	25	75	23	77	29	71	27	73
Karnataka	26	74	39	61	37	63	48	52	28	72
Kerala	36	64	38	62	39	61	32	67	38	61
Madhya Pradesh	47	53	41	59	45	55	49	51	46	53
Maharashtra	35	65	28	72	33	67	31	69	33	67
Manipur	7	92	16	84	0	100	4	96	8	92
Meghalaya	8	91	10	90	9	90	9	90	9	91
Mizoram	25	75	23	77	29	71	35	65	34	66
Nagaland	25	75	24	76	23	77	16	83	18	82
Odisha	28	72	13	87	24	76	28	72	27	73
Punjab	31	68	32	67	32	68	36	64	34	65
Rajasthan	36	64	36	64	34	65	33	67	36	63
Sikkim	40	60	43	57	27	73	38	62	26	73
Tamil Nadu	30	70	36	64	29	71	28	73	31	69
Tripura	54	46	41	59	54	46	47	53	50	50
Uttar Pradesh	26	74	19	81	23	77	22	78	24	75
Uttarakhand	41	59	34	66	40	60	40	60	39	61
West Bengal	26	74	25	76	27	74	28	71	25	74
Andaman and Nicobar Islands	41	59	36	64	-	-	26	74	47	53
Chandigarh	33	67	30	70	31	69	37	63	32	68
Dadra and Nagar Haveli	2	97	6	95	8	92	3	97	3	97
Daman and Diu	37	63	10	90	39	61	41	59	34	66
Delhi	22	78	20	80	23	77	28	72	22	78
Lakshadweep	0	100	3	97	-	-	3	97	2	97
Puducherry	43	57	25	75	39	61	34	66	41	59
All-India	31	68	26	74	30	70	34	67	30	69

* Figure may not add up to 100% due to rounding off of the decimal points.
Source: Authors' calculation from the *Prison Statistics India*, 1998–2014.

Punitive democracy in advanced capitalist societies: Another explanation is structural–institutional or systemic. In contrast to "culture talk" (Mamdani 2002: 767), scholars of prisons in advanced capitalist democracies, especially in the US, stress that warehousing of "criminals" is not about the crime per se; it is about the matrix of political, economic and industrial actors, and media corporations, which sustain prisons to secure the auto-immunity of the political order that produces prisoners (Davis 2011; Meiner 2011). Put differently, punitiveness is constitutive of capitalist democracy; hence the description of it as "punishing democracy" by Hartnett (2011: 5–6, 11n8), as a "police state" by Harcourt (2014: 11) and "penal democracy" by James (2007: xiv–xv). Scholars also link prisons to nation-building and war-making within, and to international relations (Loyd et al 2012). Inspired by Foucault's *The Punitive Society*, Harcourt avers that punitiveness in prison characterises society at large. These studies (McClellan 2011: 149) also point out how poverty, racism, discrimination, prejudice, and so on render minorities disproportionately represented in jails. Table 5 (p 103) presents the percentage of minorities in prison vis-à-vis their percentage in the total population in Australia, Canada, France, the Netherlands, the UK, and the US.

Before we discuss similarities, let us note a difference. The ratio of India's numbers in prison vis-à-vis the total population is far smaller than many countries, notably the US, which has the highest rate of incarceration in the world (McClellan 2011: 149; Khan 2016: 27). Barring this difference, the data in Table 5 demonstrates sufficient analytical similarities with the data on India we presented in Section 1. In short, a disproportionate representation of minorities in jail is common to democracies, Western and Indian. Another similarity is along the lines of Foucault's punitive society. While researching the

Table 5: Percentage of Minorities in Prison vis-à-vis Their Percentage in Total Population in Select Western Democracies, 2014–16

Country	Year	Minorities	Population	Percentage in Total Population	Prison Population	Percentage in Prison	Number per 1,00,000
England and Wales	2016	Total	6,55,00,277	100	85,441	100	130
		Muslims	36,87,804	5.6	12,506	14.6	339
		Blacks	2,452,584	3.7	10,459	12.2	426
US	2014	Total	31,88,57,056	100	15,08,636	100	473
		Blacks	4,21,58,238	13.2	5,39,500	35.8	1,280
		Hispanics	5,53,87,539	17.4	3,26,500	21.6	589
Canada	2014	Total	3,20,88,136	100	37,864	100	118
		Aboriginals	10,54,749	3.0	7,951	21.0	754
Australia	2015	Total	2,38,60,100	100	36,134	100	151
		Aboriginals and Torres Strait Islanders	7,13,600	3.0	9,885	27.4	1,385
France	2016	Total	6,46,64,760	100	66,678	100	103
		Muslims	62,07,816	9.6	40,007	60.0	644
The Netherlands	2014	Total	1,68,29,289	100	9,909	100	59
		Antilles+	1,46,855	0.9	727	7.3	495
		Surinamese	3,48,291	2.1	597	6.0	171
		Moroccans	3,74,996	2.2	443	4.5	118
		Turkish	3,96,414	2.4	246	2.5	62

+ Antilles refers to islands in the Caribbean that are part of the Netherlands.

Sources: For the UK, Ministry of Justice (2016); for the US, Carson (2015: 15); for Canada, Statistics Canada (2015); for Australia, Australian Bureau of Statistics (2015); for France, World Prison Brief (2016) and Larrive (2015); for The Netherlands, Linckens and Loof (2015: 38).

Muslim slums of Kolkata, a local activist told Jeremy Seabrook and Imran Siddiqui:

> There is no visible prison [here], but that does not mean these people are free. Mobility is not prevented by checkpoints, military posts, and armed guards; but the exit from misery, ignorance, and want is policed by discrimination and prejudice … (2011: 248–49).

Many scholars stand for the abolition of prisons to stress societal justice (Davis 2011; Hartnett 2011) beyond the liberal notion of juridical individual equality. As noted earlier, they stress structural-political factors to explain the over-representation of minorities in Western democracies like the US calling it a "punitive" and "punishing" democracy. Sympathetic to this standpoint, in the remainder of this article we discuss how imprisonment and torture generate an idea of democracy that is an alternative to "punishing," "punitive" democracy, enmeshed as it is, inter alia, in election-centric majoritarian democracy. To this end, we focus on the prison memoirs of Qayyum and Khan. As we analyse these memoirs anthropologically, a word about the anthropology of prisons is in order.

The prison memoirs—Mufti Qayyum and Amir Khan: Prison is an understudied subject in anthropology (Rhodes 2001). Given the nature of prisons, and issues of accessibility (especially in the time of securitised states), anthropological work on Indian prisons is thin. Based on her work in a Kolkata prison, Mahuya Bandyopadhyay's *Everyday Life in a Prison* is "the first anthropological study of the prison system in post-independence India" (2014: 15).[6] However, her concern with agency, structure, and resistance does not interest us here. Prison memoirs we discuss rarely speak of "scripts of subversion" (Bandyopadhyay 2013: 28). Instead they record suffering, pain, human finitude, vulnerability, and compassion. They involve "the desire for mutual care, distress at the infliction of pain and indignity, concern for truth more than for immutable subjective rights, the ability to listen and not merely to tell. …" Asad (2012: 56) calls this "democratic sensibility as an ethos." By contrast, "jealous of its sovereignty" and intoxicated with nationalist thirst, "democracy as a state system" works for "bureaucratic rationality." We stress on "democratic sensibility as an ethos" in jail.

The Gujarat police "abducted" Qayyum on 17 August 2003. Taken to the crime branch, he was brought into the office of D G Vanzara, Director-General of Police, Gujarat. On Qayyum's refusal to confess about his supposed involvement in the Akshardham case, Vanzara ordered a stump-wielding team to beat him. Placed upside down with his feet and hands cuffed, at every stroke, Qayyum proclaimed: "God is the greatest (Allāhu Akbar)." At every proclamation, Vanzara would utter vile abuse. He asked: "See, we have [the] government! We have power. We have everything. What do you have? If God is with you, then recite *Bismillāh* [in the name of God] to show us that you can break these fetters and become free" (Qayyum 2015: 8). At Vanzara's command, the team continued to beat Qayyum until his clothes got soaked in blood. The flogging momentarily stopped only when he lost consciousness. Some of the methods deployed included: attaching electrodes to his genitals, inserting a stick up his anus, extracting his fingernails, and putting living rats inside his pyjamas with its bottoms sealed. At this stage, the torture stopped only when out of "unbearable pain and terror," Qayyum agreed to endorse the story the crime branch wanted him to (Qayyum 2015: vi, 1, 7–9, 16–17, 39).

Meanwhile, the women from Qayyum's neighbourhood in Ahmedabad planned a protest rally against the illegal, secret arrest of Qayyum and others. A day before the rally, Qayyum was allowed to meet his father. The aim of this meeting was to frighten him into cancelling the protest rally, failing which either Qayyum himself or his family members would be killed. "Encounter" was the word the officials used. If the rally was held, officials of the crime branch threatened, the police would kill Muslims participating in the rally. These threats notwithstanding, the rally did take place, under the banner of the Kalupur Mahila Sangh and the leadership of Nazneen Bastawala, municipal corporator of Kalupur. Some of the women who participated in the rally were later arrested and first information reports were lodged against them (Qayyum 2015: 31–36).

If we analyse this episode in its entirety, we can identify two conceptions of democracy at work: the threats enacted by the officials of the crime branch and other authorities on the one hand, and fear-defying democracy embodied by protesting women on the other. What galvanised the women, among other factors, was the feeling of vulnerability that their own loved ones could meet a similar fate as Qayyum and the others. Bastawala told reporters: "Minority families of the city are terror-struck due to this strange modus operandi of the Crime Branch;" hence her resolve to continue to enact democracy: "Though police have assured [us] of prompt action, we will wait for three days and take to the streets again if [their] assurances prove false" (*Times of India* 2003).

On the last day of 40 days in police remand, Qayyum and the others were produced before the Chief Judicial Magistrate. A large number of Muslims had gathered inside and outside the court. While on that day too, policemen such as V D Vanar continued to issue threats of killing Qayyum in an encounter if he uttered a single word against them after entering jail, other authorities showed compassion. And they showed compassion not because an appeal was made to them. The compassion arose from the nameless sighs, tears, and sorrow directed at no one in particular—and therefore at everyone—but at a potential humanity in search of itself. As Qayyum and others were taken to the police van, many cried, others raised their hands upward in prayer and yet others issued words of consolation. Away from the van, Salman, a friend of Qayyum's, wept and wailed uncontrollably. Seeing him weep, C J Goswami of the crime branch and the policeman Desai too were on the verge of a breakdown. On knowing that Salman was a friend, they called him near the van and advised him perseverance. To Qayyum, they said: "It is good that you are now in jail custody. You are liberated from the torture of the Crime Branch. God willing, your future too would be better" (Qayyum 2015: 56–57).

Once in Sabarmati jail (where Gandhi was imprisoned in 1922), Qayyum received help from Sanjiv Bhatt, "*mard-e-ḥaqq* (man of truth)," "*raḥam dil* (kind-hearted)" and "*inṣafpasand* (justice-loving)." Bhatt was an Indian Police Service (IPS) officer at the time of 2002 Gujarat pogrom. For his refusal to toe the government line, he was transferred to the prison department. As jail superintendent, in the course of his routine inspection, Bhatt asked: "Are you implicated in the Akshardham attack?" "Yes, but I am innocent," replied Qayyum. Bhatt stated that he knew that. Showing his helplessness to do anything in the legal case, Bhatt assured him that he would not face any difficulty (*taklif*) in jail. When Qayyum and others informed Bhatt that they had been tortured to confess, he arranged for their medical examination and instructed that a medical report be prepared. He helped in getting counter-confessions dispatched to the special court (formed under the Prevention of Terrorism Act [POTA]) and human rights organisations. He also arranged a meeting between the accused and functionaries of the Akshardham temple for the former to explain their case.

Another jail superintendent was R J Parghi. He joyfully took up his role for it allowed him "to live in the midst of grief-stricken people to get familiar with their condition and helplessness as well as do his own reform in light of that knowledge." Unlike Alex Tocqueville who viewed prisoners as enemies and a small nation within the nation (Harcourt 2014: 8), Parghi addressed them as "brother" and treated them with care and sympathy. In fact, he considered prisoners less "sinful (*gunahgar*)" than people outside of prison (Qayyum 2015: 150–51).

Qayyum's relations with all prisoners, including Hindus were cordial. He followed the rules. Hindu prisoners treated him with respect for they too knew that he was innocent. Many of them approached him to make amulets. They shared their domestic and personal problems with him and he did whatever was possible to address them. In the month of fasting, Musa Patel, an Ahmedabad businessperson, used to send fruits and related items, which Muslim prisoners shared with their Hindu fellow-prisoners. Such deeds of sharing in a space of unfreedom and in a state marked by helplessness generated an unusual bond amongst prisoners, including the so-called "mad" ones. One such "mad" and well-educated prisoner in barrack 4 was Bipinbhai. A week before Qayyum's release, Bipinbhai told him: "Don't worry, you will be released with dignity." He also held that the attackers of the Akshardham temple were outsiders. The day he was released, fellow prisoners like Bipinbhai came together to dress Qayyum as if he was a groom (2015: 131–32, 147–48, 187).

Threats and coercion: While such "democratic sensibility as an ethos" worked inside jail, institutions entrusted to guard democracy subverted it outside through threats and coercion. Doctors were pressured to not record the torture meted out to Qayyum and his fellow prisoners. Lawyers were harassed too. In fact, Mushtaq Sayyid, a lawyer fighting Qayyum's case, was himself framed under POTA. So thorough was the terror that Qayyum's neighbourhood, otherwise bristling with life until late at night, looked deserted even during the day for some time.

Not everyone succumbed to fear, however. Lawyers like K T S Tulsi, Amarendra Saran, Anis Suhrawardi, Irshad Ahmad, Khalid Shaikh, Ijaz Qureshi, and Kamini Jaiswal took up Qayyum's case. For these lawyers, people like Qayyum were more than "clients." When Qayyum met Saran after being freed, the latter told him that as a principle he never took up a case he regarded as non-genuine. "I have pleaded your case in this world, you plead mine before God," remarked Saran. Ahmad took only a symbolic fee, that too reluctantly and well after the Supreme Court judgment. Soon after the judgment was delivered, lawyers cried out of joy. "Why are lawyers crying," asked someone. "They are not only lawyers," pat came the reply (Qayyum 2015: 38–39, 46–47, 171).

In many ways, the memoir of Khan is similar to Qayyum's. Though the characters are different, the story of torture, discrimination, and prejudice is largely similar. The similarity also pertains to desperation, due to which prisoners commit suicide. Qayyum too had contemplated hanging himself. There is much specificity and detail in Khan's memoir. However, given the lack of space, we briefly discuss his post-jail activism rooted in sufferings—his own as well as those of fellow prisoners—and the compassion of others. With his father dead and mother paralysed, Khan faced an uncertain future on his release from jail, with no economic prospects and security. Fear of the police continued to haunt him. His memory was disrupted, not to speak of the psychological aftermath he suffered. Yet because of this, he aligned himself with collective struggles of multiple kinds—discrimination against women, rights for the lesbian, gay, bisexual and transgender (LGBT) community, violence against minorities, and initiatives for religious pluralism (Khan 2016: 195–97). The endorsement of Khan's book by Harsh Mander is correct; it is indeed about "incredible injustice and suffering" which had earlier impelled Mander (2015) to resign from the bureaucracy in the aftermath of 2002 Gujarat pogrom.

Democracy emanating from identification with, and the sharing of suffering, pain, human finitude, and vulnerability seems to be at radical variance with the lethal injustice and callousness of the rationalised bureaucracy, and institutions sanctioned by democracy as a state system manifest in the periodic spectacle of elections.

3 Conclusions

In 1988, one of us (Ahmad) moved from Sheohar to begin his college education at Patna University (PU). In the assembly elections of 1990, Jabir Hussain, Professor of English at Magadh University, was an independent candidate (of socialist background) from Patna Central constituency, under which PU fell. For many students, Hussain was the most ideal candidate; we listened to his speeches with rapt attention. In one such speech, Hussain stressed that he would not hesitate going to jail if his advocacy for the cause of justice required going to prison. During the Emergency, Hussain had been arrested under the Maintenance of Internal Security Act (MISA).[7] Hussain—who lost the elections—was probably one of the few to continue to see the connection between the fight for justice and freedom leading to imprisonment, a connection that was all too obvious to anti-colonial activists of nearly all political shades under the British. Consider the letter (dated 11 August 1942) Abul Kalam Azad wrote from the prison of Ahmednagar Fort. Azad, who had been in prison for over 10 years, observed that Indians under colonial subjugation had only two options: either to lead a life of "cold-heartedness/detachment (*beḥisi*)" or a life of "feeling (*ihsas*)" (Azad 1967: 34). The second option, he approvingly noted, led straightaway to prison.

There seems to be a discernible change in the political discourse over the last two decades or more. The language has changed from "*we* are ready to go to jail" to "put *them* in jail." The metamorphosis in this language is arguably one key explanation for the over-representation of minorities in jail. Through a sociological analysis of data drawn from the *Prison Statistics India*, 1998–2014, we have documented the disproportionate representation of minorities such as Adivasis, Christians, Dalits, Muslims and Sikhs—and Hindus in states where they are in a minority—in prisons. One important aim of this article has been to underline the flaws in and limits of exclusively cultural-religious explanations of over-representation and instead connect it to structural-political factors. We observe that minorities such as African–Americans, Hispanics, North Africans, or Muslims are over-represented in jails in Western democracies too. Such over-representation of minorities in jails in democracies, one may hypothesise, means that election-centric, number-dominated, security-driven democracy is unfriendly to minorities as it puts substantive democracy in jail thereby becoming what scholars call "punitive" and "punishing" democracy. Through the case studies of Qayyum's and Khan's torture, imprisonment and their exit from prison, we also showed how a notion of democracy different from "punitive" and "punishing" democracy emerges in jail amongst prisoners, some jail officials, and the community outside prison. This notion of democracy rooted in shared suffering, pain, mutual care, vulnerability, and human finitude has the potential to re-signify the prevalent democracy so as to democratise democracy beyond the putative divide of minority and majority. A major task for democrats around the world is to reflect on the following observation of Henry Thoreau (1817–62) and put its implications in practice. Thoreau, who had experienced jail, observed: "A minority is powerless while it conforms to the majority; it is not even a minority then," and in an unjust order "the true place for a just man is also a prison" (2004: 76).

NOTES

1 One of us (Siddiqui) emailed the Ministry of Home Affairs on 17 March 2016, inquiring if data prior to 1998 was available. We received no reply.

2 Recently, top leaders of the Rashtriya Swayamsevak Sangh have issued statements saying that the "genesis of Dalits, tribals, and many other groups" are due to a "Muslim invasion" (*Hindutsan Times* 2014). Too obvious to state, such statements are political in the minimal sense of the term.

3 Buddhists and Jains, though much smaller in numbers, are not considered minorities by themselves as well as by the Hindu majority with which they identify themselves (Weiner 1998: 470). Sociologist M N Srinivas (1991: 31) included Buddhists, Jains, and Sikhs under the category Hindus (also see Jayaram 1990: 116; Katju 2003: 26).

4 The foreword to Upadhyay's book is written by Jagmohan (2008: xvii), former Governor of Jammu and Kashmir. He too bemoans that Muslims are unable to free themselves from the "orthodox clergy" and patronisingly advises a "liberal, enlightened interpretation of Islam" for a change in the "Muslim outlook" (Jagmohan 2008: xvii). The theologisation of Muslims' backwardness manifest in the emphasis on "outlook" and "psyche" is striking when juxtaposed against the aetiology of backwardness of Adivasis and Dalits where political economy dominates, with no reference either to "outlook" or "psyche." Relatedly, it should be noted that even those few scholars who fleetingly find such an explanation somewhat problematic end up endorsing it. Surveying educational backwardness among Muslims, sociologist Jayaram identified three main explanations for it: (i) religious traditionality among Muslims; (ii) biases against Muslims by the majority Hindu community; and (iii) a crisis of identity resulting from Partition. To Jayaram, while the first is "usually emphasised by Hindu scholars, and even by the secularists among them," the second one is aired by Muslim scholars. Yet, Jayaram concluded stressing "the stranglehold of the religious orthodoxy on the Muslim community and the 'false consciousness' fostered by their religion" as a key explanation for their backwardness (1990: 119, 126).

5 Proponents of Hindutva denounced the Sachar Committee as "anti-national;" Rajender Sachar, who headed the committee, was accused of "caring for terrorists" (Hansen 2007: 51).

6 Empirical studies discussed in the literature (Maguire 2013: 50) are S P Srivastava's *Indian Prison Community* (1978) and I J Singh's *Indian Prison: A Sociological Enquiry* (1979). Singh studied a prison in Lucknow. One of his findings was that "the inmate culture is like a caste system, a rigidly hierarchical system …" (NCJRS 2016). Some works discuss life within prisons and overcrowding (Maguire 2013; Chattoraj and Das 2009; also see Ahmad 2014b; Sethi 2014). Works by political scientists include Singh (1998, 2007) and Roy and Singh (2012). The literature cited here is representative, not exhaustive.

7 Jabir Hussain (b 1945) is also an Urdu littérateur and winner of the Sahitya Akademi Award (Sajjad 2015). For a brief account of Hussain's politics, see Sajjad (2014: 265, 289, 316–17).

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