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LIFE IN THE INDIAN PRISONS: WHERE HUMANS EXIST BUT HUMANITY DOESN'T

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ABSTRACT

For many of us, the concept of heaven and hell would be abstract. But for some, hell can exist, right here on earth. The prison system in India is not less than an example of hell for a person. The function that prisons and jail cells are supposed to perform is to rehabilitate the wrongdoer and make him/her abled enough to be a better person than what he/she was before. But what if the only impact that prisons are having in reality, is negative? If so, do we need to reform the prison system, and if yes then how? The outbreak of the COVID – 19 pandemic is one of the worst things to have happened in recent years, but how did it affect the ones living in overcrowded spaces with nowhere to go, and lack of healthcare and sanitation? The following research paper highlights the plight of Indian prisoners in the existing system. We believe that this issue still remains the one that is not discussed as much as it should be. The paper defines the major concepts of prisons and prisoners and underlines the various rights of the inmates, both under domestic and international law. It also talks about the issue of mental health of the prisoners, and the impact of the COVID – 19 pandemic on the prison system as a whole. Concluding on certain suggestions as to how the system can be reformed; the paper ends on the note of morality and hopes to serve the reader with significant and thought-provoking information.

Keywords - prisoners in India, women prisoners, undertrial prisoners, solitary confinement, Indian prison system, rights of prisoners, domestic and international law, COVID - 19 and prisoners, overcrowding, lack of health and sanitation, cruel and inhuman behaviour, torture, mental health of prisoners

STATEMENT OF PURPOSE

The authors of this research paper were prompted to take up the theme of prison system in India because of the lack of subject matter and knowledge existing on the same, even when the issue at stake is alarming. As much as the issue being a moral one, the paper examines the technical failures of the prison system and attempts to educate the reader on the same. The aim of this paper has been to focus on the numerous challenges the present prison system faces, one which has not been

through reformation since ages. The paper also explores the circumstances in which prisoners in India are kept, and provides suggestions for improvement thereby.

METHODOLOGY

This research paper makes use of quantitative research strategy, along with certain points of qualitative information, to approach and update the reader about prison statistics in India. Much of the statistics that have been studied are from official documents by government authorities. The authors have chosen an interpretive approach to present the data on the Indian prison system. The authors have also relied upon significant and authentic news articles, and a large number of government and international statutes to support their assertions. Considering that the topic taken for research is one which has not been very much presented and discussed about, the authors have tried to present the information in such a manner so as to attract every section of readers. Most importantly, the authors have incorporated their own thoughts and ideas and come out with recommendations on a concluding note. The paper seeks to represent all information as authentic and reliable.

BACKGROUND

To be held captive against one's will is not something a person would ever want or wish for in their life. However, sometimes it becomes inevitable to hold certain people captive against their wills and wishes. Such persons are termed as prisoners and they are confined in special places called prisons or jails. Prisoners are held so per the law, i.e., it is the law of the country that decides whether a person should be imprisoned or not, based on the activity that they might have performed. Indeed, this is a very basic understanding of prisoners and the prison system, and we have evolved so much from what is, or rather was, basic. There are various concepts related to the prison system, some of them even latent, and all these concepts combined together highlight the very harsh system that exists behind the bars. Indeed, an offender needs to be punished for the wrongful act that he/she has done, but we cannot rule out the fact that prisoners in India are treated

worse than animals. With more than 4 lakh prisoners in the country¹, the needs and requirements of such a large population cannot be disregarded.

THE BARS

Prison may be a jail or any other place used for detention of prisoners, whether permanently or temporarily, under special orders of the government. It can said to be an accommodation for individuals who are held guilty by the State for committing an offence and are thus undergoing trial for the same.² Since such individuals are considered a threat to the general public, they are kept in secluded places so they may not commit the same offence again, or any other offence for that matter. But then we may argue as to why those people who act in self-defence or are first-time offenders, are kept in prisons, because having them already committed the act, they should be released. Here comes the point of punishment, as prisons not only exist to separate the guilty minds from the innocent ones but also to serve as a means of punishment for everyone at large. A prisoner cannot have access to a normal life, one which he was leading before committing the offence. Thus, prisons are much more than what they appear to be.

BRIEF ANTIQUITY

The concept of jail is not a new one. The moment written language developed, and with it, a set of written rules and regulations, prisons as a form of punishment developed. Ancient concepts related more with the idea of punishment rather than rehabilitation, and it was Plato who introduced the notion of rehabilitation and reformation. Medieval castles and fortresses housed wrongdoers in their basements, which acted as makeshifts. The Modern Age turned from this practice in the sense that they started shipping the offenders to distant places, but it ended with the end of colonial rule.³

¹ National Crime Records Bureau, Ministry of Human Affairs, Prison Statistics India (2019).

² Hariitha Dinakaran, *Prisons in India: Types and Functions*, LATEST LAWS (Mar. 22, 2021, 7:33 PM), <https://www.latestlaws.com/articles/prisons-in-india-types-and-functions/>.

³ Grayfell, *Prison*, WIKIPEDIA (Mar. 22, 2021, 7:48 PM), <https://en.wikipedia.org/wiki/Prison>.

Even India has had a history of prisons, with the earliest mentions by Kautilya and Manu. While the ancient perspective was more spiritual and provided all opportunities to repent and reform, prisons in medieval India inclined more towards torture and terror, the ultimate goal being deterrence. It was only after the advent of the British, that the prisons and prisoners in India were reformed. A Prison Enquiry Committee was appointed by the government in 1836 for the same, and an Inspector-General was appointed in 1855, who acted as a Chief Administrator for all the prisons in India at that time. Subsequent committees were appointed, each of which looked into specific matters related to prisons and prisoners⁴, and after the formulation of the UN Standard Minimum Rules for the Treatment of Prisoners in 1955, a well-developed framework came into being, which called for reformation and social rehabilitation of prisoners.⁵ However, it is not as easy as it sounds to put these principles into practice, and although India is a party to this framework, what has been put into practice is hardly noticeable.

CATEGORIES

To understand the condition of prisons and prisoners in modern India, we first need to examine the various kinds of prisons that exist at three levels: Taluk level, District level and Zonal/Range level, and the jails at these levels are called Sub Jails, District Jails and Central Jails, respectively. Their conditions progress as we move from the Sub Jails to the District Jails, and from the District Jails to the Center.⁶

- **Central Jails:** Usually, a convict who is entitled to punishment for a longer period is put in central jail, although this can vary from one state to another. Since these jails are larger in terms of capacity, having additional facilities of rehabilitation, it is desired that offenders with two or more years of prison sentence be kept here. Delhi has the largest number of central jails (16).

⁴ N. V. PARANJAPE, CRIMINOLOGY AND PENOLOGY, 21 (12th ed. 2005).

⁵ United Nations Standard Rules for the Treatment of Prisoners (Mandela Rules), 2015.

⁶ National Crime Records Bureau, Ministry of Human Affairs, Prison Statistics India (2018).

- **District Jails:** Where there are no central jails, prisoners are kept in district jails. They may have a capacity of around 500 prisoners. Uttar Pradesh has the highest number of district jails (57), followed by Madhya Pradesh (41).
- **Sub-Jails:** Sub-jails are smaller in size and rank lower than the district and central jails. They are placed in the sub-divisional area of the States. However, many states have maintained a large number of sub-jails with proper facilities, like Maharashtra (100) and Andhra Pradesh (99).⁷

Apart from these, there are other kinds of prisons as well:

- **Open Prisons:** An open prison, or open jail, confines only selective prisoners, i.e., those certifying good behaviour or standing up to certain prison norms. There is minimum security in these prisons and prisoners are engaged in agricultural activities mostly to keep themselves occupied. Only 17 states in India practice this system as of 2018, with Rajasthan having the highest number of open prisons (31), followed by Maharashtra (19).
- **Special Jails:** Special jails hold a particular class or classes of prisoners, those who had been engaged in criminal activities of the highest degree, like terrorism, drug peddling, etc. Special jails cannot be accessed easily because of the high maintenance of security. Only 13 states/union territories have special jails, with Kerala having the highest of them all (16).
- **Women's Jails:** As the name suggests, women's jails hold only female offenders, and thus they exist at all three levels: central, district and sub-level. The state with the maximum number of women's prisons is Tamil Nadu (5).
- **Borstal Schools:** Borstal School is a place to hold juvenile offenders. The main objective of these schools is to rehabilitate the offenders and to separate them from the awful life of a usual prison. A borstal school educates and nurtures the offender, making him/her capable of re-joining the society once he/she gets out.

⁷ *Id.* at 7.

- **Other Jails:** Prisons which are not covered under any category are covered under other jails. They may exist for a specific purpose, or may not fulfil the criteria to be put under any other category. Only Maharashtra and Kerala have other jails, each having only one.⁸

THE INMATES

“Prison walls have a double function: to lock people in and the public out”

- Manfred Nowak⁹

An accepted definition of the word ‘prisoner’ would be ‘a person deprived of liberty and kept under involuntary restraint, confinement, or custody’.¹⁰ Under English Law, the term ‘prisoner’ means ‘any person for the time being in a prison as a result of any requirement imposed by a court or otherwise that he be detained in legal custody’.¹¹ According to Black’s Law Dictionary, a ‘prisoner’ is someone who is ‘deprived of his liberty; one who is against his will kept in confinement or custody’.¹² In simple terms it can be said that a prisoner is a person who is serving a prison sentence in a prison¹³ as a punishment for a crime that he/she has committed.¹⁴ Prisoners are those who are deprived of liberty against their will. Confinement, captivity, or forcible restriction are all options. The term ‘prisoner’ has not been defined under the Prisons Act, 1894 but the Act itself classified the prisoners into two categories i.e. Criminal Prisoner¹⁵ and Civil Prisoner¹⁶. It is not used for a person being prosecuted for a misdemeanour.¹⁷

⁸ *Id.* at 8.

⁹ Patron of the IRCT and the former UN special rapporteur on ‘torture’.

¹⁰ “Prisoner” Merriam-Webster Online Dictionary, 2021, <https://www.merriam-webster.com/dictionary/prisoner> (Mar. 20, 2021)

¹¹ The Prison Security Act, 1992, No. 25, Acts of Parliament, 1992 (United Kingdom).

¹² *Prisoner*, Black’s Law Dictionary (4th ed. 1968).

¹³ WEBSTER *supra* note 10.

¹⁴ *Prisoner*, Collins English Advanced Dictionary, 2021.

<https://www.collinsdictionary.com/dictionary/english/prisoner> (Mar. 20, 2021).

¹⁵ Prisons Act, 1894, No. 9, Acts of Parliament, 1894 (India).

¹⁶ *Id.* s. 3(4).

¹⁷ O. HOOD PHILLIPS, A FIRST BOOK OF ENGLISH LAW, 161 (4th ed. 1960).

The term ‘prisoner’ originated from an old French word ‘*prisonier*’. Furthermore, the earliest evidence of the prisoner’s presence comes from ancient graves in lower Egypt dating back to 8,000 BC.¹⁸

According to the 2019 survey conducted by the Ministry of Home affairs, there are total 4,78,600 prisoners in Indian prisons out of which 4.2% are female prisoners, 0.1% juveniles and 1.2% foreign prisoners.¹⁹ With the increasing population of the country the trend of increasing population of the prisons can be seen from the table given below:

Year	Total Prison Population	Prison Population Rate (in%)
2000	272,079	26
2002	322,357	30
2004	331,391	30
2006	373,271	32
2008	384,753	33
2010	368,998	30
2012	385,135	30
2014	418,536	32
2016	433,033	33
2018	466,084	34

¹⁸ HUGH THOMAS, THE SLAVE TRADE (1997).

¹⁹ National Crime Records Bureau, Ministry of Human Affairs, Prison Statistics India (2019).

From this table, one can easily conclude that the crime rate in India is going up and the population of prisoners is increasing every year. And the interesting fact is, according to the WORLD PRISON BRIEF, India is ranked 5th in having the greatest number of prisoners.²⁰

Prisoners can be of two types:

- Lawfully confined
- Unlawfully imprisoned

But as a result of individualisation of criminals the prisoners were divided into various categories. There are various kinds of prisoners all around the world, like convicts, detainees, prisoners of war (POW), political prisoners, prisoners of conscience, etc.

These definitions are strictly legal, and they do not represent the moral and human status of a person detained by law. But lack of these definitions in explaining the meaning of the term ‘prisoner’ is trivial when the behaviour inflicted on prisoners themselves is inhumane and forbidding. As will be later discussed, prisoners are regularly subjected to abnormal conduct and denied their basic moral, natural and legal rights. Before stepping into the harsh reality of which we may be little to not aware of, there is a need to understand the abundant number of rights available to the prisoners, which of course are rarely put into practice.

THE RIGHT TO ACCESS THE RIGHTS

Every human being is capable to exercise certain rights given to him/her according to the law to which he/she is subject. However, the nature of rights varies from an ordinary human to a prisoner. A prisoner is unable to exercise those rights which he/she may otherwise have if he/she were not a prisoner. But this does not mean that a prisoner is devoid of rights. There are certain guidelines

²⁰ World Prison Brief, *Highest to Lowest- Prison Population Total*, ICPCR, Mar. 27, 2021, 12:33 AM)
https://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All.

that expressly mention the various rights of prisoners, both in national and international law, for example, the UN Standard Minimum Rules for the Treatment of Prisoners.

INTERNATIONAL LAW

Several resources exist in international law when it comes to the treatment and rights of prisoners.

- **The Universal Declaration of Human Rights (UDHR)**²¹ protects fundamental human rights universally. Certain rights on prisoners are mentioned under Articles 4, 9, 18, 19 and 25(a).
- **The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**²² recognises rights of prisoners under Articles 10 and 11, and prevents inhuman treatment and acts of torture against people in general.
- **The UN Standard Minimum Rules for the Treatment of Prisoners**²³, also known as the Nelson Mandela rules after its revision in 2015, were adopted to prevent crime and degradation of prisoners.
- **Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**²⁴ specifically provide for health and medical facilities to the prisoners, as mentioned specifically under Principles 3, 4, 5 and 6.
- **United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders**²⁵ were adopted to safeguard the interests and rights of women who are detained by law.

These, and many other conventions and rules, offer a substantial amount of rights to prisoners and other persons detained under law, and rest certain duties on the governments of the ratifying

²¹ The Universal Declaration of Human Rights, 1948.

²² The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1985.

²³ Nelson Mandela Rules, *supra* note 5.

²⁴ Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982.

²⁵ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules) 2010.

countries in respect of prison administration. But the application of international laws seems a distant dream, when the domestic laws themselves, although abundant, are not acted upon.

INDIAN LAW

The Indian Constitution mentions the Fundamental Rights in Part III, which are available to the citizens of India. These rights are also available to a prisoner unless they are curtailed by the Constitution itself.²⁶ Moreover, various statutes especially enacted for the prisoners provide certain rights and safeguards to them. Some of them are enlisted below:

- **The Prisons Act of 1894**²⁷, the first statute regulating prisons and prisoners in India, provides for accommodation, sanitation, mental and physical sanitation of prisoners, medical examination and treatment, physical and mental well-being of the prisoners, as well as separation of prisoners of different categories.
- **The Transfer of Prisoners Act of 1950**²⁸ allows transfer of prisoners for rehabilitation or to prevent over-crowding.

Many rights of prisoners have been laid down in judgements given by the Supreme Court and High Courts in landmark cases. In *D. B. M. Patnaik v. State of A. P.*²⁹, the Supreme Court ruled that just because a person is detained does not mean that he/she is deprived of the Fundamental Rights mentioned in the Constitution of India. As early as in 1977, the Supreme Court insisted on the rehabilitation of prisoners and the reformation of prisons.³⁰ The right to fair treatment and right of judicial remedy are the pre-requisites for the administration of justice in prisons.³¹ Much recently, due to the outbreak of the COVID – 19 pandemic, the Supreme Court pursued the constitution of a High Powered Committee to categorise prisoners and order temporary release for certain categories so that the spread of the pandemic could be controlled to a certain extent in the prisons.³² This step was commendable because of the horrific situation of the prisons, overcrowding and lack

²⁶ State of A. P. v. Challa Ramkrishna Reddy, AIR 2000 SC 2083.

²⁷ The Prisons Act, *supra* note 15.

²⁸ The Transfer of Prisoners Act, 1950, No. 29, Acts of Parliament, 1950 (India).

²⁹ AIR 1974 SC 2092.

³⁰ A. Hiralal Mallick v. State of Bihar, AIR 1977 SC 2237.

³¹ A. R. D. Upadhyaya v. State of A. P. and ors., AIR 2001 SCC 437.

³² V. Venkatesan, *SC Permits Judicial Review of Discrimination During Prisoner Release, if Alleged Within a Category*, THE WIRE, Sep. 23, 2020.

of sanitation being a regular sight. However, the question remains intact: *how much of it is put into practice?*

A LOOK INTO THEIR LIVES

"Prison is a second by second assault on the soul, a day to day degradation of the self , an oppressive steel and brick umbrella that transforms seconds into hours and hours into days

– Mumia Abu Jamal.³³

You must have seen certain movies or series depicting prison life. In India, the prisoner's life is not that bad, it's *worse*. As shown, prisoners are kept in dilapidated age-old buildings with disgruntled, untrained and insufficient staff along with various kinds of prison fellows ranging from a terrorist, gangster, murderer, rapist, or sometimes, an innocent. Life is a killer, psychologically and physically, in the dark and dank dungeons of Indian jails.³⁴ Prison conditions are bad and unhealthy as well as *frequently life threatening*.

Prisoners were subjected to cruel punishments in ancient times, and their living conditions were deplorable.³⁵ Until 1919-20, Indian prisons were inhumane. Various reforms like classification, segregation of inmates, schooling, recreation, etc. were implemented in maximum-security prisons after the recommendations of the 1919-20 Indian Jails Reform Committee³⁶.

However, it is important to note, as prisons are not created strategically, the consequences may vary along critical dimensions like physical layout, number of staff , resources, correctional philosophy, administrative leadership, etc. But there are some problems which are common in every prison from decades, like overcrowded prisons (more than 50 people live in barracks sometimes, which can ideally hold 20), lack of cleanliness and sanitation facilities (rat attack, dirty toilets and clothes, etc), horrible food, callous and insensitive attitude of prison authorities (e.g.

³³ Mumia Abu Jamal, Journalist

³⁴ Kishorechandra Wangkhem, *Life in an Indian Prison: when darkness falls, tears are not enough*, OUTLOOK INDIA (Mar. 23, 2021, 07:52 PM) <https://www.outlookindia.com/website/story/india-news-life-in-an-indian-prison-when-darkness-falls-tears-are-not-enough/329303>.

³⁵ Accounts of Huan-Tsang.

³⁶ Indian Jail Reforms Committee (1919-20).

Byculla Jail incident)³⁷ along with lack of trained staff, harsh physical and mental torture³⁸, lack of doctors and insufficient provisions of medical aid to prisoners, lack of proper legal aid, corruption and other malpractices.³⁹ **“Convicted people go to prison as punishment, not for punishment,”** as it was correctly stated.⁴⁰

The fact that the number of people imprisoned in the country is steadily increasing is at the core of many of these issues. However, the facilities for holding them remain unchanged, resulting in jail overcrowding with a 118.5% occupancy rate.⁴¹ The occupancy rate in some areas is as high as 277%, almost three times the permitted capacity⁴² and some to the extent of 600%. It was observed that *‘prisoners cannot be kept in jail like animals’*.⁴³ About 12,727 people are reported to have died in prisons between 2001 and 2010.⁴⁴

One of the primary reason of the overcrowding of prisons is the increasing number of undertrials and their pending court cases. Corruption, the position of the police, prosecutors, and the judiciary are some other factors that contribute to a large pre-trial population.

PLIGHT OF UNDERTRIAL PRISONERS

Innocent until proven guilty - It is the basic principle of criminal justice system granted to all, including ‘undertrials’. However, they are kept with inmates and are exposed to psychological and physical torment as well as sub-human living conditions and jail abuse while imprisoned. Much has changed in the last four decades, but the plight of undertrials in Indian jails has only gotten

³⁷ Gautam S. Mengle, *Inmate’s Death spark riot in Byculla Women’s Prison*, THE HINDU, June 25, 2017.

³⁸ JINEE LOKANEETA, THE TRUTH MACHINES: POLICING, VIOLENCE, AND SCIENTIFIC INTERROGATIONS IN INDIA, LAW, MEANING A VIOLENCE SERIES (2020).

³⁹ Duncan Leatherdale, *Chennai Six: Nick Dunn reveals what Indian prison life was like*, BBC, May 14, 2020; Dhruvo Jyoti & Roshni Nair, *What life is like in a women’s jail in India*, HT, July 26, 2017.

⁴⁰ Charles Sobraj v. Superintendent, Tihar Jail, AIR 1978 SC 1514.

⁴¹ NCRB, *supra* note 19.

⁴² Vrinda Bhandari, *Pretrial Detention in India: an Examination of the Causes and Possible Solutions*, 11 ASIAN JOURNAL OF CRIMINOLOGY 2 (2015).

⁴³ PTI, *Prisoners cannot be kept like animals: SC shocked at 600% overcrowding in Jails*, HT, Mar. 30, 2018.

⁴⁴ Basanth Rath, *Why we need to talk about conditions of Indian Prisons*, THE WIRE, July 26, 2017.

worse as their numbers have increased. Currently, 69.1% of the total number of inmates are under-trials. Two out of every three prisoners are under-trial prisoners.⁴⁵

Poverty, illiteracy (roughly 71%), and underprivileged status, as well as an apathetic judicial system, are the key causes of their increasing numbers. Many of the undertrials, who are charged with minor offenses, remain incarcerated either because they are unaware of their rights⁴⁶ or because they have insufficient access to legal protection and representation. Despite the fact that many undertrials are given parole, they are unable to leave prison due to a lack of financial support. In India, the *strong, wealthy, and influential obtain bail quickly and easily, whereas the masses/common/poor languish in jails*, and this prevalence jeopardizes human dignity.⁴⁷

The law mandates the release of undertrials, on personal bond with or without surety, of undertrial detainees who have been imprisoned for half the maximum sentence they would have received if they are found guilty of the crime for which they are accused.⁴⁸ Also, ‘speedy and fair trial’ is a Fundamental Right under Article 21 of the Constitution of India.⁴⁹ But in reality, nothing works and undertrials remain behind bars for years. Law has been a *instrument of injustice* for these people, and they are powerless victims of the *callousness of the legal and judicial systems*.⁵⁰ Throwback to 1979, it was observed by the Supreme Court that some of the under-trial prisoners have been in jails for 5-10 years and some even more, without their trial even having begun. The Court had questioned whether there was any hope for these people. Lost souls in a justice system that keeps them behind bars, not because they are guilty, but because they are too poor to pay bail and the courts have no time to prosecute them. The Supreme Court had described such prisoners as “unfortunate forgotten specimens of humanity”, saying it was “high time” for the government

⁴⁵ Rahul Tripathi, *Jails at 14 per cent over capacity, two in three prisoners under-trials*, The Indian Express, Apr. 10, 2018.

⁴⁶ Derek P. Jinks, *The anatomy of an institutionalized emergency: Preventive Detention and Personal Liberty in India*, 22, Issue 2, Michigan Journal of Intl. Law, 311 (2001).

⁴⁷ Law Commission of India, 268th Report on Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail (2017).

⁴⁸ Code of Criminal Procedure, 1973, No. 2, Acts of the Parliament, 1974 (India).

⁴⁹ Kartar Singh v. State of Punjab, 1961 AIR 1787.

⁵⁰ Gobardhan Singh & anr. v. State of U. P., CRA no. 2773 of 2005.

and judiciary to acknowledge that “in the dark cells of our prisons there are a large number of men and women who are waiting patiently, perhaps impatiently, but in vain for justice”.⁵¹

PLIGHT OF WOMEN PRISONERS

*Prisons are built with the stones of law’. However, for women, prisons are built with stones of "patriarchal" law.*⁵²

Over the last fifteen years, the number of Indian women in jail has risen by 61%, outpacing the male growth rate of 33%. They, too, face overcrowding due to a shortage of jail space. As a result, they are housed in mixed-gender facilities with little to no separation from male inmates, creating an unsafe environment for women. The majority of female prisons only have one or two rooms for women in a male-dominated prison.⁵³ Furthermore, due to a shortage of female personnel in prisons around the country, male staff is often responsible for female inmates. This is unfavourable since female inmates need gender-specific care, which should be delivered by female workers only.

According to a study on the conditions of women prisoners in Rajasthan, women in this system are usually from economically and socially deprived backgrounds. Some are so poor that their family income is less than Rs. 5000, and their children are totally dependent on them.⁵⁴ This economic status plays a significant role in the recruitment and retention of women in Indian prisons. They are also held in far-flung jails due to a shortage of prison services, making it impossible for them to contact family members for financial assistance. After being convicted and replaced, the society still considers them as disrespectful. The benefits of Open Jail are recently provided to women after a long struggle waged by activists.

Older, pregnant, and lactating women face the most difficulties. In India, women are permitted to live in prisons with their children (up to the age of 6). A total of 1,320 children (73%) were living

⁵¹ Hussainara Khatoon v. Home Secretary, State of Bihar, 1979 AIR 1360.

⁵² Justice Krishna Iyer, Sunil Batra v. Delhi Administration, 1980 AIR 1579.

⁵³ Dhruvo Jyoti & Roshni Nair, *Tales from former inmates: what life is like in a women's jail*, HT, July 26, 2017.

⁵⁴ Anupama Kaushik, Kavita Sharma, *Human Rights of Women prisoners in India: A Case Study of Jaipur Central Prison for Women*, Indian Journal of Gender Studies (2009).

with mothers who were under-trials.⁵⁵ Since they live in a restrictive area, these children lack a decent education and are at risk of becoming potential criminals.

PLIGHT OF PRISONERS IN SOLITARY CONFINEMENT

Solitary confinement- the ‘hole’, as it is referred to in jails, is a confinement wherein there is complete isolation of prisoners from other co-prisoners and isolation from the outside world.⁵⁶ It is the confinement of prisoner for twenty-two hours or more per day without any human contact.⁵⁷ In India, it is permitted only in the rarest of rare cases⁵⁸, only when the perpetrator has committed such an offence under the Penal Code that is punishable with rigorous imprisonment⁵⁹ and must not exceed a period of 14 days at a time.⁶⁰ Also, the right to life⁶¹ includes the right against solitary confinement.⁶² It is considered as an *anarchic and remorseless practice*⁶³ as it tortures the inmate mentally, physically and emotionally and is a shortcut to the socio-psychological ‘death’ of prisoners.

It has severe, adverse and irreversible psychological impact including anxiety, depression, apathy, hallucinations (visual and hearing), panic attacks, cognitive deficits, paranoia, distrustfulness, hypersensitivity to external stimuli, noise and touch; insomnia, dangerous perceptions, uncontrollable feeling of fear and death, dizziness, increased heart-rate, etc. They may also develop challenges with thinking, focus, and memory; become irritated and violent; experience difficulty

⁵⁵ IndiaSpend, 17000 women in Prison in 2014, 9% with their Children, INDIASPEND, Mar. 22, 2021 (04:32 PM) <https://www.indiaspend.com/17000-women-in-prisons-in-2014-9-with-their-children-87661>.

⁵⁶ Kishore Singh Ravinder Dev v. The State of Rajasthan, 1981 AIR 625

⁵⁷ Nelson Mandela Rules, *supra* note 5.

⁵⁸ Kishore Singh, *supra* note 57.

⁵⁹ Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860.

⁶⁰ *Id.* s. 74.

⁶¹ INDIA CONST. art. 21.

⁶² Unni Krishnan & ors. v. State of A. P., 1993 AIR 2178.

⁶³ State of Uttarakhand v. Mehtab Sushil Bhura, CrA no. 1340-1341 of 2018.

in sleeping or have nightmares, etc.⁶⁴ the symptoms may stay long after the person is released or returned in the general prison populace.⁶⁵

"Solitary Confinement even for a short period is the most painful affair; for it to be prolonged for years is a terrible thing. It means the slow and continuous deterioration of the mind until it begins to border on insanity, and the appearance of the look of vacancy, or a frightened animal type of expression. It is killing of the spirit by degrees, the slow vivisection of the soul. even if a man survives it, he becomes abnormal and an absolute misfit in this world." -Jawaharlal Nehru⁶⁶

Due to the inhumane treatment of the prisoners, Manu disapproved of this form of punishment. In 2011, UN experts urged all countries to prohibit solitary confinement of prisoners, except in the most extreme cases and for as little time as possible. However, the practice continues unabated in the country, with the exception of Tamil Nadu, where the state considered the illness, psychological effects, and mental effects that such ill-treatment has on the prisoners.⁶⁷

We totally agree with the point that,

"It's not the prisoners who need reformation, it is the prisons" – Oscar Wilde⁶⁸

MENTAL ELEMENT

As much as we advocate for the wrongdoers to be sent to prisons and punished for their acts, how much punishment is enough punishment? Indeed, the Indian Penal Code mentions the term of punishment for almost every offender, but what makes prison a place of punishment? A place of overcrowding, violence, isolation and lack of affection can adversely affect a person in a short

⁶⁴ Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Washington University Journal of Law and Policy (2006); Brodsky & Scogin, *Inmates In protective study*, 1 First data on emotional effects, Forensic Reports 279 (1988).

⁶⁵ M. McManus, How Solitary Confinement Works, HOWSTUFFWORKS, Feb. 25, 2017 (09:02 PM) <https://people.howstuffworks.com/solitary-confinement2.htm>.

⁶⁶ Jawaharlal Nehru, an autobiography.

⁶⁷ J. Sneha, K. Roja, *A Study on Solitary Confinement as a Punishment*, 120 International Journal of Pure and Applied Mathematics, 863-878 (2018).

⁶⁸ Irish poet.

span of time. The Prison Statistics of India, 2016, show that mental health is uncared for when it comes to prisoners. Not only do they face neglect, but they are also subject to cruel behaviour by the authorities. According to the Mental Health Act of 1978, a mentally ill prisoner is one who has been ordered ‘to be removed to or from a psychiatric institution or psychiatric nursing house, jail or some other secure detention facility’⁶⁹. The case of *Mrs. Veena Sethi v. State of Bihar and ors.*⁷⁰ mentioned a report of the Indian Express about 16 mentally ill prisoners who had been kept in the Hazaribagh jail for 25 years, and how because of overcrowded mental asylums, these prisoners were sent to jail instead of a shelter. The case highlighted the gross misconduct on part of the prison authorities, and how even the magistrates mishandled prisoners like these. The prisoners in question were released, but the conditions for the rest of such prisoners did not improve. Several such cases related to the mental health of prisoners came and went before the Indian judiciary, but it was only after *Charanjit Singh v. State and ors.*⁷¹ that a proper set of guidelines was framed by the National Human Rights Commission on handling mentally ill prisoners. If implemented to their full extent, they can improve the conditions of such prisoners since they cover almost every important aspect that is there. But, since these are only exhaustive guidelines, for a radical change, a statute regulating the same is incumbent upon the government.

PRISONS DURING COVID – 19

As we all know, the main precautionary measure to save oneself from COVID – 19 is to maintain social distancing and good hygiene and sanitation conditions. But both of these seem absent in prisons, jails, correctional and detention centres. Indian prisons and jails are the opaque den of disease, squalor and filth. They are notorious incubators and amplifiers of infectious diseases.⁷²

If this epidemic reaches prisons, it can spread like a wildfire not just among those who live there, but also among those who work there. Because more people in jail had underlying health problems

⁶⁹ Mental Health Act, 1978, Acts of Parliament, 1978.

⁷⁰ AIR 1983 SC 339.

⁷¹ (2005) ILR 1 Delhi 760.

⁷² K. Kauffman, *Why Jails Are Key to ‘Flattening the Curve’ of Coronavirus*, THE APPEAL, March 13, 2020.

than others, thus it will be more deadly.⁷³ Governments must concentrate on heavily populated environments such as jails, where social distancing is unlikely⁷⁴, in order to flatten the curve.

The prison authorities have taken note of the need to take appropriate measures to contain the spread of infection within prisons.⁷⁵ Various countries freed their inmates.⁷⁶ In India, the Supreme Court took suo moto cognizance and formed HPCs to draft guidelines for the release of prisoners.⁷⁷ It was realized that social distancing is unlikely to take place in the overcrowded prisons. Therefore to prevent danger of the COVID-19 virus, prison authorities took some steps like setting up of isolation wards, quarantining of new prisoners, screening of prisoners, staff and service providers, supply of masks and sanitisers, limiting or prohibition of visits by lawyers and NGOs, and the suspension of cultural and group activities, transfer of prisoners from congested prisons to less crowded ones, making prisoners aware of the virus, setting up corona care centres(inside as well as outside the prisons), increasing testing, providing protective equipment etc. These steps were also promoted by Netsanet Belay.⁷⁸

In order to ease the burden on prisons even further, the Supreme Court reaffirmed the orders given in *Arnesh Kumar v. State of Bihar*⁷⁹, which claimed that arrests should be avoided wherever possible in cases where the maximum sentence was less than seven years. “**Imprisonment should be a measure of last resort**”⁸⁰ said Michelle Bachelet⁸¹. Many state HPCs also have since then broadened the categories of prisoners eligible for release, including those with various diseases, magistrate-triable offences, undertrials in jail for more than 5 years, and those completing a term

⁷³ Peter Wagner and Emily Widra, *No Need to Wait for Pandemics: The Public Health case for criminal justice reform*, PRISONPOLICY, Mar. 6, 2020 (07:29 PM) <https://www.prisonpolicy.org/blog/2020/03/06/pandemic/>.

⁷⁴ K. Kauffman, *supra* note 72.

⁷⁵ C. Mallapur, COVID-19: Overcrowded jails to release prisoners on parole, but this may just kick the can, INDIASPEND, Mar. 25, 2020 (10:07 PM) <https://www.indiaspend.com/covid-19-overcrowded-jails-to-release-prisoners-on-parole-but-this-may-just-kick-the-can/>.

⁷⁶ ED, *Explained: Why several countries are releasing their prisoners amid COVID-19*, THE INDIAN EXPRESS, Apr. 1, 2020.

⁷⁷ *Re: Contagion of Covid-19 Virus in Prisons, Suo Moto Writ Petition (c) No.1/2020*.

⁷⁸ Amnesty International’s research and advocacy director.

⁷⁹ Cr. A. No. 1277 of 2014.

⁸⁰ Human Rights Watch, World Report 2019.

⁸¹ United Nations High Commissioner for Human Rights

in lieu of a fine, among other things.⁸² Amnesty International has also urged UN agencies and the World Health Organization to do more to protect the prisoners' rights.⁸³

However, these safeguards were discriminatory. The lack of gender-disaggregated data on prisoner release suggests a lack of attention paid to the needs of female inmates. Women's release was also needed because they have young children (under the age of 6). Bail has been refused to older women inmates, detainees, and undertrials in overcrowded pandemic-stricken prisons, while pregnant women, lactating mothers, and mothers and their children, women with disabilities, and women that have co-morbidities are also being held in overcrowded jails.⁸⁴ Even after so many precautionary measures been taken, various cases of COVID-19 and deaths were reported in prisons⁸⁵

Although prison officials argued that they were taking appropriate preventive measures under existing constraints⁸⁶, the inadequacy of these measures, as well as the conditions inside prisons, has been criticised. This has been so due to a lack of staff to look after the prisoners, continuous entry and exit of service providers, vendors, and prison staff; the deplorable conditions of temporary prisons set up to quarantine new prisoners⁸⁷, enclosing (through quarantining), partitioning (trading from one prison to another) and ranking prisoners⁸⁸, lack of availability of trained doctors (there is one medical personnel for 243 inmates)⁸⁹, etc.

⁸² Vijay Raghavan, *Prison and the Pandemic: the Panopticon Plays Out*, Journal of Social and Economic Development (2020).

⁸³ Sukanya Shantha, *In India and Around the World, Prisoners' Rights Violated During Pandemic: Report*, THE WIRE, Mar. 19, 2021.

⁸⁴ P. Baxi, N. Singh, *Gendering the pandemic in the prison*, THE INDIA FORUM, Jul. 14, 2020.

⁸⁵ Commonwealth Human Right Initiative, *State/UT wise prison response to COVID-19 pandemic in India*, HUMANRIGHTSINITIATIVE (Mar. 23, 2021) <https://www.humanrightsinitiative.org/content/stateut-wise-prisons-response-to-covid-19-pandemic-in-india>.

⁸⁶ D. Trivedi, Prisons become breeding grounds for the coronavirus, FRONTLINE, Mar. 28, 2021 (05:35 PM) <https://frontline.thehindu.com/the-nation/tinderbox-prisons/article32296969.ece>; T. Pandey, *Coronavirus: India's packed prisons raise Covid-19 alarm*, INDIATODAY, Mar. 30, 2020.

⁸⁷ Sadaf Modak, *Maharashtra: temporary Jail Condition Deplorable, Navlakha tells Partner, Lawyer*, THE INDIAN EXPRESS, Jun. 22, 2020.

⁸⁸ T. Deol, *350 inmates in 6 rooms, only 3 toilets: Letter describes Gautam Navlakha's jail in Raigad*, THE PRINT, Jun. 23, 2020.

⁸⁹ SR, *Coronavirus: Curbs at Kolkata Prison triggers violent clash*, THE HINDU, Mar. 22, 2020.

REINCARNATION: LIFE AFTER RELEASE

Longer and harsher prison sentences can mean that prisoners’ personalities will be changed in ways that make their reintegration difficult.⁹⁰ One cannot even begin to imagine what effect prolonged confinement in one place with no comfort of the ordinary life would have on a person’s mind. Although a prisoner is released after he/she has completed his/her term, it is not easy for offenders to go back to the life they were living before being sent to jail. In fact, the hardest part of the punishment is when prisoners come out of that institution.⁹¹ It is difficult to get accepted into the society, to find employment, or in case of a young offender, to complete his/her education. To curb this situation, the government has introduced certain ‘after-care’ and rehabilitation programmes, so that prisoners can be re-assimilated into the social strata without much hardship. ‘After-care’ is basically a term given to those services that help a prisoner overcome the physical, emotional and economic difficulties that he/she may face after release. The person is usually provided with some amount of money by the State or through his vocational activities that he/she might have been engaged in while in prison, and some clothes⁹², in a manner allowing him/her to begin his/her life afresh. Although in India, an ‘after-care’ programme is not compulsory, and any offender can choose to either accept or reject it, but where the law imposes it as a duty, it becomes mandatory to accept these services, such as in the United Kingdom.⁹³ Following are certain objectives of ‘after-care’ programmes, as mentioned in the Model Prison Manual of 2016:

- Extending help, guidance, counselling, support and protection to all released prisoners, whenever necessary.
- Assisting a recently released person in overcoming emotional, social, and financial challenges.
- Assisting in the elimination of any social stigma that the prisoner or his family may have received as a result of his incarceration.

⁹⁰ Christian Jarrett, *How Prison Changes People*, BBC FUTURE, May 1, 2018.

⁹¹ B. K. BHATTACHARYA, *VIOLENCE DELINQUENCY REHABILITATION* 88 (1st ed. 1977).

⁹² AHMAD SIDDIQUE, *CRIMINOLOGY, PROBLEMS & PERSPECTIVES* 178-179 (4th ed. 1997).

⁹³ R. Deb, *After-care Organization*, 13 *JOURNAL OF ILI* 518 (1971).

- Educating the person on the importance of adapting his or her behaviours, attitudes, methods, and values to a reasonable view of social roles and obligations, as well as the demands of community life.
- Assisting the person in readjusting satisfactorily to his or her family, neighbourhood, work group, and community
- Assisting in the physical, emotional, vocational, economic, social, and attitudinal re-adjustment and eventual recovery of the person after release.⁹⁴

After-care programs were initiated in India during the 2nd and 3rd Five Year Plans. The All India Committee on Jail Reform urged the reformation of released prisoners through after-care institutions. The policy of after-care is also stated in the Indian Constitution, under Art. 39(f), but it speaks for children and juvenile offenders, and provides for their development and protection against exploitation.⁹⁵ The Juvenile Justice (Care and Protection of Children) Act, 2000, also states the rehabilitation and social integration of young offenders, and allows setting up of organisations for the same.⁹⁶ Yet, these recommendations and rules are neither stabilised nor have they evolved from their initial phase.

WHAT CAN BE DONE?

The time has come to decolonise Indian prisons and reform the centurion-old Prisons Act of 1894, which is antiquated and out of date.

"To improve prison conditions does not mean that prison life should be made soft; it means that it should be made human and sensible."⁹⁷

For the purpose of punishing/treating prisoners by detention, a balanced strategy of liberalisation and strictness against inmates in jail should be implemented. Following an analysis of a prisoner's life in a jail, such steps must be implemented in order to make their lives worthy

⁹⁴ Government of India, Ministry of Home Affairs, New Delhi, Model Prison Manual (2016).

⁹⁵ INDIA CONST. art. 39(f).

⁹⁶ The Juvenile Justice (Care and Protection of Children) Act, 2000, No. 56, Acts of Parliament, 2000 (India).

⁹⁷ Jawahar Lal Nehru, in India and the World.

- Inmates should be provided with the necessities, such as sufficient living space, good sanitary conditions, proper hygiene, adequate amounts of water, nutritious food, clean clothing, facilities for continuing their education, provided employment with proper salaries, qualified physicians, trained prison officers, proper legal aid, and so on. They should not be confined to rule books and policy documents, but should be brought to life.
- Traditional patriarchal law should not be used to punish or discriminate against women in jail. Their prisons must have gender-specific staff, and they should not be expected to operate in co-ed facilities.
- The under-trials are *innocent until proven guilty*, still they are kept in the same prisons with convicts, which destroys them and they have to fight for their life in despicable prison facilities. They should be placed in a separate prison and their cases should not be put on hold for years.
- There should be a strict check on the *inner prison politics*, corruption and other malpractices. Everyone should be treated equally whether they are rich or poor, privileged or non-privileged.
- As it is recommended by the survivals of solitary confinement and various researchers and scholars, the punishment of solitary confinement should be strictly banned in all states.
- Bail and parole processes should be relaxed, and the open court system should be encouraged. Bail should be issued to pregnant women in order to enable them to give birth outside of jail.⁹⁸
- Children (under the age of 6) who are incarcerated with their mothers should be provided with appropriate educational opportunities and a safe atmosphere through which they cultivate positive behavior.
- The mental and physical health check-up of prisoners should be given periodically and those who suffer from mental illness should be given regular therapy sessions.

⁹⁸ Government of India, *Women in Prison*, 31, MINISTRY OF CHILD AND DEVELOPMENT, Jun. 2018.

- Prisoners should be reformed in such a way that when they get out of their prison life, especially the long-term prisoners, can adjust well in the world outside the prisons and can develop an identity of their own.
- Last but not least, prisoners should not be treated as objects, but as the human beings they are, no matter how despicable their prior actions, which will demonstrate an unflagging commitment to human dignity.⁹⁹

"Overall, we need a bold change in our criminal justice system. A good first step forward is to start treating prisoners as human beings, not profiting from their incarceration. Our emphasis must be on rehabilitation, not incarceration and longer prison sentences"

- Sen Bernie Sanders¹⁰⁰

WHAT CAN BE CONCLUDED?

Life does not mean mere animal existence.¹⁰¹ It is important to identify every human as a human being, a living person, with basic human rights, and to treat every human being kindly and with compassion. Article 21 of the Indian Constitution allows a person to exercise the rights available to him/her, and to live a life with dignity.¹⁰² In *Parmanand Katara v. Union of India*¹⁰³, it was observed by the Supreme Court that “it is the duty of the State to preserve a life whether the life in question is that of an ordinary human being or that of a convicted felon or an inmate.” Time and again, cases related to the rights of prisoners have come before the Indian judiciary, and it has, undoubtedly, delivered in consonance with basic human principles. The problem, however, lies in the application and management of the vast majority of rules and regulations, concerning prisoners and the prison system, that exist on paper. From holding an accused guilty once he/she is alleged of a crime, to boycotting that individual after he/she goes through imprisonment, we as a society

⁹⁹ Lynn S. Branham, *The Mess We're in: Five Steps towards the Transformation of Prison Culture*, 44 INDIANA L. R. 703 (2011).

¹⁰⁰ Senator, United States.

¹⁰¹ *Manna v. People of Illinois*, 421 N.E.2d 542.

¹⁰² INDIA CONST. *supra* note 62.

¹⁰³ AIR 1979 SC 1369.

have not developed. We are only comfortable when it comes to talking, but never in action. Thus, it is no surprise that even after their release, prisoners go back to their illicit activities because we as a society do not accept them. It would be wrong to say that a person should not suffer the consequences of his/her wrongful act, but to deny the basic minimum to such people is not acceptable. All in all, it is the prisoners as well as the prison system that needs to be reformed, statutes incorporated to regulate the same, and a liberal and more compassionate approach towards the ones behind the bars.

‘No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens but its lowest ones.’ – Nelson Mandela.