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# Challenges in Prison System: A Reformative Approach

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## ABSTRACT

*The paper discusses the design of the Indian prison system, the issues that inmates encounter, and the initiatives that have been taken to reform convicts and help them reintegrate into society. Prisons are no longer institutions created just to carry out the punitive parts of retribution and deterrence. Inmates are now housed in prisons not as abandoned or forgotten members of society, but as living, breathing humans who must behave properly when they return to their communities. All men are created equally and endowed with a set of basic human rights by their creator. The rights to life and liberty are among these rights, however if someone violates social norms, their rights are revoked and they are subject to the proper punishment. Reintegrating prisoners into society is considered by many observers to be one of the main objectives of prisons. A society's level of civilization may be assessed by looking inside its jails. A person is no longer someone to be punished and reformed with harsh and intolerable punishment when they choose to stray from the path of ethical principles and moral behaviour traceable to a responsible citizen. To cleanse the accused's mind of the wrongdoing beliefs, a system must be developed that is tailored to his unique circumstances. This study aims to explain the many measures periodically done by Indian governments to speed up the process. There has been discussion of the legislative provisions as well as the committees established to provide recommendations. The main issues affecting the reform process have been emphasised in an effort to come up with a solution to decrease their impact. This paper also includes the reformative approach.*

**Keywords:** Prison, Convicts, Prison problems, Prison administration, covid19, Reformative.

## I. INTRODUCTION

Over the years, prison's function has drastically altered, and today they are not just seen as institutions that house prisoners. Thus, the focus has changed from prisoner detention to prisoner training and re-educations. The Prison is a venerable establishment. The meanings of the word "prison" are "to seize" and "cage." According to the Oxford English Dictionary, a prison is a location that has been appropriately set up and prepared for the arrival of people who

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have been legally committed there for safe custody while awaiting trial or as punishment. A variety of elements relating to the socioeconomic circumstances and pragmatic concerns affect a nation's jail management.<sup>3</sup> A system of punishment is represented by the word prison. In most cases, the accused individual is placed in an institution together with the under-trials and suspects. The guiding principle of India's criminal justice system has been "hate the crime, not the criminal" and on the basis of doubt no conviction can be done. Every time an accused person is sentenced to prison time, a process of repentance and change also ensues.

Prison is not ordinary place. Although the goal of locking up criminals is to turn them into honest, law-abiding citizens, in reality, prison authorities strive to compel or coerce prisoners into reformation. Prisoners are denied their freedom and access to family and friends. As a result, inmates' changes are temporary, lasting only until they enter prison, and are lured back into crime upon release. Because of this, the present trend is to offer convicts more consideration so that they can resume their regular lives in society. Several methods of prison reform, including probation and probation, can help attain this goal.<sup>4</sup>

Prison is where the criminal justice framework rests all its hopes. When the corrective mechanisms fail, the entire crime methodology becomes useless. There is a behind disciplinary action has changed significantly with the introduction of new human rights law. The idea of transformation has become a buzzword in the prison system. Changes brought to the mechanism have been adopted worldwide and the question of whether to include it in the Indian scenario remains open.<sup>5</sup>

Additionally, 64% of all detainees in jails are under-trials. Therefore, the upgrading of infrastructure presents the first difficulty from both a human rights and an internal security perspective. This can be accomplished by increasing the budgetary funds allocated to jail facilities. We have seen that the monies allocated under the recently created scheme for modernising police forces have not been used as quickly as they were allocated.

Second, having uniform jail management is challenging since prisons are a governmental concern. The Union can only provide models for the states to use, aid in interstate coordination, and prod them to embrace best practices.<sup>6</sup>

Thirdly, and most crucially, prisoners are not allowed to vote under India's current election

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<sup>3</sup> Rao Priya, *Indian Prison System: Structure, Problem and Reforms*, X RJHSS (2019).

<sup>4</sup> Bhargava Rishabh, *A Critical Study of Prison Reforms in India*, II ACCLAIMS (2018).

<sup>5</sup> Sakshi Gupta, *System of Prison, its History and Types in India*, LEGAL SERVICE INDIA (May 25, 2023, 5:12am), <https://www.legalserviceindia.com/legal/article-4501-system-of-prison-its-history-and-types-in-india.html>.

<sup>6</sup> Priyal, *Prison System in India*, LEGAL UPANISHAD (MAY 26, 2023, 12:40 pm), <https://legalupanishad.com/prison-system-of-india-jail/>.

rules. Because inmates do not represent the ruling class politically, they continue to be unimportant. It is actually quite difficult to envision that reform will be forthcoming with concrete outcomes unless this changes. This is due to the Representation of People's Act's provisions that discourage the political class from taking effective action for jail reforms by denying convicts the ability to vote.<sup>7</sup>

Last but not least, significant judicial decisions have largely defined the parameters of the prisoners' human rights that must be protected. They need to be protected by discovering structural problems and putting into action the recommendations of the several committees the Government of India has created over the years. In spite of having a lower-than-average prison population in compared to many other countries, there are several problems that exist in jails all over India, and they probably exist in many other poor countries as well, if not worse. Critics' attention has been drawn to a number of issues over the years, including overcrowding, prolonged detention of prisoners awaiting trial, unsatisfactory living conditions, a lack of treatment programmes, and claims that prison staff members have been indifferent or even cruel in their treatment of prisoners.

In recent years, activists and legislators on both sides of the political spectrum have publicly considered many possible reforms to America's correctional system. There are many reasons for these reforms. Some are concerned about humanitarian issues within the prison system, some are trying to curb huge government spending, some are trying to rationalize conflicting policies, others are trying to right the wrongs of the law.<sup>8</sup>

#### **(A) Definitions**

##### **According to Section 3 of Prison's Act 1984,**

“Prison” means any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include—

- any place specially appointed by the State Government under section 541 of the Code of Criminal Procedure, 1882 (10 of 1882); or
- any place which has been declared by the State Government by general or special order, to be a subsidiary jail.”<sup>9</sup>

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<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Prison's Act, 1984, Sec. 341997

**According to Donald Taft,**

Prisons are intentionally designed to create an uncomfortable forced isolation from society. Prisons are characterized by strict discipline, provision of necessities, strict security measures, and monotonous routines. Life in prison necessarily presupposes certain restrictions on the freedom of those imprisoned against their freewill.<sup>10</sup>

**According to the oxford English Dictionary,**

“A place properly arranged and equipped for the reception of persons who by legal process are committed to it for safe custody while awaiting trial or punishment”<sup>11</sup>

**(B) Statement of problem**

In India, the legal system and sentencing guidelines frequently result in protracted pretrial detentions, harsh punishments, and delays in the criminal court system. These problems impede the overall efficacy of the jail system and add to congestion. Inmates are frequently unable to successfully complete rehabilitation programmes because to India's present jail system, which hinders their smooth reintegration into society after release. High rates of recidivism are a result of limited access to options for work, education, and other types of training. The goal of this study is to evaluate the current efforts at rehabilitation and suggest evidence-based interventions to improve the chances of successful reintegration for prisoners. It also aims to evaluate the current legal system and sentencing guidelines and recommend changes to advance fairness, effectiveness, and consistency in the criminal justice system.

**(C) Research Methodology**

Doctrinal, descriptive and explanatory research analysis based on correlation research approach is used for analysis and interpretation. The document analysis approach was used to acquire secondary data. The strategy enables the researcher to rely on several sources of evidence, allowing for convergence and confirmation via the utilisation of various data sources and methodologies. Books, academic articles, newspaper, journals, internet sites, magazines and other media were used to contrast what other author has said on the issue.

**II. CHALLENGES IN PRISON REFORMS**

Despite having a lower-than-average prison population in comparison to many other nations, India's jails are plagued by a number of issues, many of which are likely to be at least as bad or even worse in many other developing nations. Overcrowding, prolonged detention of prisoners

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<sup>10</sup> Ibid

<sup>11</sup> Mishra Siddhant, *Historical evolution of the prison system in India*, II IJIRL (2020).

awaiting trial, unsatisfactory living conditions, a dearth of treatment programmes, and allegations that prison staff members have been callous or cruel in their treatment of prisoners are just a few of the problems that critics have brought to light over the years.<sup>12</sup>

The next portion of this article discusses the major concerns that have an impact on the management and administration of the India Prison. The main problem with the Indian jail system is that it was founded about 200 years ago, which is a significant amount of time. Along with the country's population growth over this time, the social structure and manner of life of the populace have also changed. India has the second-highest population in the world right now. When the brick and mortar of our jails' physical infrastructure has fulfilled its job, that is. It is required to construct further jails and renovate the ones that already exist due to overcrowding brought on by the infrastructure's capacity being surpassed.<sup>13</sup>

The poor jail programming makes this situation worse. the lack of proper legal counsel and abuse of power by staff employees who occasionally take advantage of the prisoner's dependence and put unreasonable demands ahead of providing for their basic needs, such food, even to the point of demanding for sexual favours. Additionally, the personnel engage in corruption and extortion, usually assisting affluent criminals who are supported by huge criminal networks.

Thirdly, and most importantly, present election regulations in India prohibit convicts from casting ballots. Inmates continue to be irrelevant since they do not politically represent the ruling elite. Without a shift in attitude, it is truly pretty impossible to imagine that reform would arrive with tangible results. This is because of the Representation of People's Act's clauses that prevent prisoners from voting, discouraging the political class from taking meaningful action for jail reforms.

Last but not least, significant legal decisions have largely defined the parameters of the inmates' human rights that must be protected. These need to be protected by discovering structural problems and putting into action the recommendations of the several committees the Government of India has created over the years. Stan Swamy (2021) recently had to go in court to defend his rights after being refused the use of a sipper to drink water despite having

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<sup>12</sup> Charles W. Ostrom, *Judges and Discrimination: Assessing the Theory and Practice of Criminal Sentencing*, OFFICE OF JUSTICE PROGRAMS (May 30, 2023, 9:12am), <https://www.ojp.gov/pdffiles1/nij/grants/204024.pdf>.

<sup>13</sup> ID.

exceptional health concerns that made it hard for him to carry a glass of water.<sup>14</sup>

### **(A) Prisoners in jail-**

Women make up for a very small portion of prisoners worldwide, often between 2% and 9% in any country. Only 12 prison systems throughout the world boast a higher rate. Sadly, this shows that the majority of prison policies are male-centric and disregard the needs and worries of female inmates. Jail systems usually fall short of meeting the health needs of women since they were initially created for men, who make up more than 95% of the jail population worldwide. There is a paucity of information on the health of women in jail and the medical care they get because the majority of prison data is not gender specific.

Many women in prison have small children for whom they were frequently the sole or primary source of income prior to being imprisoned, according to the UN Office of Drugs and Crime (2009). Penal Reform International (2008) reports that the majority of women in prison come from low-income families and that many of them have already been victims of physical and sexual abuse, drug and alcohol addiction, and inadequate medical treatment. Even though there aren't many women in jail, those that do are more likely to face family rejection because of their poor social standing and economic poverty. Women are more likely to serve longer prison terms due to their lower levels of education and legal knowledge.<sup>15</sup>

Even if there is more space available for them, women convict nevertheless have more difficulties than male detainees, although making up only 3.91 percent of the overall jail population in the state. Without free access to the meals, visitors' area, or library—all of which are available to male prisoners—they are thrown into a corner of the prison. The right of female prisoners to a family life is impacted by the fact that fewer prisons have the ability to house them and those that do are frequently placed far from where they live. This is because it is challenging for relatives to visit. They experience higher stress since they are separated from their families and kids while being jailed.

### **(B) Major Problems**

There are several problems faced by the prisoners in India. Some are due to lack of management facilities and some are due to negligent or intentionally so as to worry the prisoners.

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<sup>14</sup> SUDHIR DHAWALE, *IN A LETTER FROM JAIL, STAN SWAMY'S CO-ACCUSED ASK PRESIDENT MURMU TO STAND UP FOR WHAT IS RIGHT*, *The wire* (JUNE 1, 2023, 3:00PM), [HTTPS://THEWIRE.IN/RIGHTS/IN-A-LETTER-FROM-JAIL-STAN-SWAMYS-CO-ACCUSED-ASK-PRESIDENT-MURMU-TO-STAND-UP-FOR-WHAT-IS-RIGHT](https://thewire.in/rights/in-a-letter-from-jail-stan-swamys-co-accused-ask-president-murmu-to-stand-up-for-what-is-right).

<sup>15</sup> *Id.*

### ***1. Over Crowding-***

Concern has been raised about jail overcrowding, especially among prisoners awaiting trial. In 1970, the Law Enforcement Assistance Administration's National Jail Census showed that 52% of the prisoners were on trial. The number of those awaiting trial must be dramatically decreased if jail congestion is to be addressed. Of course, cooperation between the police and the courts is necessary for this to occur. The criminal justice system's three branches would need to work together harmoniously. A refractory defence attorney who was determined to seek adjournments, even if such tactics injure his or her client, as well as a heavy court workload and convoluted processes, prevent speedy trials from proceeding.<sup>16</sup>

This rate represents the degree of overcrowding. The occurrence of under trials is the primary cause of jail overpopulation. Overcrowding strains prison infrastructure, impedes correctional services, spreads contagious diseases, and causes a slew of issues for prison administration, including an increase in indiscipline and violence, as well as the diversion of prison staff for routine tasks such as food distribution, security, and guarding. According to Lord Wolf, "due to overcrowding, a significant number of prisoners frequently leave jails more embittered and hostile to society than when they arrived." Prison overpopulation is a worldwide issue that causes prison administration great concern.<sup>17</sup>

Overcrowding, inadequate sanitary facilities, a lack of physical and mental activity, and a lack of adequate health treatment all contribute to the risk of health problems in prisons. Given the conditions of poverty and drug addiction, prisons, according to Kazi and colleagues, are great locations for infectious disease screening and intervention.<sup>18</sup>

There are little details readily available concerning this work, such as diagnostic standards, completed investigations, etc. Anaemia was the most prevalent physical ailment among prisoners, according to another survey. It is acknowledged that the following international standards apply to prisoners' health rights: Everyone has the right to the highest possible physical and mental health, according to Article 12 of the International Covenant on Economic, Social, and Cultural Rights. When a state takes away someone's freedom, it also assumes control of their medical treatment. Because illness in prisons is easily spread to the public by staff and visitors and because virtually all prisoners eventually return to the community, where they may

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<sup>16</sup> Shubham Kashyap, *Major Problems of Prison System in India*, TIMES OF INDIA (June 2, 2023, 6:00pm), <https://timesofindia.indiatimes.com/readersblog/shubham-kashyap/major-problems-of-prison-system-in-india-40079/>.

<sup>17</sup> Id.

<sup>18</sup> Priadarshi Nagda, *A Socio- Legal Study of Prison System and its Reforms in India*, SCRIBD (June 5, 2023, 3:00pm), <https://www.scribd.com/document/403085319/priadarshi-nagda-pdf#>.



infect others, maintaining the health of inmates is essential for the effectiveness of public health efforts. It is crucial to recognise this fact and take all necessary steps to stop the spread of transmissible diseases given the alarming increase of TB and HIV in jails across the world. The most common cause of mortality among those incarcerated across the world is recognised as being tuberculosis. Despite the fact that the disease is widespread throughout Asia (Principle 9 of the Basic Principles for the Treatment of Prisoners, 1990 UNHRC; Principle 24 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, UNHCR), TB is still a major public health concern.<sup>19</sup>

Overcrowding and poor ventilation in prisons, together with limited funding for medical care, result in subpar care. Prior to discharge or transfer, TB treatment may not have been completed. A severe threat to the public's health was posed by the fact that one in ten prisoners had TB, with multidrug resistant strains affecting more than 20% of the sick convicts. Prisons in Brazil and India have also been shown to have high TB rates.<sup>20</sup>

In nations like India, Indonesia, and Thailand, the prevalence of the human immunodeficiency virus in prisons is two to fifteen times higher than it is in the general population. This may be a result of risky heterosexual or gay encounters that are consenting or forced, the use of injectable drugs, intergroup violence, or practises like tattooing (which have been documented in other countries). High-risk sexual activities are common in prisons, and when combined with a lack of knowledge about how HIV and other sexually transmitted infections spread and a lack of resources, this problem becomes very difficult to treat.

## ***2. Deaths of Prisoners and their Healthcare-***

The death of an inmate is a major source of anxiety for prison officials. Sometimes, the public takes to the streets to protest such killings. The Human Rights Commission, non-governmental organisations that care about civil liberties, and the media will all criticise it. In general, there are two types of deaths in prison: natural and unnatural. Examples of unnatural deaths include suicide, execution, prisoner murder, termination, negligence or excess on the part of jail staff, and other cases. Ambulances for use in emergencies are one of these jails' most notable and commendable features, nevertheless. Surprisingly, fewer deaths have consistently occurred in Karnataka jails than in those of other states.<sup>21</sup>

Unacceptable living conditions are a result of jail overcrowding. Unacceptable living

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<sup>19</sup> Id.

<sup>20</sup> Smaranika Sen, *Prison System and the rising Vagueness in Documentation in India*, IPLEADERS (June 8, 2023, 2:00pm), <https://blog.ipleaders.in/prison-system-and-the-rising-vagueness-in-documentation-in-india/>.

<sup>21</sup> Id.

circumstances persist in numerous prisons around the nation, despite the fact that the reforms in the jails mentioned earlier have focused on things like diet, clothes, and sanitation. 10 000 inmates held in India's high-security Tihar Central Jail were subjected to serious health risks, including overcrowding, "appalling" sanitary conditions, and a lack of medical staff, according to a special commission of inquiry's 1997 report, which was established after a prominent businessman died there in 1995. As a result, the facilities in the barracks are filthy both inside and outside. Detainees in many facilities are prohibited from taking a bath for weeks or even months at a time. Even as recently as September 2007, inmates could not get toothpaste or soap for their bathrooms. One of the key causes of the widespread lack of hygiene is the PWD's failure to do their duties. Under the guise of a lack of funding, the prisons are not regularly whitewashed, and drainage and sewerage projects are left unfinished for years. Despite the fact that prisons must be maintained, each prisoner is entitled to 50 grammes of toothpowder at a cost of Rs. 12 per month and 150 grammes of bathing soap at a cost of Rs. 17.<sup>22</sup>

The total lack of qualified counsellors is a clear indication of the jail system's contempt for the mental health of its inmates. The general lack of nutrition and physical activity, long lock-up times caused by a staffing shortage, heavy smoking and high levels of anxiety among the prisoners, illegal cooking inside the barracks, and unhygienic living conditions all contribute to the prisoners' poor physical and mental health.<sup>23</sup>

### ***3. Lack of Legal Aid as a result of Corruption-***

In jails all across the world, there is a high incidence of staff corruption and its less severe corollary, guard corruption. These issues are inevitable given the significant control guards have over inmates, but they are made worse by the poor pay that guards typically receive. Inmates pay bribes to guards to supplement their pay in exchange for contraband or special treatment. Extortion by prison employees and its less severe counterpart, guard corruption, are widespread in jails all over the world. These issues are predicted given the significant control that guards have over convicts, but they are made worse by the typical low pay for guards. Inmates pay bribes to guards to supplement their pay in exchange for contraband or special treatment. While their less fortunate brothers suffered in misery, powerful convicts in several facilities in Colombia, India, and Mexico had access to cell phones, a lavish food, and nice accommodations.<sup>24</sup>

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<sup>22</sup> Edge Law Partners, *Condition of Prison- An Analysis*, LINKED IN (June 09, 2023, 4:16pm), <https://www.linkedin.com/pulse/condition-prisons-analysis-edge-law-partners-1f>.

<sup>23</sup> Id.

<sup>24</sup> Saurbh Kothari, *Right to Legal Aid*, LEGAL SERVICE INDIA (June 10, 2023, 12:00pm), <https://www.legalserviceindia.com/articles/po.htm>.

Without providing free legal assistance to the most disadvantaged members of society, access to justice for all is unimaginable. The 42nd Amendment to the Indian Constitution included Article 39-A, which is the fundamental foundation of the idea of legal help. According to the article, the state must support equal opportunity justice and offer free legal assistance to make sure that no citizen is denied the chance to get justice because of their financial situation or another obstacle. And neither do the workers. According to a survey by the Commonwealth Human Rights Initiative, 23% of prisoners were unaware of any visits from the district legal services authority, 49% thought that these visitors were infrequent, and 28% thought that the magistrate visited the facility once a month to once every three months. The Chief Judicial Magistrate or the Judicial Magistrate, First Class, makes a monthly visit and opens the complaint boxes.<sup>25</sup>

Another issue with the legal assistance panels is the dearth of competent and effective attorneys. It is occasionally suggested to expedite the trial procedures in order to reduce the number of people awaiting trial and lessen the prison population. The quick holding of trials, making it easier for defendants to plead guilty at any point in the trial, and a system of plea bargaining were some of the recommendations made by several committees. The University of Delhi teachers and law students' tireless work in the area of legal help at the Tihar Jail were emphasised in a lecture.<sup>26</sup>

This included teaching the prisoners legal literacy, educating the prison personnel, focusing on specific prisoners to provide legal aid, and enlisting paralegal staff to deal with prisoners, both those who had been convicted and those who were awaiting trial. In order to spot inefficiencies and flaws in the jail administration, the seminar had recommended that Lok Adalat be more involved and that prisons be constantly monitored. Finally, it made the suggestion that legal change would be necessary and crucial to the operation of the overall legal aid system.<sup>27</sup>

#### ***4. Staff Shortage and Inadequate Training Programmes-***

The authorised staff size for prisons in India is around 49030 prison guards of various grades, of which the current staff size is approximately 40000. In the Indian prison, there are around 1 prisoner for every 7 staff members. It indicates that there is only one jail officer available for every seven convicts in India, compared to two officers for every three detainees in the UK. Prison improvements suffer from serious staffing and financial shortages, which leads to

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<sup>25</sup> Mehal Jain, *Legal Aid System in Prisons Ineffective; Many Languish in Jails Because of this*, LIVE LAW (June 11, 4:14pm), available at <https://www.livelaw.in/top-stories/advocate-sudha-bhardwaj-webinar-ailaj-conditions-of-prisoners-in-indian-prisons-legal-aid-195238>.

<sup>26</sup> Id.

<sup>27</sup> Id.

uncontrolled violence, a lack of security, and other criminal activities inside jails.<sup>28</sup>

Medical professionals are sent to jail for three years by the Department of Medical Health. Again, sending medical personnel to prisons is not a top priority for them, and medical personnel, like the great majority of the general public, does not prefer working in jails. In fact, personal interests rather than professional reasons drive one's decision to position themselves in a certain location. Doctors and medical professionals are not encouraged or offered incentives to choose this line of work, adding to the government's already permissive stance towards criminals. Additionally, doctors working in prisons aren't given enough professional autonomy, especially when they report to prison guards, which makes them uninterested in what they perform.<sup>29</sup>

Some institutions have put creative ideas into practise despite problems with congestion, a labour deficit, and other administrative difficulties. For instance, the Art of Living oversees the SMART project at Tihar Jail. There are two classes each month, plus weekend follow-up sessions. The personnel of prisons can choose from two courses each year. This, however, could have more to do with experiments and outliers. Providing social rehabilitation is the goal of a project in Sijan. In Indian jails, there aren't many of these initiatives, though. Vocational training initiatives are available in several jails in India; however, they are occasionally outdated. Well-designed jail programmes with regularly planned activities, vocational training, pre-discharge counselling, and post-release monitoring are uncommon.<sup>30</sup>

Reforming prisons and the criminal justice system are crucial parts of addressing the many problems the Indian prison system is now experiencing. They must be dealt with in order of importance. One last step might be imagined in the criminal justice process, which entails the commission of an offence, its investigation, the arrest of suspects, their detention, the trial, and the imposition of a penalty. The way the criminal justice system manages offenders determines the size of the prison population, which in turn has a significant impact on how prisons are administered. On the other hand, current political and governmental policies—which are mostly set by the people who elect governments in democracies—have an influence on the criminal justice system. Therefore, it is important to recognise that effective administration and humane jail conditions depend on more than just the prison authorities when evaluating the prison

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<sup>28</sup>Jon Collins, *Understaffed and underfunded: the Impact of Staff Shortages on Prison Education*, PRISONERS EDUCATION TRUST(June 11, 2023, 5:00am), <https://www.prisonerseducation.org.uk/2023/02/understaffed-and-underfunded-the-impact-of-staff-shortages-on-prison-education/>.

<sup>29</sup>Id.

<sup>30</sup>Neetu Chandra Sharma, *Shortage of Medical Staff puts Indian Prisoner's at High Risk of getting sick*, LIVE MINT (June 13, 2023, 6:12pm),<https://www.livemint.com/news/india/shortage-of-medical-staff-puts-indian-prisoners-at-high-risk-of-getting-sick-11595248789662.html>.

system.

### **5. Poor Budget for Health and Care in Prison-**

According to the National Crime Records Bureau (NCRB) 2005, prison administrations in India spent an average of INR 10,474 per prisoner per year in 2005, divided among the categories of food, clothes, medical costs, vocational & educational costs, welfare programmes, and others. Food costs in Indian prisons are among their highest. During that year, medical expenses were reported as being considerably higher in West Bengal, Punjab, Madhya Pradesh, Uttar Pradesh, Bihar, and Delhi, while vocational and educational expenses were recorded as being relatively higher in Bihar, Karnataka, and West Bengal. According to Tamil Nadu, Orissa, and Chhattisgarh, spending on prisoner care initiatives is comparatively greater.<sup>31</sup>

### **6. Abuse of Prisoners-**

Another ongoing issue in the jails of India is the physical mistreatment of convicts by the guards. Some nations still tolerate regular usage of leg irons, fetters, shackles, and chains as well as physical punishment. Unjustified beatings are a common occurrence in several Indian prison systems. The risk of custodial sexual abuse is higher for female inmates in Indian prisons. The issue was common throughout the world, but was particularly acute in the United States, where many women's prisons had more male guards on duty than female. Female convicts were sometimes even housed with male inmates in some nations—Haiti being the sole example—exposing them to widespread sexual assault and brutality.<sup>32</sup>

According to a book examining prison facilities in Punjab, class C convicts must fan the convict officers, massage their legs, or even engage in sexual favours for them in order to receive food supplements or blankets in the cold. For new arrivals, the enslavement of other inmates by the convicted officials who functionally govern the jails is especially terrible. As part of the process of breaking them in, they are taunted, pursued, humiliated, and even tortured in prison.<sup>33</sup>

There are 2 types of abuse-

- Psychological abuse and
- Mental abuse

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<sup>31</sup>Shivpriya Sridhar & Seena Fazel, *The Cost of Healthcare in Prison and Custody: Systematic Review of Current Estimates and Proposed Guidelines for Future Reporting*, NIH (June 12, 2023, 9:22am), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6306428/>.

<sup>32</sup>Lloyd Nicholson, *Inmate Abuse by Correctional Officers and the Legal Recourse available*, FOGELAW (June 15, 2023, 2:10pm), <https://www.nsfogel.com/articles/inmate-abuse-by-corrections-officers-and-the-legal-recourse-available/>.

<sup>33</sup> Id.

In undertrials, prolonged detention without trial can lead to depression. Convicts imprisoned in overcrowded cells may have panic attacks, tension, anxiety, and claustrophobia, among other symptoms. This can lead to them inflicting harm on others or committing suicide. As a result, rather of mending the convict, the prison worsens the condition.

**Custodial Rape-**The risk of being raped while being arrested by the police is especially high for women. Since many of the victims are migrant women, protests on their behalf are ineffective because they lack the established community connections that would support them. In India, the likelihood of custodial rapes varies from state to state and prison to prison. Only a small number of cases are brought about by coincidence; the majority go unnoticed or unreported. The PUDR claims that "chance events" made these cases public. If not, they most likely would not have been reported. The victims of rape run a much higher risk of retribution or rejection if what occurred to them is made public than in Western nations.<sup>34</sup>

They could face rejection from their husbands and families, and for unmarried girls in nations like India, the likelihood of being married is significantly diminished. These criminal statistics are accessible in India, giving the impression that the rate of rape in detention is rising. After the rape, the lady has little chance or no chance to immediately voice her outrage; this nearly always results in the victim suffering much more while her assailants go unpunished. If the lady stays silent, it is doubtful that anybody but the victim and her perpetrators will ever learn of her shame. When the rapists are cops, there is especially tremendous concern for subsequent retaliation.<sup>35</sup>

**Custodial Torture-** Another significant issue with Indian jails is the use of torture and other cruel physical punishment when people are in their custody. Third-degree torture takes place routinely inside prison walls, sometimes going unnoticed. These incidents only come to light when the media or a human rights committee raises the issue. The police staff frequently fails to provide prisoners in their care with the required care specified in the jail acts, numerous manuals, and the rules established by the apex courts. These acts of torture cause the victim to suffer both physically and mentally, and it might take them a while to get over the trauma. The increase of these instances over the past 20 years is shown in the reports of the national and state human rights commissions.<sup>36</sup> The actual stigma behind these detention practises is that any individual can be picked up by a police officer at any time and from any location, and they can

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<sup>34</sup> Nishka Kamath, *Custodial Rape*, IPLEADERS (June 16, 2023, 4:00pm), <https://blog.ipleaders.in/custodial-rape/>.

<sup>35</sup> *Id.*

<sup>36</sup> Nishka Kamath, *Custodial Torture*, DHRISTI AS (June 15, 2023, 9:00am), <https://blog.ipleaders.in/custodial-rape/>.

hold them for an extended period of time without providing adequate justification for the arrest. Custodial violence is the worst kind of abuse committed by public employees charged with the responsibility of law enforcement, according to the National Human Rights Commission. There were 6,623 prisoners with mental disorders incarcerated in 2018.<sup>37</sup>

According to estimates, severe mental illness is three to five times more common in jails and prisons than in the general population. Mental illness may onset while incarcerated or already exist at the time of arrest. The strain of prison life can hasten the onset of mental disorders in those who are biologically predisposed to them. The current prison environment torture, or other human rights violations can also contribute to the development of such disorders.

Prisoners are also denied their freedom, which denies them choices that people in the outside world take for granted. They are no longer free to choose where to live, who to associate with, or how to spend their time, and must instead subject to rules that are imposed by others. Communication with friends and family is frequently poor. In addition to the stigma associated with having spent time in jail, convicts may also experience regret over their crimes and worry about how much of their former lives will be preserved following release.

### **III. PRISON AND COVID-19 PANDEMIC**

It is crucial to keep in mind the almost 11 million inmates who are being kept in jails and prisons around the globe as well as the guards who are in charge of guaranteeing their safe, secure, and humane custody during the COVID-19 pandemic. Nations should understand the dangers that COVID-19 and the virus that causes it pose, particularly to small populations where physical separation is not an option. This is especially true given the jail population's worse health profile. In order to protect those inside and outside of jail, it is vitally necessary for prisons to implement evidence-based COVID-19 prevention and control measures that are fully compliant with UN Basic Standards for the Treatment of Prisoners.

However, for many prison systems struggling with overcrowding and other systemic issues, COVID-19 prevention and control methods may prove insufficient. So, COVID-19 readiness in prisons should also involve initiatives to cut back on new admissions and hasten the release of particular groups of offenders without jeopardising public safety. Long-standing recommendations from the UN Office on Drug and Crime and the UN system as a whole include reducing jail congestion, making imprisonment a last resort, and, when necessary, completely upholding the duty of care that States assume when denying people their freedom. Such

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<sup>37</sup> Id.

concerns are now again in the public eye because to the significant risk that COVID-19 poses in prison environments.

When it comes to COVID-19, prisons are dangerous places. Several nations' systematic disregard for the needs of jails and other detention facilities has left them with insufficient management, supervision, and accountability systems, as well as understaffed staff and weak connections to public health systems. The majority of nations still experience prison overcrowding, which is one of the most important barriers to providing secure and healthy detention settings that are compliant with fundamental human rights. The danger for infection, amplification, and transmission of COVID-19 will significantly increase as a result of crowded living quarters, inadequate cleanliness, ventilation, and nutrition, as well as insufficient health care facilities in many jail systems.

#### **(A) Covid-19 Prevention and Control Among Prison Workers**

- When caring for patients, wear PPE such as disposable gloves, a fluid repellent surgical face mask, and, if available, disposable plastic aprons and eye protection. After each patient, change your gloves and mask.
- If a patient requires hospitalisation, seek the advice of local jail and health authorities on whether to transfer to the community or manage in prison.
- Maintain a physical distance from patients during interviews.
- Ensure continuous health services for HIV/AIDS prevention, treatment, and care, as well as other health issues.
- Clean and disinfect frequently touched objects and surfaces, and closely adhere to infection control procedures.
- People should be screened for COVID-19 pre-release symptoms.
- Demand a reliable and consistent supply chain for personal protective equipment (PPE) and critical pharmaceuticals.
- When prisoners are released from prison, make sure they have access to health care.
- Reporting about a case. COVID-19 has been added to the list of notifiable disorders that doctors must report to public health officials.

#### **(B) COVID-19-related fatalities**

From March 2020 to February 2021, about 2,500 people in state and federal prisons died as a result of COVID-19-related causes. Whites accounted for 44% of COVID-19-related jail



deaths, while blacks accounted for 34%. Eighty-three percent of COVID-19-related deaths occurred in people aged 55 and over. From the end of February 2020 to the end of February 2021, state and federal prisons reported a crude mortality rate (unadjusted for gender, race or ethnicity, or age) of 1.5 COVID-19-related deaths per 1,000 prisoners. COVID-19 killed 196 correctional officers in state and federal prisons, for a crude mortality rate of 0.5 fatalities per 1,000 personnel.<sup>38</sup>

Judicial reformative approach-

- **Right to healthcare-**

In, *Sanjay Suri v. Delhi Administration*<sup>39</sup>, the Supreme Court ruled that for the sake of humanity, prison officials must adjust how they view convicts and uphold their legal rights. In, *Parmanand Katara v. Union of India*<sup>40</sup>, a government hospital doctor is required by law to provide any kind of medical support for saving life, the court ruled. In order to save his life, every doctor has a professional duty to offer his services to patients (regardless of who they may be) with diligence and knowledge. Therefore, no legal entity may interfere to prevent the medical profession's members from fulfilling the obligations and duties placed on them. In another judgement, *Rasikbhai Ramsing Rana v. The State of Gujarat*<sup>41</sup>, everyone should have access to fundamental human rights, including the right to healthcare, according to a judgement from the Gujarat High Court. The relevant jail personnel were additionally ordered by the court to provide the detainees who were ill with any illness with adequate mental and physical health care. In a case, *Upadhyaya v. State Of Andhra Pradesh*<sup>42</sup>, the children who were being put in jail with their mother who was detained needed to have access to enough food, shelter, medical care, clothes, education, and recreational facilities. The Supreme Court made decisions requiring these things. It went on to say that the site of birth of a child born to a prisoner woman shouldn't be shown as "prison" on the birth certificate.

- **Legal Aid-**

In a case, *M.H. Wadanrao Hoskotv. State of Maharashtra*<sup>43</sup>, if sufficient legal help is not given, it is impossible to protect human rights and individual liberty when those rights are gravely abused. Charity organisations no longer offer legal aid. It has legal standing. Justice should be

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<sup>38</sup> E. Ann Carson & Melissa Nadel, *Impact of COVID-19 on State and Federal Prisons, March 2020–February 2021* (June 20, 2023, 11:10 am), BUREAU OF JUSTICE STATISTICS, <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/icsfp2021.pdf>.

<sup>39</sup> *Sanjay Suri v. Delhi Administration* (1988) Cr LJ 705 (SC).

<sup>40</sup> *Parmanand Katara v. Union of India* 1989 AIR 2039.

<sup>41</sup> *Rasikbhai Ramsing Rana v. State of Gujarat*, 1999 CriLJ 1975, (1999) 1 GLr 176.

<sup>42</sup> *D. Upadhyaya v. State Of Andhra Pradesh* A.I.R 2006 S.C 1946.

<sup>43</sup> *M.H. Wadanrao Hoskotv. State of Maharashtra*, 1978 AIR 1548.

efficiently administered and easily accessible, as Legal Aid emphasises. The notion of legal aid has been developed and defined in large part by the judiciary. In, **Rudal Shah v. State of Bihar**<sup>44</sup>, according to the ruling, if a prisoner is found not guilty after a trial, he or she is automatically entitled to immediate release. He cannot be held inside the prison after a ruling of acquittal. In, **Sukdasv. Union Territory of Arunachal Pradesh**<sup>45</sup>, the Supreme Court ruled that in this instance, the state had guaranteed a basic right to free legal representation to a person accused of a crime that could imperil his life or personal freedom. In, **AR Antulayv. RS Nayak**<sup>46</sup>, although the Supreme Court laid forth stringent requirements for individuals who were found guilty in a criminal case, it did not set a deadline for the offense's trial. According to the court, Article 21 establishes the right to a timely trial, which extends to all stages of an investigation, including the inquiry, trial, appeal, review, and retrial. The defendant's right to a speedy trial cannot be denied on the basis that he did not request one, the court further declared. It was also highlighted that many considerations, such as the type of the offence, the number of accused, the number of witnesses, and the workload of the court, should be made when determining the length of a trial. The court finally concludes that if a convict's right to a speedy trial has been violated in the interest of natural justice, charges of a conviction should be overturned. The court voiced its outrage at witnessing four petitioners who were only undertrial inmates awaiting their trial shackled in leg shackles in the case of **Kadra Pehadiya v. The State of Bihar**<sup>47</sup>.

- **Health and Hygiene-**

In a judgement, **TN Mathur v. State of Uttar Pradesh**<sup>48</sup>, the Hon'ble Supreme Court has given the State authorization to keep detained individuals wherever such incarceration is kept in a lock-up that will offer at least 40 square feet per person as well as the essential necessities, such a cot for each detainee and a supply of potable water. Hygienic aspects must be present in the restroom. The State shall guarantee that these conditions are met wherever such arrests and detentions are employed.<sup>49</sup>

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<sup>44</sup>*Rudal Shah v. State of Bihar* 1983 AIR 1086.

<sup>45</sup>*Sukdas v. Union Territory of Arunachal Pradesh* (1986).

<sup>46</sup>*AR Antulayv. RS Nayak* 1988 AIR 1531.

<sup>47</sup>*Kadra Pehadiyav. The State of Bihar* AIR 1981 SC 939 b

<sup>48</sup>*TN Mathur v. State of Uttar Pradesh*, 1993 1 SCC 722

<sup>49</sup>Sanjeev Sirohi, *Legal and Basic Rights of Accused and Prisoners must be Respected under all Circumstances*, LEGAL INDIA (June 21, 2023, 5:04 pm) <https://www.legalindia.com/legal-and-basic-rights-of-accused-and-prisoners-must-be-respected-under-all-circumstances/>.

- **Open prison**

In a judgement, *Dharmbir v. State of Uttar Pradesh*<sup>50</sup>, the Supreme Court noted that open prisons offer certain benefits for juvenile criminals since they might be shielded from some of the well-known vices that young inmates in traditional jails are subjected to. Older prisoners who were abandoned by their family find it challenging to support themselves after being released since they have become accustomed to a life in jail and are reliant on the care of other convicts. These convicts may find it easier to adjust to regular life in open prisons. When the only provider for the family receives a lengthy jail term, many families are devastated. In the beginning, open jails aggressively promote prison visits and even let families to lodge with criminals and coexist economically.

#### IV. CONCLUSION AND SUGGESTION

*“Hate the crime, not the criminal”*

*-Mahatma Gandhi*

The remark above promotes reform and rehabilitation while discouraging violence and social stigmatisation of prisoners. Other issues, like as overcrowding, physical abuse, stigmatisation, custodial violence, a lack of proper healthcare, basic utilities, etc., have emerged since the introduction of the jail legislation. These contravene the freedoms and rights that the Indian Constitution guarantees to every citizen. Reformatory programmes and new legislation must be implemented in order to modify the existing prison laws to reflect the contemporary issues encountered in the prisons. Numerous developments have taken place since the Prisons Act of 1894 was implemented. In order to address the needs and problems that are now present in prisons, it is vitally required to update the law and adopt modifications.

A preliminary categorization must be done to distinguish between males and females, children and adults, the convicted from the convicted, civil from criminal prisoners, and occasional from chronic offenders in order to ensure a good domain and conduct. The key goal was to keep them involved in order to protect their mental health and provide them the chance to help in their maintenance. As a result of the prolonged detention brought on by the investigation and trial, the bulk of individuals who are being tried are either freed or found not guilty. During this period, the innocence of those who are incarcerated and being trial is assumed. Criminal justice research is still in its infancy. The convicts' rehabilitation should be the prison's primary objective. Rehabilitating and reforming criminals is crucial to preventing crime and providing

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<sup>50</sup>*Dharmbir v. State of Uttar Pradesh* (1979)

them with a better life following their sentence. These reports show grave human rights breaches committed by police personnel tasked with protecting the public safety and security within jails. The police official must cease treating the captives inhumanely.

Therefore, a national response to COVID-19 must include prisons and other penal facilities as essential components. Only those who have no other option should reside in the crowded jail and detention facilities, and in the face of this unprecedented crisis, all individuals who interact with the criminal justice system need to get real assistance. All significant governmental and social sectors, including the management of prisons, must coordinate right away. Before COVID-19 outbreaks break out in prisons, it will be much simpler to stop them, especially if preventive measures are done to lower jail populations.

### **Suggestions**

- Libraries should be constructed in all jails since it is true that "books are our true companion" and co-accused should be kept apart because they will commit crime if they are still together.
- The Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA), which was passed in 2005, should also be applied to inmates so that his family won't bear the brunt of his misdeeds.
- Disposable utensils should be used since metal and silver utensils might be used as weapons in criminal activity.
- To oversee proper execution of the jail laws and proper operation of the prisons, the government must form a committee.
- The accused who are awaiting trial must only be held for the bare minimum of time, and not for unreasonable lengths of time. This will lessen the issue of jail congestion without severely limiting the rights of the accused.
- The security of prisoners should include proper CCTV with sound effects.
- Language difficulties should be present when hiring jail officers to keep them from acting dishonestly or cruelly.
- As the network frequency rises consistently, jammers should be improved on a regular basis.
- Dos and don'ts should be posted in various locations throughout the prisons.
- Pregnant women should be provided special care. Gynaecologists should be stationed in

prisons and detainees who are pregnant should be given special consideration in detention facilities.

- The pandemic situation should also be taken into account, and the convicts should be treated with appropriate facilities. They should be kept in a suitable location that is safe and supervised. Prisoner housing must be planned up in advance; it cannot be like the problems seen during COVID-19, when inmates fled from the jails.
- When they reach the required age, children of prisoners must be sent to boarding schools; their parents' property may be used to fund the costs. The name of the jail where a child was born shall not appear on the birth certificate for such children. The youngster won't experience prejudice as a result of this.
- Regularly visiting inmates to check on their conditions, publishing these findings, and drawing attention to their situation should be the media's obligation. It is a severe problem because almost all jails in India are overcrowded. As a result, special under-trial procedures, such home arrest, must be added to the criminal law.

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