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# Mental Health in Indian Prisons: A Legal Perspective with Comparative Insights from the Netherlands

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## ABSTRACT

*This article provides a legal perspective on the mental health of prisoners in India by examining the legal frameworks – both statutory framework and landmark judgments related to mental health in Indian prisons and identifying the challenges faced by Indian prisons in providing mental health care to its prisoners such as overcrowding, lack of training for prison staff, stigma around mental health, and insufficient funding. The article highlights the high prevalence of psychiatric disorders, suicidal ideation, and self-harm among prison inmates, revealing a stark disparity between legal mandates and ground realities. This article further explores the international best practices in providing mental health care to prisoners by reviewing the mental health care model in prisons of the Netherlands which is known to have one of the best systems globally for dealing with mentally ill prisoners. It also elaborates on the principle of diminished responsibility and Terbeschikkingstelling (TBS) under the Dutch Criminal Code. By examining relevant laws, policies, and the comparative study this article seeks to highlight the gaps in the system and propose reforms to better address the mental health needs of prisoners, ensuring their right to dignity, rehabilitation, and proper medical care. Ultimately, the article advocates for a more humane, rehabilitative, and rights-based approach to incarceration that ensures the mental well-being and dignity of all prisoners.*

**Keywords:** Mental Health, Indian prisons, Mental Healthcare Act 2017, Terbeschikkingstelling (TBS), diminished responsibility, prison reform, rehabilitation.

## I. INTRODUCTION

People in prison experience extremely high levels of mental health issues, suicide, and self-harm which may exist before incarceration or may be triggered or worsened by the conditions and experiences of being imprisoned.<sup>3</sup> Suicide is the leading cause of death in prison, with rates among male prisoners being three times higher—and among female prisoners nine times

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<sup>3</sup> Andrew Forrester, Radha Kothari, Annie Bartlett, *Prison healthcare: The practical and ethical consequences of the current state of prisons*, Vol 65, *Medicine, Science and the Law*, 85-88, (2024), <https://journals.sagepub.com/doi/full/10.1177/00258024241302277>.

higher—than those in the general population.<sup>4</sup> It is a significant issue in Indian prisons, with the suicide rate nearly doubling over the last twenty years.<sup>5</sup> Mental health issues such as depression, suicidal ideation, and substance use are highly prevalent among the prisoners in India.<sup>6</sup> Therefore, prisons are a high risk environment for mental illnesses among prisoners.

As per the 2021 "Prison Statistics India" report by the National Crime Records Bureau (NCRB), 1.7% of the 5, 54,000 inmates, or 9,180 individuals, suffer from mental illnesses<sup>7</sup>. Although this may seem like a small percentage, it highlights a critical issue within the prison system. A study revealed that prison mental health in South-East Asia, including India, is largely overlooked and requires urgent attention.<sup>8</sup> There is a significant gap in mental health care for inmates, with many needs going unmet and existing services either absent or poorly supported. Compared to the general population, prisoners experience much higher rates of psychiatric disorders, yet receive minimal or inadequate mental health support.

Mental illness, if left untreated, can significantly impair a prisoner's ability to engage in correctional programs, follow institutional rules, or prepare for reintegration into society. Therefore, addressing the mental health needs of prisoners is essential not only for the well-being of individuals but also for ensuring rehabilitation and reducing recidivism, which is an important objective of the criminal justice system.

## II. CHALLENGES FACED BY INDIAN PRISONS IN PROVIDING MENTAL HEALTH SERVICES

There are several issues plaguing the prison system in India which prevents it from providing adequate mental health services to its inmates such as inadequate infrastructure, overcrowding, a shortage of trained professionals, and insufficient treatment programs. These factors which have been elaborated below, along with the stressful and traumatic prison environment, contribute to the high prevalence of mental illnesses among inmates in Indian prisons.

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<sup>4</sup> Seena Fazel, Taanvi Ramesh, Keith Hawton, *Suicide in prisons: an international study of prevalence and contributory factors*, *Lancet Psychiatry*, 946-952, (2017), <https://pubmed.ncbi.nlm.nih.gov/29179937/>.

<sup>5</sup> Gowda, G. S., Shadakshari, D., Vajawat, B., Reddi, V. S. K., Math, S. B., & Murthy, P., *Suicide in Indian prisons*, Vol 8, *The Lancet Psychiatry*, (2021), <https://psycnet.apa.org/record/2021-69748-028>.

<sup>6</sup> Manna, S., Tripathy, S., Sah, R. K., Padhi, B. K., Kaur, S., Nowrouzi-Kia, B., & Chattu, V. K., *The burden of non-communicable diseases (NCDs) among prisoners in India: A systematic review and meta-analysis*, Vol 10, *Healthcare (Basel, Switzerland)*, (2022), <https://www.mdpi.com/2227-9032/10/10/2046>.

<sup>7</sup> Prison Statistics India–2022, National Crime Records Bureau, <https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyearwise2022/170161282705ExecutiveSummary2022.pdf>.

<sup>8</sup> S M Yasir Arafat, Sujita Kumar Kar, Chittahari Abhayanayake, Pawan Sharma, M Marthoenis, *Prison mental health in South-East Asia: A narrative review*, Vol 14, *Brain and behavior*, (2024), <https://pmc.ncbi.nlm.nih.gov/articles/PMC11345491/>.

Firstly, a major challenge which the Indian prisons face is the acute shortage of mental health professionals. There is only a ratio of one mental health professional for every 16,789 prison inmates which is insufficient to deal with mentally ill prisoners in India.<sup>9</sup> Secondly, there is overcrowding and poor infrastructure. Prisons are forced to operate well beyond their capacity which creates stressful environment and scarcity of resources which worsen the mental health issues of prisoners. Thirdly, there is a lack of awareness and social stigma surrounding mental health both within and outside prisons due to which prisoners are prevented from seeking help. Additionally, the prison staffs more often than not lack the training to identify mental illness among the prisoners which leads to delayed identification and treatment of mentally ill prisoners. Fourthly, there is the challenge of insufficient resources and funding which makes the situation worse with inadequate budgets for mental health services, medical supplies, and staff training. There is also the lack of a comprehensive legal and policy framework for mental health care, which results in inconsistent care across facilities. Although the Mental Healthcare Act, 2017 mandates appropriate care for mentally ill prisoners, its implementation remains slow and uneven across different states. For instance, under the Mental Healthcare Act (MHCA), prison medical officers are required to notify Mental Health Review Boards (MHRBs) quarterly about inmates suffering from mental illnesses. MHRBs have the authority to inspect prisons and approve the transfer of inmates to mental health establishments for better care. However, as of October 2020, only a few states had established these critical boards.<sup>10</sup>

Lastly, it is significant to note that there is a lack of adequate inadequate rehabilitation and aftercare system for prisoners with mental health issues, which leads to various complexities and difficulties in their reintegration into the society post their release from prison. These challenges collectively prevent the delivery of adequate mental health care to incarcerated individuals in India.

### **III. MENTAL HEALTH IN INDIAN PRISONS: CONSTITUTIONAL PROVISIONS, STATUTORY FRAMEWORK AND LANDMARK JUDGMENTS**

#### **The Constitution of India, 1950**

Prisoners despite the fact of their incarceration continue to retain their fundamental rights

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<sup>9</sup> *Id.*

<sup>10</sup> Pyali Chatterjee, *Addressing overcrowding and mental health in Indian prisons*, THE DAILY GUARDIAN (May. 19, 2025, 9:29 PM), <https://theguardian.com/opinion/addressing-overcrowding-and-mental-health-in-indian-prisons/>.

except in cases where their liberty has been lawfully restricted by the Constitution.<sup>11</sup> In the case of *Sunil Batra v. Delhi Administration*<sup>12</sup>, Justice V. R. Krishna Iyer, emphasized that prisoners are not denuded of their fundamental rights the moment they enter prison. It was observed that incarceration does not strip a person of the right to dignity, life, and humane treatment under Article 21 of the Constitution. The Constitution of India protects the fundamental rights of all prisoners.

The Supreme Court has affirmed that prisoners, whether convicts or under trials, continue to retain their human rights, including the right to life. Articles 14, 19, and 21 of the Indian Constitution grant fundamental rights to all citizens, and these rights are also applicable to prisoners.<sup>13</sup> The Apex Court has emphasized that these fundamental rights extend to both prisoners and non-incarcerated individuals.<sup>14</sup>

Therefore, the prisoners are also entitled to the fundamental right to health under article 21 of the Constitution.<sup>15</sup> The Court has ruled that access to healthcare, medical facilities and a clean environment are part of this right, emphasizing the State's responsibility to provide essential healthcare, especially to vulnerable groups of individuals.<sup>16</sup> The Court has also affirmed that the right to life includes access to health and medical care.<sup>17</sup>

Further, the Supreme Court has also observed that prisoners on death row should be permitted to have meetings and consultations with their lawyers, immediate family members, or even mental health professionals.<sup>18</sup>

### **The Mental Healthcare Act, 2017**

The Mental Healthcare Act, 2017 in India aims to protect the rights of individuals with mental health conditions and ensure access to quality care. It provides a comprehensive framework for the treatment, rehabilitation, and protection of mental health, emphasizing the availability, accessibility, and affordability of services, especially for vulnerable groups. The Act also mandates the creation of mental health policies and regulatory bodies, and includes specific provisions regarding the mental health of prisoners, which is relevant to this research article.

Mental illness is defined under **section 2(s)**<sup>19</sup> of the act in the following manner –

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<sup>11</sup> A.P. v. Challa Ramkrishna Reddy & Ors., (2000) 5 SCC 712.

<sup>12</sup> Sunil Batra v. Delhi Administration, (1978) 4 SCC 409.

<sup>13</sup> *Supra* note 9.

<sup>14</sup> T.V. Vatheeswaran v. State of Tamil Nadu, (1983) 2 SCC 68.

<sup>15</sup> INDIA CONST. art. 21

<sup>16</sup> National Consumer Research Centre v. Union of India, 1995 AIR 922.

<sup>17</sup> State of Punjab v. Ms. Chawla, Civil Appeal No. 16979 of 1996.

<sup>18</sup> Re: Inhuman Conditions In 1382 Prisons.

<sup>19</sup> The Mental Healthcare Act, § 2(s), 2017.

*“a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence.”*

As per **section 2(w)**<sup>20</sup> of the act “prisoner with mental illness” means *“a person with mental illness who is an under-trial or convicted of an offence and detained in a jail or prison.”*

**Section 103**<sup>21</sup> of the Mental Healthcare Act, 2017 outlines the procedures for the treatment of prisoners with mental illness. It allows for the transfer of mentally ill prisoners to suitable mental health establishments based on orders under various laws, such as the Prisoners Act, 1900 and the Code of Criminal Procedure, 1973. If a psychiatric ward is available in the prison's medical wing, it is considered sufficient for treatment. If not, the prisoner can be transferred to a mental health facility with prior approval from the relevant Board.

The medical officer of the prison must send a quarterly report to the Board confirming whether there are any prisoners with mental illness in the prison. The Board has the authority to inspect the prison and inquire about prisoners who haven't been transferred for treatment. Additionally, the medical officer in charge of a mental health establishment must submit a report every six months on the condition of the prisoner.

The government is required to establish mental health facilities in the medical wings of at least one prison in each state and union territory, where mentally ill prisoners can be referred for care. These establishments must be registered under the Act with the appropriate authority and meet prescribed standards and procedures.

Chapter V of the Mental Healthcare Act, 2017 outlines several rights for individuals with mental illness to ensure their protection and well-being. It guarantees the following rights: the right to access mental healthcare<sup>22</sup>, the right to community living,<sup>23</sup> the right to equality and non-discrimination,<sup>24</sup> the right to information<sup>25</sup> the right to confidentiality<sup>26</sup>, the right to access medical records,<sup>27</sup> the right to personal contacts and communication<sup>28</sup> and the right to

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<sup>20</sup> The Mental Healthcare Act, § 2(w), 2017.

<sup>21</sup> The Mental Healthcare Act, § 103, 2017.

<sup>22</sup> The Mental Healthcare Act, § 18, 2017.

<sup>23</sup> The Mental Healthcare Act, § 19, 2017.

<sup>24</sup> The Mental Healthcare Act, § 21, 2017.

<sup>25</sup> The Mental Healthcare Act, § 22, 2017.

<sup>26</sup> The Mental Healthcare Act, § 23, 2017.

<sup>27</sup> The Mental Healthcare Act, § 25, 2017.

<sup>28</sup> The Mental Healthcare Act, § 26, 2017.

make complaints about deficiencies in the mental health services<sup>29</sup> they receive. These rights are therefore also available to prisoners with mental illness.

### **The Prisoners Act, 1900**

This act under section 30<sup>30</sup> provides for the procedure for dealing with lunatic prisoners. The State Government can order the transfer of a prisoner who is mentally ill to a lunatic asylum or a secure facility within or outside the state for treatment. This can be done either for the rest of their sentence or until a medical officer deems further detention necessary. Upon recovering, the prisoner may be send back to prison or may be discharged. It is significant to note that the time spent by the prisoner in the mental health facility counts towards their sentence.

### **The Model Prison Manual, 2016**

The Ministry of Home Affairs developed the Model Prison Manual, 2016 to promote consistency in the fundamental principles regulating prisons. It mandates that the prison must have a proper hospital room which must contain a requisite number of officers who are supposed to make regular visits for the inspection of prison inmates.

It also provides that those prisoners who are suffering from mental illnesses must be provided with professional psychiatric treatment which includes physiotherapy and cognitive behavior therapy.<sup>31</sup> It further provides that if prisoners are suffering from severe mental illness they may be transferred to appropriate facilities for treatment.

It is significant to note that the prison manual also provides for proper recreational facilities for prison inmates such as auditorium, library, indoor and outdoor games and yoga etc. This contributes towards ensuring good mental health of prisoners.

### **Recent Judicial Pronouncements on Mental Health of Prisoners**

In recent times, there have been various judicial pronouncements especially by various High Courts addressing the mental health of prisoners in India. In the case of *Krushna Prasad Sahoo v. State of Orissa and Ors* (2022)<sup>32</sup> the Orissa High Court dealt with the issue of insufficiency of resources for mental health of prisoners. The court highlighted that there is just one psychiatrist who is available for all the mentally ill prisoners in the state.

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<sup>29</sup> The Mental Healthcare Act, § 28, 2017.

<sup>30</sup> The Prisoners Act, § 30, 1900.

<sup>31</sup> See *The Model Prison Manual 2016*, Ministry of Home Affaris, [https://www.mha.gov.in/sites/default/files/2024-12/PrisonManualA2016\\_20122024.pdf](https://www.mha.gov.in/sites/default/files/2024-12/PrisonManualA2016_20122024.pdf).

<sup>32</sup> *Krushna Prasad Sahoo v. State of Odisha*, 2021 SCC OnLine Ori 984.

The Delhi High Court in the case of *Sartaj @Allaharakha v State of NCT of Delhi (2023)*<sup>33</sup> issued a directive which called for the training of the prison staffs to identify and manage mental health illnesses among the prisoners. This directive is significant as it strives to ensure that mental illnesses among the prisoners are detected early since prison staffs generally stay in close proximity to the prisoners.

#### **IV. LAW ON MENTAL HEALTH OF PRISONERS IN NETHERLANDS – A COMPARATIVE STUDY EXPLORING INTERNATIONAL BEST PRACTICES**

Netherlands is known for providing one of the best mental health services to its prison inmates. Dutch prisons are often praised for their approach to mental health. The World Health Organization (WHO) has reported that the Netherlands has the fourth-lowest incarceration rate in the European Region, and its health policies aim to ensure that all prisoners receive necessary care, ensuring that no one is left behind.<sup>34</sup> Zwolle prison in the Netherlands is one such prison which houses prison inmates with some of the most severe psychiatric conditions. In this article, a detailed analysis will be made of the approach of the Netherlands in treating mentally ill prisoners with a special focus on Zwolle prison.

In Netherlands including the Zwolle prison, the prisoners with mental illness are treated differently from the general population. Instead of being placed in the general prison population, they are housed separately so that they can receive specialized care. They undergo a screening process by medical professionals at the very beginning itself so that prisoners with mental illness could be identified.<sup>35</sup>

Those prisoners who are found to be suffering from severe psychiatric conditions are sent to PPC – short for penitentiary psychiatric centre whereas those suffering from less severe conditions go to EZG (extra care facility), which is set up to “offer a quiet and stimulating environment.”<sup>36</sup> Surprisingly, in prisons, individuals are more likely to receive psychiatric treatment than they would in the outside world.

##### **Diminished Responsibility under the Dutch Criminal Justice System**

There is the system of diminished responsibility under the Dutch criminal justice system based on how culpable a person is for the offence which he committed. There are five levels,

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<sup>33</sup> *Sartaj @Allaharakha v State of NCT of Delhi*, 2023 LiveLaw (Del) 666.

<sup>34</sup> Bhanu Bhatnagar, *The Netherlands paves the way for improved prison health policies*, WORLD HEALTH ORGANIZATION (May. 19, 2025, 9:29 PM), <https://www.who.int/europe/news-room/15-04-2024-the-netherlands-paves-the-way-for-improved-prison-health-policies>.

<sup>35</sup> Melissa Hogenboom, *The unique way the Dutch treat mentally ill prisoners*, BBC (May. 19, 2025, 19:53 PM), <https://www.bbc.com/future/article/20180423-the-unique-way-the-dutch-treat-mentally-ill-prisoners>.

<sup>36</sup> *Id.*



the maximum is when a person is considered to be fully responsible for the offence and the minimum is when a person is not considered to be responsible at all for committing the offence.<sup>37</sup>

The extent to which the mental disorder influences the offense directly affects the degree of criminal responsibility; the stronger the causal relationship, the lesser the individual's responsibility for the criminal act.

### **Terbeschikkingstelling (TBS) under the Dutch Criminal Code**

The Dutch system offers specialized treatment for the most dangerous offenders with mental health issues. Those who commit serious violent crimes and have mental health conditions are placed in forensic institutions called TBS (Terbeschikkingstelling), where they are detained until they are no longer deemed a threat to public safety. Terbeschikkingstelling (TBS) is a legal provision under the Dutch criminal code that enables the treatment of mentally disordered offenders after they have served a prison sentence.<sup>38</sup>

It is a judicial instrument which works together with a prison sentence. TBS is not intended as a punitive measure but functions as a custodial intervention for individuals with mental disorders who have committed offenses. According to Article 37a of the Criminal Code, an individual may be subjected to a TBS order if the offense was committed while the person was experiencing “developmental deficiencies and pathological mental disturbance.” The criteria is “a danger to others and/or to the general safety of persons and property”<sup>39</sup> There must be a causal link between the mental disturbance and the commission of the offense. Accordingly, in cases involving TBS, the disorder (verified through expert evaluation) must be identified as a contributing factor in the individual's criminal behavior.

First, a prison sentence is imposed and then a TBS. A TBS order works as long as a person is considered to be dangerous. It is only in cases of highly serious offences that a TBS sentence is imposed. The duration of a TBS order is at the disposal of the government.<sup>40</sup> Its core objective is not to impose retribution through loss of liberty, but rather to ensure public safety—initially through detention and subsequently through therapeutic treatment aimed at minimizing the risk of reoffending.

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<sup>37</sup>Hjalmar J. C. van Marle, *The Dutch Entrustment Act (TBS): Its Principles and Innovations*, Vol 1, International Journal of Forensic Mental Health, 83 – 92, (2002), [https://www.researchgate.net/publication/242280647\\_The\\_Dutch\\_Entrustment\\_Act\\_TBS\\_Its\\_Principles\\_and\\_Innovations](https://www.researchgate.net/publication/242280647_The_Dutch_Entrustment_Act_TBS_Its_Principles_and_Innovations).

<sup>38</sup> See Art. 37 to 37a CC.

<sup>39</sup> *Id.*

<sup>40</sup> *Supra* note 35.

### **Criticism of the Dutch Prison System**

Despite its progressive approach, the Dutch system is not without flaws. Like other global prison systems, it was originally designed with male prisoners in mind, and risk-assessment tools used to evaluate inmates have primarily been developed and tested on men. This raises concerns about the adequacy of these tools in assessing female offenders, who often have different mental health profiles and histories, particularly involving complex trauma. Nonetheless, the Dutch approach stands in complete contrast to many other countries where prisoners with mental health conditions often struggle to access adequate care.

### **V. CONCLUSION AND SUGGESTIONS**

Prisoners are entitled to good mental health services in prisons and a denial of the same is a violation of their fundamental rights. Addressing prisoners' mental health is not only a matter of human rights and public health but also a critical component of effective correctional policy. Addressing mental health is essential for a criminal justice system that aspires to be fair, effective, and humane. Currently, there are several challenges which the Indian prisons face in providing adequate mental health services to its inmates which must be addressed. The prison system in Netherlands does a remarkable job in dealing with its mentally ill prisoners and provides valuable lessons for the same. Therefore, from the analysis made in this article including the comparative study the following recommendations are suggested for reforming the prison system for mentally ill prisoners so that India can work towards providing more effective and accessible mental health care for its prisoners.

1. Increase the number of qualified mental health professionals, such as psychiatrists and psychologists, in prisons to meet the growing demand for mental health care as the currently available mental health professionals are inadequate to deal with the problem.
2. There must be establishment of a separate and specialized care facility for mentally ill prisoners within the prisons. This is essential to ensure that they receive the appropriate treatment in a secure and supportive environment.
3. There must be an early screening process of prisoners at the time of entering prisons. Those who are found suffering from mental illnesses must be shifted to the separate and specialized care facility at the beginning itself. This will ensure that mentally ill prisoners will be identified and treated early on.

4. There must be a regular training of prison staff identifying and managing mental health conditions, as well as dealing with inmates with mental distress. Since they generally stay close and interact with the prisoners on a regular basis therefore they are in a better position to identify mental illness among the prisoners as early as possible.
5. There must be regular mental health assessments by qualified medical professionals in prisons coupled with an increase in the budget and resources for providing mental health services to inmates.
6. Proper implementation of the Mental Healthcare Act, 2017. This act provides several provisions for dealing with mental health prisoners however the problem which remains is the poor implementation of the act. For instance, the mental health review boards as mandated by the act are not yet established in all states. Therefore, compliance with the provisions of the act is a need of the hour.
7. Providing adequate recreational facilities will go a long way towards promoting the mental well being of prisoners. Prisons must have recreational facilities such as playgrounds, auditorium for cultural activities, library etc.
8. Public awareness about mental health both within and outside the prison system can reduce stigma, encourage self-reporting, and facilitate better rehabilitation and reintegration of mentally ill prisoners into society. This is of utmost importance.

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