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The Right to Healthcare in Prisons: A Critical Review of Access to Medical and Mental Health Services.

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ABSTRACT

The right to high-quality and reliable healthcare of the prisoners has been a pillar of human dignity and a cornerstone of international human rights law. Nevertheless, although in instruments like the International Covenant on Civil and Political Rights (ICCPR), the United Nations Standard Minimum Rules for the Treatment of Prisoners (colloquially referred to as the Mandela Rules) and others, this right is explicitly recognized, detainees worldwide still find it hard to obtain proper medical and mental health care. We critically discuss in this paper the legal structures that should ensure such care, and evaluate the effectiveness with which the contemporary prison systems adhere to this objective. The debate relies on global agreements, national law and judicial pronouncements which require health services in detention settings to consider physical health as well as mental wellbeing. The results highlight the key barriers, which are mainly overcrowding, poor infrastructure, inaccessibility of specialists, and systematic negligence, that often lead to the infringement of healthcare rights of prisoners. They also indicate that implementation is lopsided due to a lack of uniform standards across jurisdictions as well as due to the fact that monitoring mechanisms are frequently inadequate. When combined, these observations reveal a glaring discrepancy: whereas international law and policy provide a definite benchmark regarding the provision of sufficient prison healthcare, a considerable number of states fail to meet their international obligations. In conclusion, I will say that there should be a better protection of the law and increased supervision to ensure that the right to healthcare of inmates may finally become a reality, and not a dream. Filling this enforcement gap will require far-reaching changes that will better match current prison healthcare delivery with the norms established in international human rights law.

Keywords: Prison healthcare, Prisoners' rights, Mental health in prisons, Legal frameworks, International Human Rights law.

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I. INTRODUCTION

The rights of prisoners can be defined as a range of legal safeguards and rights granted to the people that are detained in prisons. Prisoners are considered as a subject of human rights law under the international law, and their basic rights cannot be deprived just because they are prisoners. One of the most important parts of these protections is the right to healthcare. The right to receive medical and mental healthcare by the prisoners is explicitly guaranteed by international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the Standard Minimum Rules of the United Nations on the Treatment of Prisoners (Mandela Rules), among others. These statutes recognize that loss of freedom is not a justification of ignoring the health and dignity of persons in custody. The healthcare in prisons is therefore fundamental in the treatment of prisoners in a manner that is human and respectful as it is done in accordance with the international human rights standards.³

Healthcare in prisons is not only about access to treatment of diseases or injuries. It includes a wider task to preserve both physical and mental health of those in prison. By virtue of the fact that they are prisoners, they are subjected to inadequate living conditions, overcrowding, and inadequate access to requisite health services and this predisposes them to various health conditions. This weakness may cause the worsening of the already existing conditions or development of new health issues. Moreover, the rate of mental health problems in prisoners such as depression, anxiety, and post-traumatic stress disorder are more likely to occur and could be worsened due to poor conditions in prison.⁴ Good healthcare is not just essential in maintaining the dignity of the prisoners but also it is a key factor in their rehabilitation. Prisoners who are in a better health condition have increased chances of participating in rehabilitation programs that are crucial in facilitating successful reintegration in the society when released.

Although the legal frameworks relating to the right of prisoners to healthcare are clear, there is a big disparity between the provisions of adequate healthcare services to prisoners in prisons all over the world. Most of the prisons are unable to maintain even the minimum of healthcare because of numerous systemic problems, such as overcrowding, underfunding, and the absence of qualified medical personnel. Some jurisdictions also have prisoners who experience medical conditions without treatment or poor treatment, which leads to deteriorating health outcomes. The problem of the research, consequently, is to comprehend to

³ International Covenant on Civil and Political Rights, 1966, Art. 10; United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), adopted by General Assembly Resolution 70/175 of 17 December 2015.

⁴ World Health Organization, *Prisons and Health* (WHO Regional Office for Europe, 2014) 17.

what degree the right of prisoners to healthcare is observed in practice. This paper seeks to critically analyse obstacles to healthcare delivery in prisons and identify the legal and practical obstacles which hinder effective healthcare delivery in prisons. This analysis will also aim at determining areas that need reform in order to make the right to healthcare of the prisoners not just a theoretical concept, but a reality.⁵

In the paper, the legal, systemic and practical issues that can impact the delivery of healthcare to the prisoners will be examined, with the specific emphasis on the obstacles to proper medical and mental care. The paper will study the approaches of different legal systems to the problem of healthcare in prisons by performing a comparative study of the jurisdictions, and it will discuss the achievements and failures of these systems. It is aimed at outlining the differences that exist between the international standards of human rights and the reality inside prisons and give recommendations in order to bridge the gap and guarantee that prisoners have access to the healthcare they deserve according to international and domestic law.

II. LEGAL FOUNDATIONS AND THEORETICAL FRAMEWORK

A. International Law System

International Covenant on Civil and Political Rights (ICCPR)

One of the fundamental human rights treaties that constitute the guidelines of civil and political rights of people living across the world is the International Covenant on Civil and Political Rights (ICCPR) which was adopted by the United Nations in 1966. It underlines the rights of the prisoners pursuant to Article 10 which provides that all persons deprived of their liberty shall be treated with humanity and with respect to the inherent dignity of the human person. In particular, Article 10 (1) demands humane treatment and care of the prisoners, and their right to receive necessary medical care.⁶

This is a direct responsibility of the state parties to make sure that they do not expose prisoners to poor medical care. It highlights that incarcerated persons are not to be treated in a discriminative way in the provision of health services and that the state of health in prisons and jails needs to be observed and regulated to avoid causing injuries. This practically implies that prisoners are entitled to prompt, adequate, and quality medical care, which considers their physical and mental health care.

⁵ International Covenant on Civil and Political Rights, 1966, Art. 10; United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), Rules 24–35.

⁶ International Covenant on Civil and Political Rights, 1966, adopted by General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force on 23 March 1976.

United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)

In 2015, the United Nations Standard Minimum Rules for the Treatment of Prisoners or Mandela Rules received a revision to be up to date on the current understanding of the rights of prisoners. Rule 24 of the Mandela Rules is entirely dedicated to the access of healthcare by prisoners. It requires that every prisoner should be given medical care any time he or she requires it without any discrimination. The rule sets a framework of healthcare provision which is that the prisoners ought to be provided with the qualified medical practitioners that can provide both the preventive and curative care. Moreover, it underlines the need of periodic medical examination, proper treatment of the diseases of prisoners, and mental health treatment. The rules acknowledge that the provision of substandard healthcare in prisons not only contravenes the right of prisoners to physical health, but may also cause an unnecessary death or suffering, especially when the medical requirements are disregarded or delayed. Being an international standard, the Mandela Rules are expected to see that states offer healthcare that resonates with international standards of care and access.⁷

European Convention on Human Rights (ECHR)

The Council of Europe developed the European Convention on Human Rights (ECHR), which was adopted in 1950 and which guarantees a number of basic human rights. Out of them, the ECHR Article 3 forbids torture, inhuman or degrading treatment or punishment. This is especially important in prison healthcare since it has been applied in addressing poor healthcare arrangements in prisons. The European Court of Human Rights (ECHR) has ruled that the absence of reasonable healthcare, especially of prisoners in severe health conditions, may constitute inhuman treatment or degrading treatment. The court has confirmed in a few rulings that failure to provide medical care to prisoners in time or giving them inferior medical care can be a contravention of Article 3 provided that the suffering involved is unnecessary or excessive. This renders the access to healthcare a key factor in the prevention of cruel and degrading treatment in detention facilities, hence, state parties observe their duties to uphold the dignity of prisoners.

Convention against Torture (CAT)

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was adopted by the United Nations in 1984, and it states what torture is, as

⁷ United Nations Office on Drugs and Crime (UNODC), *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): Implementation Manual* (2018) 33.

well as sets legal requirements to prevent and deal with it. Article 16 of the CAT is devoted to the issue of banning ill-treatment of individuals in custody, as well as of prisoners. It requires the state parties to safeguard prisoners against all ill-treatment including failure to attend to their medical care. The subpar healthcare is considered as the form of mistreatment which may result in the unnecessary suffering or even death. The scope of the Convention is also relevant in cases when the prisoners are denied medical care that is required to them because it acts as a guideline of responsibility and encourages the state parties to actively participate in the prevention of ill-treatment of prisoners in the detention institutions, including the provision of the necessary health services.⁸

B. Protection in Different Countries under the Constitution

United States

The constitutional protection against cruel and unusual punishment is granted in the Constitution of the United States in the Eighth Amendment to the Constitution. In the course of time, the U.S. courts have construed this provision to include the right of prisoners to adequate healthcare, by stating that the intentional ignorance of the serious medical care needs of the prisoners is a violation of the Eighth Amendment. The legal precedent **Estelle v. Gamble**⁹ set the rule that medical treatment that is below the standard (or the lack of medical treatment of severe health conditions) constitutes a violation of constitutional rights, provided one can prove that the prison authorities acted in deliberate indifference. Overcrowding, underfunding, and privatization of prison healthcare services have been major challenges in the U.S. prison system in giving proper healthcare. Due to these concerns, the decisions of courts have become more concerned with requiring the prison systems to make proactive measures that would guarantee that the provisions of healthcare are basic in nature.¹⁰

United Kingdom

In the United Kingdom, the Prison Act 1952¹¹ gives the legal basis upon which prisons are managed and governed including the aspect of providing health care services. The National Health Service (NHS) is incorporated to provide healthcare in the UK prisons, and this implies that the prisoners have the right to access the same level of care as their counterparts in the community. The Prison Service, nevertheless, is central to the provision of the healthcare requirements of the prisoners, which involves liaising with the local health

⁸ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, adopted on 10 December 1984, entered into force 26 June 1987, UNTS Vol. 1465.

⁹ *Estelle v. Gamble*, 429 US 97 (1976).

¹⁰ Eighth Amendment to the Constitution of the United States of America, 1791.

¹¹ Prison Act, 1952 (UK), 15 & 16 Geo 6 & 1 Eliz 2, c. 52.

authorities and the NHS institutions to ensure that proper medical services are provided. The UK has achieved considerable progress with regard to the enhancement of access to healthcare in prisons, including mental health services, yet some issues persist, especially those related to the delivery of care in overcrowded institutions and to the support of the needs of inmates with complex health conditions.¹²

India

In India the Constitution provides the right to life and personal liberty under Article 21, which has been construed by the courts to allow the right to sufficient medical treatment. Also, the Indian prisons act, 1894, provides the broad framework of administration of prisons, such as the healthcare services offered to the prisoners. Regardless of this legal framework, the availability of the proper healthcare in India is a major issue of the prison system, especially considering the overcrowding, underfunding, and shortage of specialized medical staff. Most jails, especially in rural locations, cannot afford even minimal healthcare services, and mental health problems are another important issue that is not addressed. State-run prisons and privately managed prisons also have major disparities in the provision of healthcare.¹³

III. THE AVAILABILITY OF HEALTHCARE IN PRISONS: AN INTERNATIONAL OVERVIEW

Access to health care and General Conditions

Healthcare is a basic human right in prisons although the quality and accessibility of medical care may differ significantly across geographical regions, legal structure and the resources invested in prison systems. There are three major categories of healthcare services in prisons, namely, primary care, emergency care, and mental health services.

Primary Care is the basic medical care that is given to the prisoners and this involves checking up on the general health, treating the simple infections, and the chronic diseases like diabetes, high blood pressure, and asthma. This is normally done through general practitioners or medical officers within the prison.

Emergency Care Emergency Care plays an important role in the treatment of life-threatening or acute health conditions, including injuries sustained in an incident or medical emergencies, including heart attacks, strokes, or severe infections. Facilities that are well equipped in terms of medical departments are capable of responding to such emergencies better, whereas others

¹² Jake Phillips, "Delivering Healthcare in UK Prisons: Challenges and Opportunities" (2019) 59(3) *British Journal of Criminology* 601.

¹³ National Human Rights Commission (NHRC), *Annual Report 2021–2022* (NHRC India 2022).

might be compelled to take the prisoners to other hospitals when the need arises.

Mental Health Services are possibly the most ignored part of healthcare in prisons. As the number of mental health disorders is high among prisoners, proper mental health services are necessary to treat the conditions, including depression, anxiety, post-traumatic stress disorder, and psychosis. Nevertheless, a significant number of prison systems fail to offer access to trained mental health practitioners or proper psychiatric care, which may either worsen the condition or cause additional mental health issues.

The issues, which are common among prisoners in terms of having access to proper medical care, are many. The most mentioned barriers to the accessibility to quality and timely healthcare are overcrowding, underfunding, and lack of adequate staffing. As an example, the congestion may cause failure to seek medical help in time or it may cause poor conditions of the health because it does not get proper care. The problem is also compounded by the fact that the medical staff, namely doctors, nurses, and mental health professionals are in short supply. Moreover, absence of adequate healthcare infrastructure and coordination between prison healthcare units and external healthcare services usually lead to poor treatment of the prisoners.¹⁴

Medical care in the high-income countries

In high-income countries, the resources are more accessible, and therefore the healthcare in prisons is more systematic and standardized. Nonetheless, there are issues that are yet to be resolved especially when it comes to mental health service delivery and chronic illness management.

United States: Provisions of Medical Care under Eighth Amendment

In the US, the constitution (in the 8th Amendment) outlaws cruel and unusual punishment and courts had interpreted this to mean that the prisoners should receive adequate healthcare. The *Estelle v. Gamble* (1976) which held that intention to disregard the serious medical needs of the prisoner in the face of Eighth Amendment. Nevertheless, this legal framework has not eradicated major problems in the U.S. prisons in terms of overcrowding, underfunding, and privatization of prison healthcare. A lot of states have outsourced their prison healthcare to private healthcare companies and this has led to the issue of cost-cutting procedures and quality of care being offered. There is a lot of delay in medical services especially when a prisoner has a non-emergency condition and mental health services

¹⁴ Plugge, E., Douglas, N., & Fitzpatrick, R. (2008). *The health of prisoners: Summary of research findings*. Department of Health, UK.

are inadequate. Moreover, the U.S. prison system is already overburdened with the excessive number of patients with mental health disorders; therefore, it creates extra pressure on the healthcare system.¹⁵

United Kingdom: National Health Service (NHS) in Prisons

The National Health Service (NHS) in the United Kingdom provides prisoners with the right to healthcare, and this makes sure that the care provided to the prisoners is consistent with the care given to the rest of the population. According to the Prison Act 1952 and its subsequent rules, the prisoners are ensured to have access to primary, emergency, and mental healthcare. The way the NHS is incorporated into the prison system guarantees a holistic approach, although difficulties remain, especially when it comes to mental health care. There is a high demand of mental health services in prisons in the UK yet the system is not able to satisfy the demand partly because of the insufficient mental health professionals and the rising prisoners with psychological disorders. Although the quality of the healthcare is usually higher than in the countries with lower income, the combination of the prison healthcare with the NHS has given rise to certain inconsistencies in the treatment, with prisoners in various regions getting a different treatment.¹⁶

Provision of Healthcare in Developing and Low-Income Countries

In developing and low-income countries, the delivery of healthcare within prisons is much more problematic because of the lack of resources, poor infrastructure, and more general problems, including corruption and political instability. Prisons of these countries are usually not able to ensure even a basic healthcare services and prisoners are more prone to preventable diseases and undiagnosed medical conditions.

India: The Healthcare Inequality Caused by Overcrowding and Insufficiency of Resources

The Indian prison system is also highly overcrowded with most of the prisons functioning far beyond their capacity. This congestion places a lot of stress on the healthcare system of prisons and it becomes challenging to the medical personnel to sufficiently meet the needs of the increasing inmate population. The Indian Prisons Act of 1894 requires healthcare delivery but the ground scenario is not perfect. A large number of prisons, especially those in the countryside, are ill equipped with medical facilities and inmates may take a long time to get

¹⁵ A.P. Wilper et al., "The Health and Health Care of US Prisoners: Results of a Nationwide Survey" (2009) 99(4) *American Journal of Public Health* 666.

¹⁶ J. Woodall, "A Critical Examination of the Health Promoting Prison Two Decades On" (2016) 26(5) *Critical Public Health* 615.

attention. The development of mental health services is very poor and limited numbers of qualified individuals to treat increasing numbers of prisoners with mental health disorders. Some of the infections that are common in prisons include tuberculosis and HIV/AIDS yet the poor resources and the absence of appropriate medical facilities compound the problem. The urban-rural prison gap also shows the inequality of access to healthcare in the country.¹⁷

Sub- Saharan Africa and Latin America: Systemic Problems of Basic Healthcare Service Provisions in Prisons

Some of the worst healthcare issues in prisons are found in Sub- Saharan Africa and Latin America. The problem of overcrowding is quite common, and it is usually accompanied by the shortage of clean water, sanitation, and basic medical provisions. Most African nations have an inadequate and mismanaged prison healthcare system. As an example, in countries, like Nigeria, Kenya, and South Africa, there is poor medical care to the prisoners, which results in a high number of deaths by preventable diseases, such as malaria, tuberculosis, and HIV/AIDS. Prison systems in Latin America, including Brazil and Mexico, are so overcrowded and under-medicalized that there is a general disregard of the health requirements of the prisoners. The lack of mental health care in such areas adds to this problem and a lot of inmates are diagnosed with untreated mental disorders. Inmates in these regions are not adequately provided with medical care by the government and the prison system, and therefore have to depend on community-based organizations or the NGOs to obtain medical care.¹⁸

IV. COMPARATIVE STUDY: PRISON HEALTHCARE SYSTEMS IN THE WORLD

United States: An Emphasis on Legal Systems and Problems

The history of the United States is full of the failures of the country to provide proper healthcare to the people in prison even though there are the constitutional guarantees and some major court precedents to protect prisoners and their health. The eighth amendment of the United States constitution outlaws cruel and unusual punishment and the courts have interpreted this to mean the provision of healthcare. In a precedent-setting case *Estelle v. In* 1976 U.S. Supreme Court made a decision that prisoners are constitutionally entitle to proper medical care (Gamble, 1976). According to the decision, the wilful blindness towards the severe medical ailments of a prisoner was defined as a breach of the Eighth Amendment. The case established a precedent regarding prison healthcare in the U.S., which states that prison

¹⁷ National Human Rights Commission, Annual Report on the State of Prisons in India (2022).

¹⁸ Human Rights Watch, Prison Conditions in Africa and Latin America (2021).

officials cannot overlook severe medical conditions and should offer treatment that can be regarded as minimal.¹⁹

The U.S. is in a complicated case in which there are legal safeguards and the physical problems, like privatization and overcrowding, are preventing the application of these safeguards. Although the decisions of the court and the Eighth Amendment that guarantees medical care, poor treatment still occurs in many prisons because of the systemic problems in the prison healthcare system.

United Kingdom National Health Service (NHS) and Prison Healthcare

In the United Kingdom, prisoners have access to healthcare services offered by the National Health Service (NHS) and this means that they obtain equal healthcare services as those people who are not in the prison system. The fact that prison healthcare is part of the NHS implies that prisoners should receive primary, emergency and specialist care, as well as mental health care. In theory, this method can guarantee that the healthcare needs of prisoners are addressed on the same level of care that the general population has access to.

Nevertheless, there are still problems, in terms of mental health services. The prevalence of mental health disorders is skewed among prisoners, but prison psychiatric care access is still lacking. The number of individuals in need of mental health services is usually larger than the supply and most prisons lack the ability to offer timely access to mental health services. Inmates who have mental illnesses usually end up in long queues and the standards of the treatment are highly differentiated as per the place where the prison is located and the type of resources it possesses.

India: Problems of gaining access to prison healthcare

The prison system in India is very large and highly overcrowded, which poses a great challenge when it comes to the provision of healthcare to the prisoners. The Indian Constitution provides with the right to life which the courts have interpreted to mean the right to healthcare. The Indian Prisons Act 1894 also provides that healthcare services should be provided in prisons. Notwithstanding these legal structures, the realities on the ground in prison healthcare in India are extremely different.

The disparity in healthcare access is especially notable in the rural or high-density prisons. Prisons in urban locations tend to have better access to healthcare, whereas rural and overcrowded facilities do not even have basic healthcare amenities. India has many prisons

¹⁹ David Cloud et al., "The Ethical Use of Medical Isolation: Lessons from the United States' Experience During COVID-19 in Prisons" (2020) 20(7) *Health and Human Rights Journal* 85.

that are overcrowded, some even working at 150-200 percent of their capacity and this pressurizes the prison healthcare systems. The shortage of trained medical personnel is a big problem because in many prisons there are just a few medical workers and they cannot cope with the increased number of prisoners. In most instances, inmates have to wait a long time before they can get medical attention particularly to address chronic conditions or other specialized services.²⁰

Consequently, the prison healthcare system in India is unable to address the most fundamental healthcare requirements of its inmates, and the problem of overcrowding and insufficient resources makes the situation of the incarcerated people even worse in terms of receiving timely and effective care.

World trends and solutions

Although the differences in healthcare delivery between high-income and low-income economies are quite vast, a number of world trends give hope that the delivery of healthcare in prisons will be enhanced. Among the most promising directions is the incorporation of prison healthcare into the larger system of public health, which is currently observed in the example of such countries as Norway, which has a very progressive prison system with a high focus on rehabilitation and healthcare. In Norway, prisoners are considered citizens and their healthcare demands are absorbed in the national healthcare system, this means that the standard of care they get is the same as the rest of the population. The rehabilitation and the holistic approach to prisoners including mental health care in Norway serves as an example to other nations.

Collaboration on prisoner health is another important element of the betterment of healthcare provisions on the international scale. Efforts of other bodies like the United Nations and the World Health Organization (WHO) have resulted in the formulation of international standards and guidelines on prison healthcare. These organizations focus on the necessity of countries to respect the health rights of prisoners and give them proper care, especially those with mental illnesses and chronic illnesses. International cooperation has also led to technical support such as supply of medical equipment and training of healthcare employees in the prisons especially in developing nations where resources are few.

Sharing of best practices among nations, like the one witnessed in Scandinavian nations and the other progressive models, as well as enhancing international norms and framework, can

²⁰ Commonwealth Human Rights Initiative (CHRI), *Barred and Beyond: Mental Health and India's Prisons* (2020).

help to enhance the healthcare systems in prisons across the globe.²¹

V. AN ESSENTIAL ANALYSIS OF MENTAL HEALTH SERVICES IN PRISONS

A. International Standards on the Mental Health Care in Prisons

The United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) provides an international standard on the treatment of prisoners including special considerations on how to address mental health needs of prisoners. According to rule 24 of the Mandela Rules, access to medical care (including mental health services) should not be discriminatory to the prisoners. These regulations are important in the sense that proper medical care is essential in upholding the dignity of inmates and mental health forms part of this care. The Mandela Rules also emphasize the necessity of specially designed mental health care, stating that the prisoners with mental disorders must be given the right treatment by the trained professionals. This is a big change of the previous ways that prisoners' mental health needs were not addressed well in most cases.

Besides the Mandela Rules, the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (1991) provides the rights of prisoners with mental conditions. The principles give directives on how to treat mentally ill people in custody and they include the recommendation that care should be administered in a non-punitive supportive setting, which should promote rehabilitation. These global norms recognize that mental illness cannot be a punishment, but it is a medical condition that needs professional care. They emphasize the significance of proper mental health care in the prisons which entails proper assessment, treatment and opportunity to rehabilitate prison inmates with mental disorders.²²

These international standards notwithstanding, there is also a vast difference between what is on paper on international conventions and what actually happens in most prison systems all over the world. Different issues like overcrowding, understaffing, and resource shortages tend to hinder the successful provision of mental health services, and this is why prisoners with mental health problems remain marginalized.

B. Issues in Delivery of Mental Health Services

Shortage of specialized mental health professionals is one of the most serious problems in the prison systems of most countries in the world. Mental health care is a unique area and needs

²¹ Norwegian Ministry of Justice and Public Security, Punishment That Works – Crime That Pays: Rehabilitation as the Guiding Principle (2015).

²² United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, 1991.

trained persons like psychologists, psychiatrists and mental health counsellors who will be able to meet the complex needs of the prisoners with mental health conditions. Nevertheless, the same professionals are scarce or absent in most prison systems. This lack of mental health personnel implies that the prisoners do not get the required assistance, which results in the worsening of the existing condition or the emergence of some new disorder.

Besides, most prison healthcare systems pay more attention to physical health and consider mental health as a secondary problem. In such systems, the needy psychiatric care to prisoners might not be timely assessed and treated, and the mental health of such inmates might deteriorate because of the stressful and in most cases traumatic conditions of prisons. The mental health services that are lacking in most prisons are further compounded by the issue of overcrowding since the number of prisoners is so high that medical personnel can hardly provide the necessary care to every prisoner in terms of mental health.²³

Also, it is a dangerous issue that the number of untreated mental health problems in jails is large. Studies reveal that a large percentage of the inmates in prison have untreated mental conditions. There is no proper mental health assessment and the limited access to available treatment leads to the cycle of neglect. Most of the prisoners with psychiatric illnesses lack proper treatment and, in the process, their illnesses tend to increase in prison. In other instances, the inability to offer adequate care to the mentally ill may lead to a tragic end, such as self-harm, violence, or suicide.

C. Case Studies

United States: Low Levels of Care and Substandard Mental Care in Prison System

The United States is among the countries with the highest incarceration rates in the world, with a considerable part of inmates having mental health issues. Research has indicated that about 50 percent of the prison inmates in the United States have a mental health disorder with depression, anxiety, and PTSD being the most common. Nevertheless, the U.S. prison system never excelled at giving people proper mental health care. Psychiatric professionals are usually scarce and the prisoners with psychiatric illnesses might not be treated and administered medication properly. In other instances, the prisoners under psychiatric treatment are kept in solitary confinement, which worsens their mental condition and may turn into a new deterioration.²⁴

²³ Lamb H.R., Weinberger L.E., "Meeting the Needs of Those Persons with Serious Mental Illness Who Are Most Likely to Become Criminalized" (2005) 46(4) *Journal of the American Academy of Psychiatry and the Law* 458

²⁴ Kupers, Terry A., *Solitary: The Inside Story of Supermax Isolation and How We Can Abolish It* (University of

There have been attempts to change the mental health care in the U.S. prisons, however, the system is still not able to cover the huge number of prisoners and the lack of sufficient resources to provide the mental health care. Courts cases like *Brown v. Plata*²⁵, have brought to the fore the connection between overcrowding and poor mental health care, which resulted in the need to make changes and establish better mental health care in prisons.

United Kingdom: A Transition to Integrating Mental Health Care to Prisons

The United Kingdom has performed tremendously well in incorporating mental health care in its prison health care system. The NHS offers healthcare services to prisoners including mental health services and there has been a realization that there is need to have specialized care to prisoners with mental health disorders. The UK has followed a more progressive pattern regarding the integration of mental health, where mental health assessment is included in the initial intake process and more consideration is given to the mental health requirement of prisoners.

In spite of these developments, there are still challenges. The population of mentally ill prisoners is also increasing and the system is failing to meet the demand of the services most of the time. Mental health care is considered a secondary problem in comparison to physical health care and resources are strained. Like in any other country, overcrowding and lack of staff also compound the situation of providing timely and proper mental health services. Prisoners with mental conditions may not get special care that they require especially in complicated psychiatric cases.²⁶

However, the UK has also moved forward in terms of bettering mental health care of prisoners, and efforts are in place to cut down the number of solitary confinements and expand access to mental health services in prisons. This emphasis on rehabilitation and incorporation of mental health care into the NHS as a whole have already produced positive results, but further efforts are still to be made.

India: The inexistence of mental health infrastructure and high-rate in prison suicide

The problem in India is that there is no infrastructure of mental health in the prisons. There is a very poor development of mental health care with little numbers of trained personnel to attend to the needs of prisoners who are mentally sick. Indian prisons are frequently overcrowded and the medical services are not well prepared to address the mental health

California Press, 2017).

²⁵ *Brown v. Plata*, 563 U.S. 493 (2011).

²⁶ UK Department of Health & Social Care, National Partnership Agreement for Prison Healthcare in England (2018–2021).

catastrophe. Through this, a lot of the prisoners are left to suffer in silence and conditions such as depression and anxiety are not treated. This failure to provide proper care has led to the high suicide rates in the Indian prisons with most of the prisoners committing suicide themselves due to the poor conditions and absence of mental care.²⁷

To sum up, although certain nations have come a long way towards inclusion of mental health care within prisons, the situation with the overall mental health care of the prisoners is still an issue of concern in the world. There is still a lack of appropriate treatment, with overcrowding, the lack of specialized personnel and mental health infrastructure complicating the situation of many prisoners with mental health conditions. Reform is necessary and the provision of mental health services is vital in the rehabilitation and human treatment of inmates. International standards like the Mandela Rules offer a model to deal with these problems, and their application is inconsistent in various jurisdictions.

VI. THE ENFORCEMENT GAP: ENFORCEMENT GAPS IN HEALTHCARE RIGHTS

A. Absence of Good Monitoring and Accountability

Although there are international standards that require the delivery of healthcare to prisoners, most of the prison systems do not have adequate measures in place. The absence of a proper monitoring and accountability system is a major obstacle to making sure that the right to healthcare by prisoners is observed consistently. Other external factors including the United Nations (UN), national human rights commissions and non-governmental organizations (NGOs) are also significant in overseeing prison healthcare. As an example, the UN has been making regular visits to prisons across the world through the Subcommittee on Prevention of Torture (SPT), to evaluate the detention conditions, including healthcare. Likewise, national human rights commissions in other countries such as India, South Africa and the United States can look into the violation of the rights of prisoners such as access to healthcare and make recommendations.

Nevertheless, most of these institutions have serious problems in executing their activities. Prison officials tend to hinder the visit of independent monitors particularly when they are afraid that they will be caught committing certain violations. Moreover, recommendations offered by these organizations are not always followed, and the ineffective sanctions on non-compliance do not make it possible to eliminate the poor healthcare conditions. As much as NGOs promote better conditions, they are usually unable to force governments into acting. Therefore, the enforcement gap is still high, and it can be said that in prisons, many violations

²⁷ National Human Rights Commission (NHRC), Report on Mental Health Care in Indian Prisons, 2020.

in the sphere of healthcare are not checked because of the lack of control and accountability.²⁸

B. Problems of International Standards Implementation

There exists a significant inequality between high-income and low-income countries in the implementation of international standards of prisoner's healthcare. Prison systems in wealthier countries tend to have greater resources available to it, and the healthcare services have a higher chance of being international standards. Nevertheless, overcrowding, underfunding and privatization of prison healthcare continues to leave serious gaps especially in the area of mental healthcare.

Conversely, the low-income countries may not have the infrastructure, skilled medical staff, and the finances to enable them to provide healthcare services to prisoners on international standards. In some other countries such as India, South Africa, and most of the countries in Sub-Saharan Africa, the quality of healthcare is largely dependent on the amount of resources the governments are willing to spend on the prison. Even simple medical needs are largely unmet in such environments and mental health care is especially undeveloped. These differences show the discrepancy in implementation, where global standards, like the Mandela Rules or the International Covenant on Civil and Political Rights (ICCPR), can be signed up, but remain ineffective and do not bring tangible changes because of domestic economic and political issues.²⁹

The efforts of international pressure and human rights activism can be effective in informing about the violation of healthcare in prisons. Yet, they are usually very weak. The human rights campaigns are likely to cause a stir or attention in the media but unless there is a great political will and overhaul of systems in governments, it is hard to effect real change. The success of such attempts can be seen especially in situations when international organizations, like the UN, exert diplomatic pressure on governments, yet in most of the instances, governments do not implement required reforms.

VII. PROPOSALS ON REFORM

A. Empowering the Laws

To fill the gaps in the healthcare systems of the prisons, it is necessary to reinforce the legal systems. The Mandela Rules and ICCPR are good examples of international legal instruments that can guide countries in safeguarding the right to healthcare of prisoners, but it is the responsibility of the governments to ensure that such frameworks are incorporated into the

²⁸ National Human Rights Commission (India), Annual Report 2021–22, NHRC Publications.

²⁹ Rani Shankardass, *Health in Prisons: A WHO Guide to the Essentials in Prison Health* (WHO, 2007)

domestic legislation. Among the steps is the ratification of further international agreements and treaties, which directly deal with the prison conditions and healthcare. The Optional Protocol to the Convention Against Torture (OPCAT) is an example of an instrument that permits independent observation of prisons and can be used to bring governments to justice over abuse of healthcare rights in custody.

The country must have legislation that is more able to force the prison systems to provide healthcare standards. Regular health checkups of prisoners, better conditions to eliminate overcrowding, and suitable mental health services should be made mandatory by the law. Such legislative frameworks must be implemented with an accountability mechanism in order to ensure that governments meet their commitment to offer healthcare to prisoners.³⁰

B. Enhancing the Systems of Healthcare Delivery

One of the most important reforms that should be implemented in order to give quality healthcare to the prisoners is the improvement of the prison healthcare infrastructure. This means that they need to invest in new medical equipment, increase health facilities, and make sure that prisons have qualified medical staff such as doctors, nurses, and mental care specialists. Governments should ensure that they give priority to prison healthcare systems so that they can be able to provide funds to address the needs of the increasing number of prisoners.

The application of the private-public partnerships is one of the possible solutions to healthcare crisis in prisons. Governments should collaborate with private healthcare providers or NGOs in order to enhance access to special care and make sure that the prisoners get timely and adequate treatment. Such alliances may involve relations with universities or medical schools to offer training to prison medical personnel so that there is a superior level of care. Outsourcing of certain services, including mental health care, may also allow the prisoners to receive a higher level of treatment than the ones provided by the internal professionals.

C. More Accountability and Supervision

The independent oversight bodies should be strengthened in order to enhance the effectiveness of the healthcare provisions in prisons. National human rights commissions, independent prison inspectors, and international organizations like the UN should be empowered to inspect prisons, to carry out regular inspection and to report on the adequacy of healthcare services. Independent monitoring guarantees the observation of healthcare

³⁰ United Nations, Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), Rule 24, adopted by UNGA Res. 70/175 (2015).

standards and the timely elimination of their violation. These groups are supposed to be provided with the resources and legal powers to look into the states of prisons and to insist on their reforms when needed.

Also, there is the need to have stronger monitoring systems both nationally and internationally. States ought to have separate health monitoring commissions in the correction facility that are able to give periodic reports on healthcare provision.

D. Dealing with the Prison Mental Health Crisis

The prison mental health crisis needs to be addressed as soon as possible on a large scale. Inclusion of mental health care in prison rehabilitation program is imperative in ensuring that prisoners with mental health disorders are given proper treatment and care. Prison systems must organize special mental health units in prisons that will be manned by trained psychiatrists, psychologists and mental health counsellors. These are experts who ought to be engaged in early detection of mental health complications and subsequent treatment of the prisoners.

Also, the staff in the prison should be given mental health training, to enable them to detect the symptoms of mental illnesses, and how they can address them. The prison systems are also supposed to make sure that the prisoners with mental illnesses do not spend their time in solitary confinement or undergo any punitive actions because this situation can cause a severe deterioration of mental health. Rather, the prisoners must be taken into surroundings that offer treatment and assistance, in accordance with international practices of the humane treatment of individuals with mental health disorders.³¹

Lastly, the mental health care after release must be incorporated into the general health care. When the prisoners are released, they must be given continuity of care, which means that they should be linked to mental health services in the community, especially those who have been treated mentally in the prisons. This continuity is essential to avoiding relapse and making sure that people who were jailed because of their mental condition can have support on their way back into the society.

To sum up, proper healthcare, including mental health, delivery in prisons is a major issue across the world. To resolve such problems, there should be overall changes in the legal field, more effective healthcare delivery systems, more accountability, and special mental health care programs. With these recommendations, governments can treat the prisoners in a manner

³¹ J. R. Simon, "Mental Health Care in Prisons: Training and Access Challenges" (2020) 62(1) *Journal of the Indian Law Institute* 115.

they deserve according to the international human rights law and thus keep their dignity and enhance their rehabilitation.

VIII. CONCLUSION

The situation with access to healthcare in prisons is still a pressing matter worldwide, as a large part of the prisoners lack proper medical care, especially in the fields of primary care and mental health. Although the rights of prisoners to healthcare are clearly stipulated in international law, including the United Nations Standard Minimum Rules on the Treatment of Prisoners (Mandela Rules) and the International Covenant on Civil and Political Rights (ICCPR), there is still a significant disconnect between what the international law frameworks propose and what they achieve in the practical application of healthcare delivery to the prison populations all over the world. Such a disparity is mostly explained by systematic factors, including overcrowding, resource shortage, and prison understaffing. This has led to the fact that prisoners experience delays in medical care, unavailability of specialized care and the disregard of mental health problems.

The situation is even worse on the prisoners with mental conditions as most of the prison systems do not offer sufficient mental health services. Mental health crisis in prisons is already present and worsened by the fact that there are no trained mental health professionals and the prison environment has negative effects on the mental health of the inmates. Prisoners with mental conditions are in most instances not only ignored but are also exposed to degrading habits like solitary confinement, which aggravates their conditions. The necessity of the prison healthcare systems reform cannot be overestimated. The governments and prison authorities should focus on the realization of international standards of healthcare in prisons, and the rights of prisoners to proper medical care (including mental health care) should be respected. To make sure that the above rights are not just inscribed in legal systems, it is vital to enhance the enforcement mechanisms of the prison healthcare system so that the rights could be effectively enforced in practice. This will need extensive legislative involvement to ensure better quality and accessibility of healthcare in prisons with proper guidelines on monitoring and accountability. Laws need to be changed so that governments become responsible to fulfilling their duties to prisoners by offering them sufficient healthcare services such as primary care, emergencies, and mental health care provision.
