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# BARS AND BOUNDARIES: A CRITICAL ASSESSMENT OF INDIAN PRISONERS' RIGHTS IN LIGHT OF GLOBAL LEGAL FRAMEWORKS

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## I. ABSTRACT

This paper examines the state of prisoners' rights in India, highlighting the disparity between legal frameworks and their implementation. Despite constitutional protections and international obligations, such as the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) and the International Covenant on Civil and Political Rights (ICCPR), Indian prisons face systemic issues including overcrowding, prolonged pre-trial detentions, inadequate healthcare, and caste-based discrimination. With undertrial prisoners constituting over 64% of the prison population, delays in judicial processes and financial barriers to bail result in significant violations of their rights to liberty and fair trial.

Comparing India's prison system with those of Germany, Norway, and the Netherlands reveals stark contrasts. Germany emphasizes rehabilitation and normalcy, offering personalized prison plans and vocational training. Norway prioritizes maintaining inmates' social bonds and dignity, resulting in one of the world's lowest recidivism rates. The Netherlands, with its minimal prison population, focuses on alternative sentencing, electronic tagging, and comprehensive mental health support. These systems underscore the benefits of humane treatment and rehabilitation in reducing recidivism and fostering reintegration.

India's reliance on punitive measures and its failure to provide humane living conditions underscore the urgent need for reforms. Addressing infrastructure deficiencies, enhancing access to legal aid, and prioritizing rehabilitation are essential to align India's prison system with human rights standards and ensure the fair

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treatment of all prisoners. This study emphasizes that lessons from international models could guide India toward a more just and effective penal system.

## II. KEYWORDS

Incarceration conditions, Human rights, Rehabilitation

## III. INTRODUCTION

Historically, the prison system was primarily viewed as a mechanism for punishment rather than rehabilitation, with scant regard for the rights and dignity of inmates. The turn of the 19th century marked a shift as reformatory laws began to shape prison management and the treatment of prisoners in India.<sup>3</sup>

The impetus for prison reforms in India didn't arise from a widespread social movement but rather emerged as a response to the harsh conditions faced by political prisoners. Figures like Bhagat Singh, Subhash Chandra Bose, Dr. M.R. Masani, Kashmir Singh, Jawaharlal Nehru, and Mahatma Gandhi endured extreme treatment during their incarceration—overcrowding, inadequate healthcare, and brutal conditions.

These political prisoners, despite their convictions, became advocates for change. Their protests weren't mere acts of defiance; they were rooted in a quest for humane treatment and justice. Their voices highlighted systemic issues within the prison system, sparking discussions about reform.<sup>4</sup>

As a result, India gradually implemented reforms. Recognizing that prisoners' treatment was a human rights issue, the focus shifted toward dignity and basic rights. Although not part of a formal social movement, these efforts—borne from lived experiences—paved the way for ongoing initiatives to improve prisoner conditions and uphold fundamental rights.

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<sup>3</sup> Maneesh Yadav, *Judicial Activism, Prison Management and Prisoners' Rights in India: An Analysis*, RESEARCHGATE (Sep. 10, 2024, 4:00 PM), [https://www.researchgate.net/profile/Maneesh-Yadav-2/publication/342887405\\_Judicial\\_Activism\\_Prison\\_Management\\_and\\_Prisoners'\\_Rights\\_in\\_India\\_An\\_Analysis](https://www.researchgate.net/profile/Maneesh-Yadav-2/publication/342887405_Judicial_Activism_Prison_Management_and_Prisoners'_Rights_in_India_An_Analysis).

<sup>4</sup> INDIAN CULTURE, <https://indianculture.gov.in/digital-district-repository/district-repository/prisons-and-indian-freedom-struggle> (last visited Nov. 21, 2024).

In recent years, the Indian legal framework has made strides in safeguarding the rights of accused individuals and prisoners. The Indian Constitution and the Bharatiya Nagarik Suraksha Sanhita (BNSS) provide essential protections. However, despite these advancements, the prison system often falls short of meeting modern human rights standards.

The Supreme Court of India has been a vocal advocate for prison reforms, emphasizing that incarceration should not deprive individuals of their fundamental human rights. Yet, the reality persists: many Indian prisoners face conditions inconsistent with these rights, perpetuating rather than mitigating criminal behaviour.

Our research paper, titled *“Bars & Boundaries: A Critical Assessment of Indian Prisoners’ Rights in Light of Global Legal Frameworks”* delves into the multifaceted dimensions of prisoners’ rights within India. We juxtapose these rights with established international human rights norms. Countries like Germany, the Netherlands, and Norway prioritize human dignity, rehabilitation, and reintegration. By analysing India’s approach alongside these models, we aim to advocate for a more just and humane system – one that recognizes human dignity beyond prison walls.

Drawing from the 2021 National Crime Records Bureau (NCRB) data, stark realities emerge: undertrials dominate the prison population, overcrowding persists, and detention periods extend far beyond reasonable limits. Specifically, 77% of inmates await trial, while only 22% are convicts. Our goal is to contribute to a broader understanding of how India can better align its prison system with international norms, fostering effective criminal justice while upholding human rights.<sup>5</sup>

It’s alarming that nearly half of India’s undertrials endure prolonged imprisonment, caught in legal limbo. Globally, the United Nations Office on Drugs and Crime (UNODC) reports approximately 11.2 million people held in prisons by the end of 2021. Although this number decreased during the pandemic, it’s now rising again. Shockingly, around 3.5 million individuals – almost a third of the global prison

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<sup>5</sup>National Crime Records Bureau, *Ministry of Home Affairs, Government of India*, available at: <http://www.ncrb.gov.in/> (last visited Sept. 12, 2024).

population—remain in pre-trial detention. Overcrowding persists, affecting 60% of countries operating prisons beyond capacity.<sup>6</sup>

In our study, we closely examine India's legal framework concerning prisoners' rights balancing fundamental liberties and essential amenities. We explore prison reforms and judicial activism, comparing India's approach with global standards. Notably, countries like Germany, the Netherlands, and Norway prioritize human dignity, rehabilitation, and reintegration. By advocating for a more just system, we recognize that justice extends beyond bars, it's about preserving human dignity and societal well-being.

#### **IV. RESEARCH QUESTIONS**

1. How effectively does India's legal framework for prisoners' rights align with international human rights standards?
2. What reforms are necessary to bridge the gap between legal provisions and their practical implementation?
3. How Can India Bridge the Gap Between Domestic Laws and International Standards in Protecting Vulnerable Prisoners?
4. How Does Abuse Experienced During Incarceration Affect Post-Release Behaviour?

#### **V. RESEARCH METHODOLOGY**

The paper adopted explanatory, analytical and descriptive methodology which involves studying existing papers, journalistic articles, case studies of incarcerated persons, reports of WHO, WPB, NCRB etc. on the theme. Thus, the approach of this paper is a combination of both primary (first-hand reports) and secondary data (journalistic articles).

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<sup>6</sup> *United Nations Office on Drugs and Crime*, available at: <https://www.unodc.org> (last visited Sept. 12, 2024).

## VI. UNDERSTANDING PRISONERS' RIGHTS

### A. Basic Definitions

Donald Taft<sup>7</sup>, defined prisons as '*intentionally designed to offer painful, required isolation from society*'. The characteristics of a prison include strict security measures, harsh discipline, and tedious daily routines. Inmates' freedom must necessarily be constrained against their will during their time inside the prison.

Section 3 of the *Prisons Act of 1894*, a prison is defined as "any jail or place used permanently or temporarily under general or special orders of the state government for the detention of prisoners."<sup>8</sup>

Classification of prisoners can be done into three categories can be used to group prisoners:

1. **Pre-trial inmates:** These individuals have been charged with a crime and are temporarily held in state custody while investigations are ongoing. They await further legal proceedings based on evidence like the formal information report (FIR).
2. **Prisoners Under Trial:** Most of our prison population consists of undertrials. These individuals are in judicial or police custody while their cases are pending in court. Charges have been framed against them, and they await judgment or sentencing.
3. **Convicted Inmates:** These are individuals who have been found guilty after a fair trial. The court sentences them to incarceration as part of their punishment.

### B. LEGAL FRAMEWORKS

- **Prisons' act, 1984**

The history of the Indian jail system is extensive. After Lord Macaulay's proposals were taken into consideration and the dreadful state of the country's prisons was noted in the year 1835, the first jail reformation or the act known as 'The Prisons Act,

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<sup>7</sup> Taft, Donald R. & England, Ralph W., Jr., *Criminology* (4th ed. 1964), The Macmillan Company.

<sup>8</sup> The Prisons Act, 1894, Section 3, No. 9, Acts of Parliament, 1894 (India).

1894', was enacted in India.<sup>9</sup> This law placed more emphasis on prison management than on the care of inmates.

*Prisons Act of 1894* is the first legislation regarding prison regulation in India. This Act mainly focus on reformation of prisoners in connection with the rights of prisoners. Following Sections of the Prisons Act, 1894 are related with the reformation of prisoners: -

Accommodation and sanitary conditions for prisoners,<sup>10</sup> Provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison,<sup>11</sup> Provisions relating to the examination of prisoners by qualified Medical Officer,<sup>12</sup> Provisions relating to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and undertrial prisoners,<sup>13</sup> Provisions relating to treatment of undertrials, civil prisoners, parole and temporary release of prisoners.<sup>14</sup>

The *Prisons (Amendment) Bill, 2016* was introduced to amend the *Prisons Act, 1894* to enhance the protection and welfare of prisoners in India. The objective of the amendment was to update the outdated provisions of the 1894 Act and address modern concerns about the treatment and rights of prisoners.

Moreover, the apex Court in *Sunil Batra v. Delhi Administration and Others*<sup>15</sup> has specifically issued directions to various authorities to deliberate about enacting of new Prison Act to replace the century old Prisons Act, 1894 and to examine the question of framing of a new model All India Jail Manual.

- **Transfer of prisoners' act, 1950**

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<sup>9</sup> Dr. Shikha Mishra and Dr. Uday Veer Singh, *Prison administration in context with prisoner's rights in India*, 5 INTERNATIONAL JOURNALS OF MULTIDISCIPLINARY RESEARCH AND ANALYSIS 1009, 1011 (2022).

<sup>10</sup> The Prisons Act, 1894, Section 4, No. 9, Acts of Parliament, 1894 (India).

<sup>11</sup> The Prisons Act, 1894, Section 7, No. 9, Acts of Parliament, 1894 (India).

<sup>12</sup> The Prisons Act, 1894, Section 24(2), No. 9, Acts of Parliament, 1894 (India).

<sup>13</sup> The Prisons Act, 1894, Section 27, No. 9, Acts of Parliament, 1894 (India).

<sup>14</sup> The Prisons Act, 1894, Section 31 & 35, No. 9, Acts of Parliament, 1894 (India).

<sup>15</sup> *Sunil Batra v. Delhi Administration and Ors.*, AIR 1980 SC 1579

The *Transfer of Prisoners Act, 1950*, is a parliament enacted law to facilitate the transfer of prisoners from one state to another.<sup>16</sup> The Act provides for the removal of prisoners from one state to another. This can be necessary for various administrative reasons, such as ensuring better security or closer proximity to the prisoner's family.

One instance of transfer made for close proximity with family was of in Sanjay Dutt case.<sup>17</sup>

He was convicted under the Arms Act in relation to the 1993 Mumbai blasts case. During his imprisonment, he was transferred from Yerwada Central Jail in Pune to Arthur Road Jail in Mumbai. This transfer was partly facilitated to allow him to be closer to his family in Mumbai, making it easier for his family to visit him.

Transfers like these are often considered to maintain family ties, which can be crucial for the mental well-being of prisoners and their rehabilitation.

- **The Constitution of India, 1950**

As the supreme law of the land, the Constitution provides a comprehensive foundation for all legislative, executive, and judicial actions. Its provisions are designed to uphold and protect human dignity and justice for all individuals, including those who are incarcerated. Although the Constitution does not explicitly outline the rights of prisoners in a dedicated section, several fundamental rights and provisions have been interpreted to protect prisoners' rights because a prisoner remains a 'person' in the prison.

For instance, *Article 14* guarantees right to equality<sup>18</sup> which also provides the concept of reasonable classification and serves as basis for the prison authorities to determine various categories of prisoners and their classifications with the object of reformation.<sup>19</sup>

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<sup>16</sup> The Transfer of Prisoners Act, No. 29 of 1950 (India).

<sup>17</sup> Sanjay Dutt v. State Through C.B.I, Bombay, (1994) 5 SCC 410.

<sup>18</sup> INDIA CONST. art. 14

<sup>19</sup> NITAI ROY CHOWDHURY, INDIAN PRISON LAWS AND CORRECTION OF PRISONERS 75, (Deep and Deep Publications 2002).



*Article 19* of the Constitution of India guarantees six fundamental freedoms to all citizens, including the freedom of speech and expression<sup>20</sup>, and the freedom to assemble and form associations.<sup>21</sup> Although prisoners face restrictions on these freedoms due to the nature of incarceration, they do not lose these rights entirely.

*Article 25* of the Constitution provides that Prisoners retain their right to freedom of conscience and the right to profess, practice, and propagate their religion, subject to reasonable restrictions imposed by prison authorities.<sup>22</sup>

*Article 21* of the Constitution of India guarantees that no person shall be deprived of their life or personal liberty except according to a procedure established by law.<sup>23</sup> Under Article 21, several implicit rights are afforded to prisoners, reflecting the need to uphold human dignity and fairness within the prison system such as right to live with human dignity, right against custodial violence and death, right against cruel and inhuman treatment etc.

*Article 32* of the constitution empowers citizens to approach the Supreme Court for the enforcement of their fundamental rights.<sup>24</sup> Prisoners can directly petition the Supreme Court or through someone else on their behalf if their rights are violated.

These rights collectively contribute to safeguarding the well-being and dignity of prisoners, ensuring that while they are deprived of their liberty, they continue to be protected by fundamental human rights principles.<sup>25</sup>

In *State of Maharashtra vs. Prabhakar Pandurang*<sup>26</sup>, where the detained person wrote a book and wanted to send it for publication, but he was denied of such a right by the authorities, it was held by the court to be unconstitutional and the court held that the personal liberty included the right to write a book and get it published and when this

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<sup>20</sup> INDIA CONST. art. 19(1)(a).

<sup>21</sup> INDIA CONST. art. 19(1)(c).

<sup>22</sup> INDIA CONST. art. 25

<sup>23</sup> INDIA CONST. art. 21

<sup>24</sup> INDIA CONST. art. 32

<sup>25</sup> Dr. Chandrani Chatterjee, *Life of a Prisoner: A Legal Study System and its Reforms in India*, 9 Indian Journal of Law and Justice 141, 144-148 (2018).

<sup>26</sup> *State of Maharashtra vs. Prabhakar Pandurang*, AIR 1966 SC 424.

right was exercised by a detainee, its denial without the authority of law violated Article 21.

Thus, what constitutes the right to life and personal liberty of the prisoners' is a question of fact that has been interpreted from time to time by the judiciary. Therefore, the judicial precedents are another source for prisoners' rights which has been elaborated in the next section.

- **Judicial Precedents**

The judiciary has played a crucial role in interpreting and upholding the rights of prisoners in India, beyond what is outlined in legislation and the Constitution. Over the last few decades, attention has turned toward prison reforms. Courts, including the Supreme Court and High Courts, have criticized deplorable conditions in prisons, leading to violations of prisoners'

rights. India's Supreme Court has actively shaped human rights jurisprudence, particularly regarding prisoners. The Indian Supreme Court has actively responded to human rights violations in jails. Through interpretations of *Articles 21, 19, 22, 32, 37, and 39A* of the Constitution, the Court has recognized various rights for prisoners. These newly recognized rights are binding on the State under Article 141 of the Constitution.<sup>27</sup>

The most landmark case is of *Maneka Gandhi v. Union of India*<sup>28</sup>, the Supreme Court expanded the scope of Article 21. It held that the procedure for depriving a person of their life or personal liberty cannot be arbitrary, unfair, or unreasonable. The Court emphasized that due process must adhere to principles of natural justice and reasonableness. This decision marked a turning point, emphasizing that Article 21 encompasses not only procedural safeguards but also substantive fairness.

The Maneka Gandhi case, significantly interpreted Article 21 (the right to life and personal liberty), has implications for prison conditions. The Supreme Court

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<sup>27</sup> INDIA CONST. art. 21, 19, 22, 32, 37, 39A, 141.

<sup>28</sup> *Maneka Gandhi v. Union of India*; 1978 SCC (1) 248.

emphasized that extended incarceration without trial is unreasonable and violates Article 21.

In *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*<sup>29</sup>, the Supreme Court reinforced the principles laid down in Maneka Gandhi's case. It reiterated that Article 21, requires that no one should be deprived of life or personal liberty except by a procedure established by law. The Court emphasized that this procedure must be reasonable, fair, and just. It cannot be arbitrary, whimsical, or fanciful.

Any violation of the right protected under Article 21 attracts the provisions of Article 14, which guarantees the right to equality and equal protection of the law.

The Court has consistently held that arbitrary or discriminatory actions by the state violate both Article 21 and Article 14. Thus, the right to life and personal liberty is closely linked to the right to equality.

In *Hayawadanrao Hoskot v. State of Maharashtra*<sup>30</sup>, The Supreme Court of India emphasized two critical principles regarding prisoners' rights under Article 21 of the Indian Constitution:

**1) Reformation of Criminals:**

- The Court highlighted the need to create a prison environment that goes beyond mere punishment.
- Rehabilitation should be a primary goal, allowing prisoners to reintegrate into society as law-abiding citizens.
- This approach aligns with the fundamental idea of human dignity and respect for life.

**2) Protection of Societal Interests:**

- While advocating for reformation, the Court recognized the delicate balance.
- It acknowledged that societal interests—such as public safety and moral standards—must also be safeguarded.

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<sup>29</sup> Francis Coralie Mullin v. The Administrator, Union Territory of Delhi; 1981 SCC (1) 608.

<sup>30</sup> Hayawadanrao Hoskot v. State of Maharashtra, 1978 SCC (3) 544.

- The judiciary plays a crucial role in ensuring this balance.

In *Prem Shankar Shukla v. Delhi Administration*<sup>31</sup>, the court held that laws related to handcuffing must align with Articles 14, 19, and 21 of the Indian Constitution. It deemed handcuffing inherently inhumane and cautioned against its routine use to prevent escape. The court emphasized that convenience for authorities should not dictate handcuffing decisions and that economic or social status should not influence this practice.

In *Sunil Batra v. Delhi Administration*<sup>32</sup>, The Supreme Court emphasized that prisoners should not suffer unnecessary deprivation beyond their court-imposed sentences. Even while incarcerated, they retain essential freedoms—such as reading, writing, exercise, and self-expression. Basic needs like proper accommodation, hygiene, diet, clothing, and timely medical services are crucial for maintaining health and nurturing the human mind. The Court criticized housing undertrials with convicts, deeming it inhumane. Additionally, solitary confinement was scrutinized, and the Court held that it violates Article 21 unless legally justified. The case laid out guidelines for prison reforms:

- a) Prepare a Prisoner's Handbook in Hindi for legal awareness.
- b) Issue periodical jail bulletins to ease tensions.
- c) Allow prisoners' wall paper for expressing grievances.
- d) Adhere to United Nations' Standard Minimum Rules for Treatment of Prisoners.
- e) Revise the Prisons Act and overhaul the Prison Manual.
- f) Provide correctional-cum-orientation courses for prison staff.
- g) Ensure prisoners' rights through writ jurisdiction and contempt power.
- h) Promote free legal services for prisoners.

In *Rudul Sah v. State of Bihar*<sup>33</sup>, the Supreme Court recognized the right to compensation in cases of illegal deprivation of personal liberty. The petitioner, who

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<sup>31</sup>Prem Shankar Shukla v. Delhi Administration, 1980 SCC (3) 526.

<sup>32</sup>Supra note 14, at 6

<sup>33</sup>Rudul Sah v. State of Bihar, 1983 AIR 1086

had been unlawfully detained for over fourteen years even after acquittal, filed a Habeas Corpus petition seeking immediate release and compensation. As a remedy, the Court granted monetary compensation of Rs. 35,000 against the Bihar Government for the prolonged illegal detention.

In *Sheela Barse v. State of Maharashtra*<sup>34</sup>, addressing custodial violence against women prisoners and detainees in Maharashtra, the court issued specific directions:

#### 1. Legal Aid and Intimation:

- When a person is arrested and taken to the police lock-up, the police must immediately inform the nearest Legal Aid Committee.
- The arrested person should also provide the name of a relative or friend to be informed about their arrest.

#### 2. Magistrate's Role:

- The magistrate before whom an arrested person is produced must inquire whether there are any complaints of torture or maltreatment in police custody.
- The arrested person should be informed of their right to a medical examination if they have such complaints.

In *A.S Mohammed Rafi v. State of Tamil Nadu*<sup>35</sup>, the court granted 1.5 lakhs compensation to the victim for police custodial death.

## VII. CHALLENGES FACED BY PRISONERS DURING THEIR TIME IN PRISON

### A. Overcrowding

The presence of under trials is the principal reason for overcrowding in prisons. Overcrowding strains prison infrastructure, hampers correctional services, spreads contagious diseases and leads to multiple problems for prison administration including larger incidence of indiscipline and violence.<sup>36</sup>

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<sup>34</sup> *Sheela Barse v. State of Maharashtra*, 1983 SCC (2) 96

<sup>35</sup> *A.S. Mohammed Rafi v. State of Tamil Nadu*, (2011) 1 SCC 688.

<sup>36</sup> SEN SHANKAR, *POLICE IN DEMOCRATIC SOCIETIES* 174 (Gyan Publications 2000).

The fourteenth edition of the World Prison Population List reveals that, as of April 2024, over 10.99 million people are held in penal institutions globally, including pre-trial detainees and convicted prisoners. The United States leads with nearly 1.8 million prisoners, followed by China with 1.69 million, and India with 573,000. Prison population rates vary significantly across regions and continents, reflecting diverse legal systems and incarceration policies worldwide.<sup>37</sup>

Overcrowding in Indian prisons is not primarily due to the higher rate of imprisonment but because of high number of under-trial prisoners. The same has been reiterated by UN Global Report on Crime and Justice 2010 in the Asian countries' studies have revealed that more than 30 % of prisons population consist of under-trial / remand detention and in many Asian countries this figure rose to over 50 %.

Since 2005, prison occupancy rates have decreased, but the reduction has not matched the actual capacity of prisons, indicating persistent overcrowding.

The large number of undertrial prisoners in Indian jails stems from delays in police investigations, economic barriers to bail, and witness non-appearance in court. To reduce overcrowding, it's essential to lower the undertrial population, which requires collaboration between courts and police.<sup>38</sup>

The Supreme Court's Justice Amitava Roy Committee recommended fast-track courts for minor offenses and releasing minor crime accused on Personal Recognizance Bond. While these measures have made some progress, they haven't significantly addressed case pendency, largely due to the prevailing culture of frequent adjournments.<sup>39</sup>

## **B. Unhealthy Living Conditions**

The overcrowding, poor sanitary facilities, lack of physical and mental activities, lack of decent health care, all increase the likelihood of health problems in prisons. As per

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<sup>37</sup>Walmsley Roy, *World Prison Population List*, 14 ICPS 1-2 (2024), [https://www.prisonstudies.org/sites/default/files/resources/downloads/world\\_prison\\_population\\_list\\_14th\\_edition.pdf](https://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_14th_edition.pdf).

<sup>38</sup> Kiran Vicky, *Problems Faced by Women Prisoners*, ACADEMIA (Sept. 29, 2024, 9:30 PM), [https://www.academia.edu/37875730/Problems\\_faced\\_by\\_women\\_prisoners](https://www.academia.edu/37875730/Problems_faced_by_women_prisoners).

<sup>39</sup> TESTBOOK, <https://testbook.com/ias-preparation/prison-reforms> (last visited Sept. 30, 2024).

the Model Prison Manual, there should be one toilet for every seven inmates, but the reality is far worse. In some prisons, up to 75 inmates are forced to share a single toilet. Newer prisons, despite their more modern design, still fall short with only two toilets for 60 inmates, exacerbating sanitation challenges<sup>40</sup>. Moreover, the prisons are unable to provide the necessary amount of water for drinking and sanitation. As a result, poor sanitation and lack of access to clean water contribute to the spread of infections and diseases.

Thus, *In Re-Inhuman Conditions in 1382 Prisons*<sup>41</sup>, the Supreme Court took Suo moto cognizance of the inhuman conditions prevalent in prisons across India and ordered the

formulation of a comprehensive plan to address overcrowding, improve sanitation, and provide basic facilities such as water, healthcare, and toilets. It also directed prison authorities to implement the recommendations of the Model Prison Manual.

### **C. Staff Shortage and Inadequate Training**

In many prisons, especially in India, the number of inmates far exceeds the capacity of the staff to manage them effectively. The ratio between the prison staff and the prisoners in the Indian prison is approximately 1:7<sup>42</sup>. It means only one prison officer is available for 7 prisoners in India. This can lead to inadequate supervision, lack of rehabilitation programs, and poor management of prison resources. A significant number of authorized staff positions remain unfilled for years, exacerbating the staffing crisis.

Recently, in 2022 a PIL was filed by activist-advocate Amit Sahni regarding the acute shortage of prison staff and particularly all posts of educational, correctional staff,

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<sup>40</sup> Shubham Kashyap, *Major Problem of Prison System in India*, TIMES OF INDIA (Sept. 29, 2024, 11:05 PM), <https://timesofindia.indiatimes.com/readersblog/shubham-kashyap/major-problems-of-prison-system-in-india-40079/>.

<sup>41</sup> *Re Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700.

<sup>42</sup> Dr. Naik, K. R., "The Problems of Prisoners: An Analysis," *International Journal of Research and Analytical Reviews*, vol. 6, no. 1, at 1-21 (2019), available at: <https://www.ijrar.org/papers/IJRAR1AXP012.pdf>. [hereinafter naik]

psychiatric social workers, and psychologists are lying vacant for a long. He further stated that Delhi Prisons are facing a 20.25 per cent staff shortage.

The plea contended that the shortage of prison staff is a reason for inadequate management of Delhi jails and many times the same leads to violence upon the errant inmates by the jail staff. As a result, the Delhi High Court issued notice to Delhi Govt and DG Prisons and directed the city government to file a status report regarding sanctioned strength and pending vacancies.<sup>43</sup>

## **D. Unequal treatment in prisons**

### **1) Socio-Economic Disparities**

Wealthy inmates or those with political influence often enjoy privileges such as better food, accommodation, access to communication, and more frequent family visits. Poor inmates, on the other hand, face harsh living conditions, poor healthcare, and limited access to basic facilities.

In addition to the above, inmates from marginalized backgrounds often lack access to proper legal representation. This disparity in legal assistance leads to a longer duration of incarceration for undertrials, especially for those who cannot afford bail or legal services.

### **2) Caste-Based Discrimination**

Recently, in 2024 in the case of *Sukanya Shantha v. Union of India*<sup>44</sup>, the Supreme Court issued notice against caste-based discrimination in prisons and highlights a serious issue that continues to plague India's prison system. A public interest litigation (PIL) has exposed discriminatory practices within the prison system in Madhya Pradesh, Delhi, and Tamil Nadu, where prisoners are segregated and assigned tasks based on caste. This includes dominant castes being given the responsibility for

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<sup>43</sup>THE STATESMAN, <https://www.thestatesman.com/india/delhi-hc-notice-pil-acute-shortage-staff-jails-1503062229.html> (last visited Sep. 30, 2024).

<sup>44</sup> *Sukanya Shantha v. Union of India*, AIR 2024 SC 771.



cooking, while prisoners from lower castes are forced to engage in menial jobs like sweeping and cleaning toilets.<sup>45</sup>

As a result, the Supreme Court ordered for deletion of caste column in prison registers to end the caste-based allotment of work to prisoners.

### 3) Gender-Based Discrimination

Kiran Gawli who spent 17 months in prison and was only one of the five transgender women among 2000 male prisoner. Kiran, although being a male at birth, identifies herself as one with a female identity. Despite her knowing she is a transwoman and the humiliation and violation that she could face amongst male prisoners, she was shifted in a male prison based on her biological features and her birth gender, which does not determine who she is also, violating her right to self-determination of her gender. Kiran posed a question *"I was in utter shock. How could they even imagine a woman surviving unscathed inside the male prison? Why did they not ask me if I preferred being among the women prisoners?"*<sup>46</sup>

### 4) Sexual Abuse or Custodial rape

Women prisoners in Indian prisons are particularly vulnerable to custodial sexual abuse as evident from following case studies:

The Mathura Rape Case (1972)<sup>47</sup> It revealed systemic abuse of power within India's police and prison systems, sparking public outrage and a national conversation on the treatment of women and sexual violence. It led to significant legal reforms, including the Criminal Law (Amendment) Act, 1983, which addressed custodial rape and increased penalties.

Furthermore, the 2015 Badaun Jail case, where a female inmate accused a prison official of sexual assault and custodial rape, exposed the vulnerability of women

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<sup>45</sup> THE HINDU, <https://www.thehindu.com/news/national/supreme-court-reserves-verdict-on-plea-highlighting-caste-based-discrimination-of-prisoners/article68388583.ece> (last visited Oct. 1, 2024).

<sup>46</sup> Harsh Mahaseth & Sparsh Jain, *The Indian Prisons and The Search for Equality: The Problems Faced by Transgender Inmates*, 58 EPW 2, 4-8 (2023), [https://www.epw.in/sites/default/files/engage\\_pdf/2023/01/06/2505-1672988492.pdf](https://www.epw.in/sites/default/files/engage_pdf/2023/01/06/2505-1672988492.pdf).

<sup>47</sup> *Tukaram and Anr. v. State of Maharashtra*, AIR 1979 SC 185

prisoners to abuse in Indian prisons. It highlighted the lack of oversight, inadequate reporting mechanisms, and the urgent need for systemic reforms to protect prisoners' dignity and safety.

Moreover, according to the "Crime in India 2021" report by NCRB, between 2001 and 2018, only 26 convictions occurred for custodial violence, despite 1,727 recorded deaths. From 2015 to 2019, 36% of custodial deaths were reported as suicides, while 6% were due to physical assault by police. Additionally, the 2018 NCRB report highlighted Madhya Pradesh as having the highest number of rape cases for three years, including 54 involving children under six. These statistics underscore the grave issue of custodial violence and sexual crimes in India, raising concerns about systemic flaws and inadequate protections.<sup>48</sup>

### 5) Custodial torture and deaths

Everyone has the right to life<sup>49</sup> and should not be arbitrarily deprived of it. They also have the right not to be subjected to torture or inhuman or degrading treatment.<sup>50</sup> These fundamental rights must be respected, even in imprisonment. Additionally, prisoners "shall be treated with humanity and with respect for the inherent dignity of the human person."<sup>51</sup>

Custodial deaths occur when an individual dies while in police custody. This can result from violence or torture by the police in lockup. Unfortunately, some cases are concealed, often portrayed as suicides. These incidents raise significant concerns, especially when corruption prevents them from coming to public attention. According to the national human rights commission of India during the financial year 2021-2022,

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<sup>48</sup> Nishka Kamath, *Custodial Rape*, IPLEADERS (Oct. 2, 2024, 4:25 PM), <https://blog.ipleaders.in/custodial-rape/>.

<sup>49</sup> INDIA CONST. art. 21.; International Covenant on Civil and Political Rights, art. 6, Dec. 16, 1966, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

<sup>50</sup> International Covenant on Civil and Political Rights, art. 7, Dec. 16, 1966, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

<sup>51</sup> International Covenant on Civil and Political Rights, art. 10, Dec. 16, 1966, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

2152 deaths had occurred in judicial custody and 155 deaths had occurred in police custody till 28 February 2022.<sup>52</sup> When we delve into the statistics, we find that approximately 60% of victims of police custody deaths come from these vulnerable groups.

In a recent incident, a 23-year-old janitor accused of sexually assaulting two four-year-old girls at a school in Badlapur, Maharashtra, was killed in what's being described as "retaliatory firing." This marks the fifth such case in the state over the past year.<sup>53</sup>

In July 2021, a distressing incident in Tuticorin district, Tamil Nadu, raised public concern about custodial deaths and detainees' treatment in police custody. A 58-year-old man and his 31-year-old son died while in custody, having been arrested for violating COVID-19 curfew hours.

Prisoners are often tortured soon after being placed in police custody, one study found that "99 percent of deaths in police custody can be ascribed to torture and occur within 48 hours of the victims being taken into custody."<sup>54</sup> Prisoners on death row are particularly likely to be tortured, including experiences like "being hung by wires, being forced to drink urine, being placed on a slab of ice, having a leg broken, forced anal penetration and more."<sup>55</sup>

In the case of *D.K Basu v. State of West Bengal*<sup>56</sup>, the apex court emphasized the severe harm that custodial torture inflicts on both the body and the mind. Justice V.R. Krishnan Iyer went so far as to describe custodial torture as a vice sanctioned by the State, a reprehensible stain on the principles of the rule of law in India. Importantly, this practice violates an individual's fundamental rights, including the right to life and dignity.

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<sup>52</sup> National Human Rights Commission (NHRC), *Annual Report 2021-2022* (2022) (New Delhi: NHRC).

<sup>53</sup> Thaver, M., 'Why Maharashtra Has a Notorious Record When It Comes to Custodial Deaths', *The Indian Express*, Sept. 24, 2024, available at: <https://indianexpress.com/article/cities/mumbai/maharashtra-custodial-deaths-9585576/> (last visited Sept. 29, 2024).

<sup>54</sup> Randolph, Eric, "Human Rights Report Says 14,000 Indian Prison Deaths in a Decade," *The National* (Abu Dhabi, UAE), Nov. 23, 2011.

<sup>55</sup> Death Penalty Research Project, Project 39A, available at: <https://www.project39a.com/death-penalty-research-project> (last visited: 30<sup>th</sup> september,2024)

<sup>56</sup> *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

Data from U.S. Department of Justice, indicates the problem of custodial deaths and torture is not prevalent only in our nation but in developed nations like USA as well. According to the Bureau of Justice Statistics (BJS)<sup>57</sup>, there were 614 deaths in custody reported by federal law enforcement agencies in the fiscal year 2020. From FY 2016 to FY 2021, federal agencies reported an average of 64 arrest-related deaths and 504 deaths in custody each year.

The death of George Floyd, a 46-year-old Black man, in May 2020 drew widespread outrage after a video circulated online showing Officer Derek Chauvin holding his knee on Mr. Floyd's neck on a Minneapolis street corner as he gasped for breath. In the wake of a distressing video, protests erupted across Minneapolis and the United States, fuelled by outrage over police brutality and systemic racism.<sup>58</sup>

#### 6) Poor Budget for Health and Care in Prison

In the financial year 2019-20, Indian prisons were allocated a budget of Rs. 6,818 crores, but the actual expenditure was Rs. 5,958 crores. Approximately 34% of this budget was earmarked for inmate needs, totalling Rs. 2,060 crores.

India has 1,350 prisons with a combined capacity of 4.03 lakh prisoners. However, the actual count at the end of 2019 was 4.78 lakh inmates. If we focus on this number, the per capita expenditure amounts to just Rs. 119 out of the annual budget of Rs. 43,096. Considering the additional 14 lakh individuals who spend short periods in custody, the per capita expenditure becomes even more inadequate.<sup>59</sup>

In Indian prisons, the per-inmate expenditure is shockingly low – just Rs. 119. To put it in perspective, that's roughly one rupee per day for clothing, education, and welfare activities for each inmate. Even more concerning, only 4% of the budget is allocated for medical needs, which translates to just Rs. 4 per inmate per day.

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<sup>57</sup> U.S. Dep't of Justice, Bureau of Justice Statistics, *Deaths in Custody and During Arrest, 2016-2021* at 5 (2021), available at <https://bjs.ojp.gov>. (last visited 30<sup>th</sup> September).

<sup>58</sup> The New York Times. (n.d.). George Floyd's Death and Its Aftermath. *The New York Times*. Available at: <https://www.nytimes.com/article/george-floyd.html> (last visited 30<sup>th</sup> sept 2024).

<sup>59</sup> D. Bharat, "The Highly Unsatisfactory Conditions of Prisons and Prisoners Often Get Reported in India," available at: <https://theleaflet.in/all-that-is-wrong-with-indian-budgets-for-prisons> (Last visited Sept. 30, 2024).

Regardless of whether an individual is incarcerated, detained, or free, every person has the right to a healthy life. The Supreme Court of India has emphasized this principle in the case of *Bandhua Mukti Morcha v. Union of India*,<sup>60</sup> affirming that the protection of health is encompassed within the scope of Article 21 of the Indian Constitution. This constitutional provision guarantees the right to life and personal liberty, and it extends to ensuring access to adequate healthcare and well-being.

In the case of *Parmanand Katara v. Union of India*,<sup>61</sup> the Supreme Court has emphasized that regardless of guilt or innocence, it's the duty of those responsible for public health to safeguard every person's well-being including prisoners.

The Prisons Act, 1894 (Sections 26 and 39), and the Model Prison Manual, 2016 further underscore this obligation, emphasizing the role of prison medical staff in maintaining hygienic conditions within jails.<sup>62</sup>

#### **7) Physical and mental abuse by jail staff**

Within correctional facilities, physical abuse by guards and jail staff against prisoners remains an ongoing issue. Tragically, there have been cases where prisoners were fatally beaten by authorities. Even more disturbingly, officials obtain false certificates from doctors, falsely claim that the deceased had taken their own life. Additionally, prison authorities in India employ abusive tactics such as physical assault, solitary confinement, blindfolding with glycerine-soaked clothes, prolonged bending, and tear gas exposure. Women prisoners are particularly vulnerable to custodial sexual abuse.<sup>63</sup>

Incarcerated individuals face elevated rates of psychological distress and mental health challenges, particularly among women in custody. Factors like gender discrimination, abuse, and violence exacerbate these issues. It's crucial that we address mental health within our prison system with compassion and understanding.

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<sup>60</sup> *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

<sup>61</sup> *Parmanand Katara v. Union of India*, AIR 1989 2039.

<sup>62</sup> Yuvakeerthana, K., Shanmuga Sundaram, R., & Aditi Shanmugam, "Healthcare and Human Rights in Prisons," *Indian Journal of Law and Legal Research*, vol. II, no. 2, at 1 (2023), available at: <https://www.ijllr.com/post/healthcare-and-human-rights-in-prisons>.

<sup>63</sup> Naik, at 12.

National Statistics on mental health found that prevalence of mental health problems is 14% among the female prisoners and 7% among the male prisoners have a psychotic illness compared with an epidemiological figure of 0.5% in the general population.

<sup>64</sup>As traditionally most of the prison inmates are males, and the prison inmates are males, and the prison environment is therefore shaped by the needs of males. <sup>65</sup>

#### 8) Contrabands and violence between inmates

Contraband refers to items that inmates are not allowed to have in their possession within correctional facilities. Some common contrabands found in possession of inmates or detainees are weapons, cell phones, drugs and alcohol, tobacco, and cash, etc.

- a) **Weapons:** These are the most obvious contraband items. In May 2023, rival gang members allegedly beat a gangster to death in Tihar prison. They used improvised weapons like iron rods and knives. <sup>66</sup>
- b) **Cell Phones:** Unauthorized cell phones are a significant issue. Inmates sometimes manage to smuggle them in, and they can be used for illegal activities or communication with the outside world. Earlier this month in Rajpura, Patiala. The special cell suspected a gang which was operating from behind the bars in Kapurthala.<sup>67</sup>
- c) **Drugs and Alcohol:** Illicit drugs, prescription medications not authorized by the facility, and alcohol are strictly prohibited.
- d) **Tobacco:** Even though smoking is banned in most prison facilities, tobacco products can still find their way in.

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<sup>64</sup> McCormick, A., *Morbidity Statistics from General Practice: Fourth National Study 1991-1992* (Office of Population Censuses and Surveys 1995).

<sup>65</sup> UNODC, *Women's Health in Prison: Correcting Gender Inequity in Prison Health* (World Health Organization 2009), available at: [https://www.unodc.org/documents/hiv-aids/WHO\\_EURO\\_UNODC\\_2009\\_Womens\\_health\\_in\\_prison\\_correcting\\_gender\\_inequity-EN.pdf](https://www.unodc.org/documents/hiv-aids/WHO_EURO_UNODC_2009_Womens_health_in_prison_correcting_gender_inequity-EN.pdf) (Last visited Sept. 30, 2024).

<sup>66</sup> Express News Service, "Delhi: Prisoner Stabbed to Death in Tihar Jail 'Over Serving Food'," *The Indian Express*, available at: <https://indianexpress.com/article/cities/delhi/prisoner-stabbed-to-death-in-delhi-tihar-jail-over-issue-of-food-9306702/> (last visited Sept. 30, 2024).

<sup>67</sup> Tribune India, "3 of Gang Operating from Prison Held with Weapons in Patiala," available at: <https://www.tribuneindia.com/news/punjab/3-of-gang-operating-from-prison-held-with-weapons-in-patiala-1452288> (Last visited Sept. 30, 2024).

- e) **Cash:** Money is considered contraband because it can lead to bribery, extortion, or other illicit transactions within the prison.

Jails and prisons, often overcrowded and understaffed, unfortunately become dangerous and dehumanizing environments where violence is all too common.

An argument over who would be served tea first led to a fistfight in Ludhiana Central Jail on Friday evening, earlier this month. A jail inmate suffered an injury on the head.<sup>68</sup>

The harsh surroundings contribute significantly to this behaviour, incarceration frequently leads to physical violence, abuse, and subpar living conditions, ultimately

### 9) Insufficient Legal Aid

In *Hussainara Khatoon v. State of Bihar*,<sup>69</sup> The Supreme Court of India has recognized the right to legal aid as implicit in Article 21 of the Constitution. Providing free legal services to the poor and needy is deemed essential for a fair and just legal system. Access to legal representation is crucial, especially for prisoners seeking justice. Article 39A further reinforces this right, ensuring that everyone, regardless of economic status, can access legal assistance.

In the landmark case of *Khatri v. State of Bihar and Ors*,<sup>70</sup> The court recognised the right to free legal aid for accused individuals to be crucial. Not only during trials but also during initial appearances before magistrates or periodic remands, the state has a constitutional obligation to provide such assistance. Importantly, this right cannot be denied due to financial constraints, administrative limitations, or the accused's failure to request it.

Justice Krishna Iyer further extended Article 21 of the Indian Constitution to include prisoners' rights. He emphasized that fundamental rights remain intact even within prison walls.

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<sup>68</sup> Times of India, "Jail Inmates Fight Over Tea Queue," available at: <https://timesofindia.indiatimes.com/city/ludhiana/jail-inmates-fight-over-tea-queue/articleshow/112959006.cms> (Last visited 1 oct, 2024).

<sup>69</sup> *Hussainara Khatoon v. State of Bihar*, 1979 AIR 1369

<sup>70</sup> *Khatri v. State of Bihar and ors*, (1981) 1 SCC 627

Despite legal provisions, the harsh reality persists, numerous indigent inmates lack proper legal representation.

According to a survey by the Commonwealth Human Rights Initiative, 23% of prisoners were unaware of visits from legal services authorities, and 49% rarely saw representatives from the district legal services authority. Magistrates visited the prison either monthly or quarterly, focusing on issues like juveniles and mentally ill prisoners. However, despite these efforts, many prisoners felt their requests and complaints went unanswered.<sup>71</sup>

### **VIII. SHORTCOMINGS IN IMPLEMENTATION OF PRISONERS' RIGHTS**

When someone is arrested, they must appear before a magistrate within 24 hours – a crucial step to prevent unlawful detention. If the police seek extended detention, they need a special order from the magistrate, typically not exceeding 14 days. In cases with a potential penalty of up to 10 years, the sentence is suspended. If bail requirements are met, release can occur after 60 days or at the end of the 90-day term.

Once a charge sheet is filed, there's no upper limit to how long a person can be held in jail. Sadly, detainees often face extended custody due to delays in recording arrests. Moreover, financial constraints hit low-income individuals harder, making it challenging for them to pay court-set bail amounts.<sup>72</sup>

In India, the terms "prison" and "jail" are often used interchangeably, blurring the distinction between undertrials and convicts. Notably, a significant portion of the prison population comprises undertrials. Unfortunately, without substantial improvements in infrastructure and basic necessities, achieving much-needed prison reforms and decentralization remains an elusive goal.

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<sup>71</sup> Naik, at 12.

<sup>72</sup> Meena, N., "Prison Reforms in India: Socio-Legal Issues," *International Journal of Criminal, Common and Statutory Law*, vol. 2, no. 1, pp. 10–41 (2022), available at: [www.criminallawjournal.org](http://www.criminallawjournal.org) (last visited Oct. 1, 2024).



## IX. INTERNATIONAL LEGAL FRAMEWORKS

### A. Universal declaration of human rights [UDHR], 1948

The UDHR serves as a common standard of achievements for all peoples and nations, setting out fundamental human rights to be universally protected.

The Universal Declaration of Human Rights of 1948 did not specifically refer to prisoners, although the rights it laid out including the prohibition of torture under article 5, the right to a fair trial under article 6 and the presumption of innocence implicitly under article 11.<sup>73</sup>

Seven years after inception of UDHR in 1948, the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders took a significant step by adopting the Standard Minimum Rules for the Treatment of Prisoners in 1955. These rules laid the groundwork for humane treatment within correctional systems.

### B. International covenant on civil and political rights [ICCPR], 1966

Adopted by the United Nations General Assembly in 1966, and entering into force in 1976, it is part of the International Bill of Human Rights alongside the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

One of the key provisions envisages in *Article 9 of the International Covenant on Civil and Political Rights (ICCPR)* which deals with the right to liberty and security of the person. It aims to protect individuals from arbitrary arrest and detention, ensuring that any deprivation of liberty follows due process and is not unjust or without legal basis.

- Article 9(1): Right to Liberty and Security of Person
- Article 9(2): Right to Know Reasons for Arrest
- Article 9(3): Right to be Brought Before a Judge
- Article 9(4): Right to Challenge Lawfulness of Detention

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<sup>73</sup> United Nations General Assembly, *Universal Declaration of Human Rights*, arts. 5, 6, 11 (1948), available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited Oct. 2, 2024).

- Article 9(5): Right to Compensation in case of unlawful arrest or detention.<sup>74</sup>

As part of the ICCPR, which is a legally binding treaty, Article 9 imposes obligations on states that have ratified the covenant. States must legislate or otherwise ensure that the rights to liberty and security of person are protected in domestic law.

Over time, the principles embedded in Article 9 have gained recognition as customary international law, meaning even states that have not ratified the ICCPR are often expected to adhere to its principles due to their wide acceptance as fundamental human rights norms.

### **C. UN standard minimum rules of administration of juvenile justice, 1985**

The “Beijing rules,” officially known as the Standard Minimum Rules for the Administration of Juvenile Justice, emphasize promoting the well-being of juveniles and their families. These rules advocate for preventive social policies, involving families, volunteers, and community institutions to prevent juvenile delinquency. They stress that juvenile justice is integral to national development and social justice. Key terms are defined, and impartial application is encouraged regardless of distinctions. The rules cover status offences, welfare proceedings, and young adult offenders. Importantly, they consider emotional and intellectual maturity, focusing on juveniles’ well-being and proportional responses to offences. Discretion, accountability, and professional training are also highlighted.<sup>75</sup>

### **D. UN rules for protection of Juveniles deprived of liberty, 1990**

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), also known as the Havana Rules.<sup>76</sup> are a set of international standards designed to protect the rights and well-being of juveniles in detention. These rules emphasize

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<sup>74</sup> United Nations, *International Covenant on Civil and Political Rights*, arts. 9(1), (2), (3), (4), (5) (1966), available at: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>.

<sup>75</sup> United Nations, *Standard Minimum Rules for the Administration of Juvenile Justice* (n.d.), available at: <https://www.ohchr.org> (Last visited Oct. 1, 2024).

<sup>76</sup> United Nations, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)* (1990), available at: <https://www.ohchr.org> (Last visited Oct. 2, 2024).

that juveniles, due to their vulnerability, require special care and protection, and they seek to ensure that deprivation of liberty is a last resort and for the shortest appropriate period.

The rules recognize that juveniles are particularly vulnerable when detained, so they emphasize rehabilitation over punishment. Key principles include the prohibition of torture or degrading treatment, the right to education, vocational training, and the promotion of reintegration into society. The rules also stress the importance of keeping juveniles separate from adult detainees and ensuring that detention is used as a measure of last resort and for the shortest appropriate period.<sup>77</sup>

### **E. United Nations Standard Minimum Rules of Treatment of Prisoners**

Although, there existed rules for the maintenance of standards in respect of treatment of prisoners all over the world, the UN General Assembly, in 2015, adopted the Revised rules called as "United Nations Standard Minimum Rules for the Treatment of Prisoners" to honour the late President of South Africa, Nelson Mandela, who had spent 27 years in prison in the course of his struggle for global human rights. Also known as Nelson Mandela Rules.

"It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones." - Nelson Mandela

Some of the rules mentioned under "The Nelson Mandela Rules 2015" are as follows:

- a. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
- b. No prisoner shall be subjected to, and all prisoners shall be protected from torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification.
- c. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or

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<sup>77</sup> Id.

any other status. The religious beliefs and moral precepts of prisoners shall be respected

- d. Prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature.
- e. Prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature.

It highlights some of the important aspects of inmates and provides direction for their welfare: Covering various modalities in the prison administration, these rules have been carved out to ensure that the inmates are safe, secure and not subjected to any kind of decimation, while development of education and imparting skills is other part of this declaration.<sup>78</sup>

## **F. United Nation Rules on Treatment of Women Prisoners**

The Standard Minimum Rules for the Treatment of Prisoners apply to all inmates without discrimination, but attention to women prisoners has been overdue. Recognizing the global increase in women prisoners, the United Nations General Assembly addressed this issue by framing the “United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders,” commonly known as the Bangkok Rules. These rules cover various aspects of treatment, including admission procedures, personal hygiene, medical services, preventive healthcare, safety, and security.<sup>79</sup>

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<sup>78</sup> United Nations, *The United Nations Standard Minimum Rules for the Treatment of Prisoners* (Nelson Mandela Rules) (2015), available at: [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf).

<sup>79</sup> United Nations, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (Bangkok Rules) (2010), available at: [https://www.unodc.org/documents/justice-and-prison-reform/Bangkok\\_Rules\\_ENG\\_22032015.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf).

## X. INDIA'S COMPLIANCE TO INTERNATIONAL STANDARDS

India, as a responsible member of the international community, has ratified several treaties and conventions that uphold human rights, including those of prisoners. Notably, India is a signatory to the United Nations' Standard Minimum Rules for the Treatment of Prisoners (SMR)<sup>80</sup> and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>81</sup>.

The SMR provides comprehensive guidelines for the treatment of prisoners, covering essential aspects such as accommodation, food, clothing, medical care, and communication. Meanwhile, the CAT aims to prevent torture and ill-treatment, obliging states to eradicate such practices and hold perpetrators accountable.

India has ratified several international human rights treaties and covenants, including the International Covenant on Civil and Political Rights (ICCPR), affirming its commitment to global human rights standards. However, its compliance with specific frameworks like the Nelson Mandela Rules (United Nations Standard Minimum Rules for the Treatment of Prisoners) and the Bangkok Rules (United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders) remains inconsistent.

Although India has not explicitly adopted these rules into its domestic legislation, many principles resonate within its constitutional and legal provisions, such as the prohibition of torture and the right to equality. Nevertheless, systemic issues such as overcrowding, prolonged pretrial detentions, and lack of specialized care for vulnerable groups demonstrate gaps in implementation.

India's prisons lack gender-sensitive facilities and services outlined in the Bangkok Rules, such as adequate medical care, rehabilitation programs tailored for women, and provisions for dependent children. Similarly, the country's prison system does

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<sup>80</sup> United Nations, *Standard Minimum Rules for the Treatment of Prisoners* (1955), available at: <https://www.unodc.org> (revised in 2015 as the Nelson Mandela Rules).

<sup>81</sup> United Nations, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

not consistently align with the Nelson Mandela Rules, particularly regarding humane treatment, education, and rehabilitation programs for all inmates.

To strengthen compliance, India should explicitly incorporate these international standards into its legal and administrative frameworks, ensuring uniformity and accountability across its prison systems.

## **XI. POLICY RECOMMENDATIONS AND INTERNATIONAL COMPARISON**

### **A. Germany**

The German penal system is based on a few core principles: reintegration and rehabilitation of offenders, the principle of normalisation wherein life in prison will resemble general living conditions outside the prison as much as possible, and the principle of damage reduction prison authorities will attempt to mitigate the damaging consequences of imprisonment.

Germany has significantly lower incarceration rates compared to many other countries. It relies less on imprisonment and more on non-custodial penalties, especially for nonviolent offenses.<sup>82</sup> whereas in India India's incarceration rates vary across states, but overall, they remain high.<sup>83</sup>

The German system doesn't have a separate category of "special jails" for violent offenders. Instead, their focus is on rehabilitation and reintegration. Security measures prioritize safety without compromising human rights.

The German prison system is regulated by various legal instruments, including:

- Legal Ordinances: These govern prison operations at a general level.
- Administrative Regulations: These provide specific guidelines for prison staff.
- Institution Rules: Each prison has its own rules and regulations.

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<sup>82</sup> Prison Policy Initiative, *International Incarceration Comparisons*, available at: [https://www.prisonpolicy.org/research/international\\_incarceration\\_comparisons/](https://www.prisonpolicy.org/research/international_incarceration_comparisons/) (last visited Oct. 11, 2024).

<sup>83</sup> Course Sidekick, *Sociology*, available at: <https://www.coursesidekick.com/sociology/65448> (last visited Oct. 11, 2024).

- Prison Plans: These are personalized plans for each prisoner, addressing their needs and rehabilitation goals.<sup>84</sup>

German prisons focus on creating an environment that prepares inmates for successful reintegration into society. This includes providing educational opportunities, vocational training, and mental health support.<sup>85</sup> German prisons prioritize maintaining a human connection with inmates. Staff engage in meaningful interactions, fostering trust and empathy.

This approach contrasts with some other systems where dehumanization and isolation prevail.<sup>86</sup> German incarceration history is shaped by the shadow of the 1940s, including the horrors of World War II concentration camps.

Learning from this dark past, modern German prisons emphasize dignity, respect, and rehabilitation.<sup>87</sup>

## B. Norway

The Norwegian incarceration system's approach lays emphasis on rehabilitation and reintegration. By using smaller, community-based correctional facilities, Norway aims to humanize the prison experience and maintain connections between incarcerated individuals and their communities. This model supports rehabilitation by keeping prisoners geographically close to their homes, enabling them to maintain meaningful relationships with family and friends. Regular visits, including up to three weekly visits and even conjugal visits in some cases, help sustain these relationships. The strong focus on social bonds is intended to provide prisoners with a solid support system upon release, increasing the chances of successful reintegration into society

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<sup>84</sup> European Union Agency for Fundamental Rights, *Germany: Criminal Detention 2022 Country Study*, available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/germany-criminal-detention-2022-country-study\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/germany-criminal-detention-2022-country-study_en.pdf) (last visited Oct. 11, 2024).

<sup>85</sup> National Criminal Justice Reference Service, *Sentencing and Prison Practices in Germany and the Netherlands*, available at: <https://www.ojp.gov/ncjrs/virtual-library/abstracts/sentencing-and-prison-practices-germany-and-netherlands> (last visited Oct. 11, 2024).

<sup>86</sup> Vera Institute of Justice, *What German Prisons Do Differently*, available at: <https://www.vera.org/news/dispatches-from-germany/what-german-prisons-do-differently> (last visited Oct. 11, 2024).

<sup>87</sup> The Marshall Project, *How Germany Does Prison*, available at: <https://www.themarshallproject.org/2015/06/16/how-germany-does-prison> (last visited Oct. 11, 2024).

and reducing recidivism. The approach reflects a belief that maintaining personal relationships can be a crucial element in the rehabilitation process, helping to prepare inmates for life after incarceration.<sup>88</sup>

In Norway since the late 1980s, efforts have been made to improve relations between officers and prisoners. From merely guarding and keeping, prison officer work now also focuses on social work and care, together with an increase in personal influence and responsibility. One important initiative has been the arrangement for prisoners to have personal contact officers. A personal contact officer is supposed to motivate and assist the prisoner in the process of rehabilitation, and help the prisoner with problems and requests during imprisonment.<sup>89</sup>

Norway's prison system prioritizes rehabilitation over punishment, focusing on maintaining the dignity and humanity of inmates. While amenities like TVs and yoga attract attention, the true strength lies in the underlying philosophy that aims to prepare prisoners for reintegration into society. This approach contributes to Norway's low recidivism rate (around 20%) and one of the world's smallest prison populations, with 54 inmates per 100,000 people.<sup>90</sup> The country invests significantly in each prisoner, leading to long-term benefits like reduced crime rates, proving that a humane, rehabilitative model can be more effective than punitive systems.

### C. Netherlands

The Netherlands has the fourth lowest incarceration rate in the WHO European Region. While many countries wrestle with overcrowded prisons, the Netherlands is facing an unusual problem: its prisons are too empty.

With a bare minimum number of inmates to admit, some of these facilities have been leased to Norway and Belgium while others have been creatively repurposed into hotels, temporary asylum centres, and even refugee housing.

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<sup>88</sup> FIRST STEP ALLIANCE, <https://www.firststepalliance.org/post/norway-prison-system-lessons> (last visited Oct. 10, 2024).

<sup>89</sup>Johnsen, B., Granheim, P.K. and Helgesen, *Exceptional prison conditions and the quality of prison life: Prison size and prison culture in Norwegian closed prisons*, 8(6) EJC 515, 517 (2011).

<sup>90</sup> WORLD PRISON BRIEF, <https://www.prisonstudies.org/country/norway> (last visited, Oct. 10, 2024).



- **Key factors in the Netherlands' emptying prisons are:**

- a. Firstly, implementation of shorter sentences for non-violent crimes;
- b. Secondly, all prisons in the country allow access to mental health counsellors and have established procedures or protocols for transferring those with severe mental health issues to specialized institutions. There are more nurses per detainee than the recommended minimum.<sup>91</sup>

Hommel Folkerts, a forensic psychologist and outreach worker, explains that the Dutch Jails work on two aims: number one, preventing another crime, and then on psychiatric suffering and the social problems that come with it.

- c. Thirdly, the Netherlands employs electronic tagging as a modern tool for monitoring offenders. This system uses a device strapped to the ankle that tracks the individual's movements in real-time. Offenders are often released from prison with these tags, allowing them to return to their daily lives while remaining under surveillance.
- d. Additionally, the use of electronic tags is part of the Netherlands' broader strategy of alternative sentencing, which aims to reduce prison populations and focus on rehabilitation rather than incarceration.<sup>92</sup>

## XII. ANALYSIS AND RECOMMENDATIONS

Indian prisons are plagued by overcrowding, a high number of undertrial prisoners, poor living conditions, inadequate health and mental health facilities, and insufficient access to competent legal aid. The responsibility for prison reforms primarily lies with state governments, as law and order are a state subject under the Indian Constitution. Despite various committees being appointed over the years to suggest reforms, significant issues persist. Key committees like the all-India Jail Manual Committee

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<sup>91</sup> WORLD HEALTH ORGANISATION, <https://www.who.int/europe/news/item/15-04-2024-the-netherlands-paves-the-way-for-improved-prison-health-policies> (last visited Oct. 12, 2024).

<sup>92</sup> Sayli Dhodapkar, *The Netherlands has Prisons that are too 'empty': Here's why?*, FIRSTPOST (Oct. 13, 2024, 3:00 PM), <https://www.firstpost.com/explainers/the-netherlands-has-prisons-that-are-too-empty-heres-why-13802844.html>.

(1957-59), the Mulla Committee (1980-83), and the Krishna Iyer Committee (1987) have made substantial recommendations.<sup>93</sup>

India's prison system includes over 1,387 facilities with a total capacity of approximately 350,000 inmates. However, these facilities currently house 418,000 detainees, exceeding their capacity.<sup>94</sup> Additionally, about 64% of the prison population is undocumented. From both human rights and internal security perspectives, upgrading prison infrastructure is a pressing concern. This can be achieved by increasing the budget allocation for prisons. Unfortunately, the funds provided under the newly established scheme for modernizing police forces have not been utilized efficiently or promptly.

Secondly, uniform jail management presents a challenge because prisons fall under state jurisdiction. The Union government can only propose models for the states, facilitate interstate coordination, and encourage the adoption of best practices.

Third issue is the harsh treatment of detainees, which has become an international concern. India's extradition requests have been denied on multiple occasions due to concerns that extradited individuals might face torture or inhumane treatment in Indian prisons. For instance, the Dutch government refused to extradite Neils Holck (alias Kim Davey) due to fears of torture related to the Purulia Arms Drop Case. Other notable cases include the UK's refusal to extradite Sanjay Chawla and the European Court of Human Rights blocking the return of Karamjit Singh. Ratifying the Convention Against Torture<sup>95</sup> would help India address both domestic and international criticism for delays in this process.

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<sup>93</sup> India Justice Report, Recommendations for Prison Reforms in India, available at: [https://indiajusticereport.org/files/IJR\\_Recommendation\\_for\\_Prison\\_Reforms\\_in\\_India.pdf](https://indiajusticereport.org/files/IJR_Recommendation_for_Prison_Reforms_in_India.pdf) (last visited Oct. 11, 2024).

<sup>94</sup> Commonwealth Human Rights Initiative, Analysis of Prison Statistics India 2020, available at: <https://www.humanrightsinitiative.org/download/1644383715CHRI%20Analysis%20of%20PSI%202020.pdf> (last visited Oct. 11, 2024).

<sup>95</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading> (last visited Oct. 11, 2024).

Lastly, several judicial decisions have outlined prisoners' human rights, which must be protected by addressing systemic flaws and implementing recommendations made by various government-appointed committees. A good initiative can be the recent ruling of Supreme Court in *Sukanya Shantha v. Union of India*<sup>96</sup> which dismantled caste-based discrimination within the prison system and upheld constitutional values of equality and dignity.

One glaring example of human rights violations in prisons involves children living with their incarcerated parents because they have no alternative caregivers. These innocent children, some as young as four or six, grow up on prison grounds, becoming familiar with the legal system and often adopting abusive behaviour from an early age. Their lives are confined to the prison, with their earliest memories formed in this environment. Even when taken outside for play, they are transported in ambulances or police vans. This situation calls for urgent change, including increased financial resources and the implementation of child-sensitive policies across prison regulations.<sup>97</sup>

### XIII. CONCLUSION

The state of prisoners' rights in India is riddled with challenges that stem from both structural inefficiencies and gaps in the implementation of legal safeguards. Although India has a robust legal framework, including constitutional protections and various legislative provisions that safeguard the rights of prisoners, the ground realities indicate a significant disconnect between law and practice. The challenges discussed in the paper reflect the shortcomings of the current system.

One of the primary research questions centered around the legal framework for the protection of prisoners' rights in India. For this, India should ratify international conventions like the Optional Protocol to the Convention Against Torture (OPCAT) and implement existing standards, such as the Nelson Mandela Rules and the Convention against Torture. Incorporating these into domestic laws would strengthen

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<sup>96</sup> Supra note 41, at 13

<sup>97</sup> Tushar Tiwari, Prison Reforms in India: A Critical Analysis, 3 Int'l J. of Acad. L. Rsch. (2023), available at: <https://ijalr.in/volume-3-issue-3-2023/prison-reforms-in-india-a-critical-analysis-tushar-tiwari/> (last visited Oct. 11, 2024).

the legal framework for prisoner protection. Updating the Prisons Act, 1894, and the Model Prison Manual to reflect international best practices, including the rights of vulnerable groups (women, juveniles, elderly, and people with disabilities), is essential for harmonizing domestic laws with global standards.

Another question examined that abuse experienced during incarceration can significantly impact post-release behaviour, often leading to long-term psychological and behavioural issues. Former inmates may suffer from PTSD, depression, and anxiety, affecting their ability to reintegrate into society. Trauma can also manifest as anger, aggression, or social withdrawal, making it difficult to establish trust and relationships. In some cases, individuals may turn to substance abuse to cope with distress, increasing the risk of re-offending. These effects can create a cycle of criminal behaviour and hinder successful rehabilitation, complicating life after release. Thus, in this case India should adopt Norwegian approach so as to maintain the mental well-being of the prisoner in order to achieve the objective of incarceration, that is, to make him a better a person. In addition to this, the prison staff and officials should incorporate more non-violent methods as discussed in the Norwegian policies.

The last question analysed the experiences of Germany, Norway, and the Netherlands which demonstrated that redemption and rehabilitation can significantly reduce recidivism rates. By focusing on the holistic development of inmates, fostering social connections, and creating environments conducive to personal growth, these countries show that it is possible to transform lives and enhance public safety. India, in contrast, continues to emphasize punitive measures, contributing to high levels of reoffending and ineffective reintegration. Thus, adopting similar principles and practices could lead to more effective and humane criminal justice systems, ultimately benefiting both individuals and society as a whole.

Way forward, the study emphasizes the necessity of reforms to address the rights and treatment of marginalized groups, including transgender individuals, in India's prisons. Incorporating the principles of the Yogyakarta Principles<sup>98</sup> and global

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<sup>98</sup> The Yogyakarta Principles, *Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (2007), available at <https://www.icj.org/wp-content/uploads/2012/08/Yogyakarta-Principles-publication-2007-eng.pdf>.

standards can ensure dignity, safety, and equitable access to healthcare and rehabilitation for transgender inmates. Additionally, adopting alternative retribution measures such as restorative justice, community service, and education programs can reduce incarceration rates while focusing on rehabilitation.

Future research could explore the unique challenges faced by transgender individuals in prisons, their post-release reintegration, and the effectiveness of restorative justice in addressing both victims' needs and offenders' rehabilitation. Examining global best practices for inclusive and rehabilitative approaches could provide a framework for progressive reform in India.

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