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A STUDY ON ECONOMIC COSTS OF OVER- INCARCERATION IN INDIA: A MULTI-DIMENSIONAL APPROACH

Tejasviya.R¹, Dr. M.D Chinnu²

I. ABSTRACT

This study examines over-incarceration not merely as a criminal justice concern but as a significant economic issue affecting the nation at large. It analyses the direct and hidden economic costs imposed on the State's exchequer, including infrastructure, administrative, medical, and opportunity costs. The research adopts a mixed methodology combining doctrinal analysis with empirical (non-doctrinal) research based on stratified random sampling of 135 respondents. Statistical tools such as percentage and average methods were employed for analysis. The empirical findings reveal a broad consensus that over-incarceration burdens national finances. However, the hypothesis that recidivism constitutes the primary hidden economic cost was rejected, with respondents identifying loss of family income and inter-generational economic impact as the most significant hidden cost. The study concludes that continued reliance on incarceration is economically unsustainable and calls for greater emphasis on cost-effective and reform-oriented alternatives.

II. KEYWORDS

Over-incarceration, Hidden economic costs, Fiscal burden, Penal Expenditure, Opportunity Cost, Criminal Justice.

III. INTRODUCTION

Over-incarceration has become a distinctive feature of the Indian criminal justice system, with Indian prisons housing inmates exceeding their capacity substantially. With crime rates on the rise and unresolved cases piling up, over-incarceration has become a burning issue of the century, not just in India but across the globe. Under-

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trial prisoners constitute a significant proportion of the prisoner population, and they remain in custody for long periods due to delays in investigation and trial. Such a detention drains the finances of the State, not only due to the cost of incarceration, but also due to the loss of a productive workforce.

In addition to the direct fiscal burden, over-incarceration also generates significant indirect economic costs. A vast majority of the prison population belongs to the economically weaker sections of society and forms part of the nation's productive workforce. Their prolonged absence from the labour market not only diminishes national income and overall productivity but also destabilises individual households through the loss of the sole breadwinner's earnings. This, in turn, fosters cyclical poverty, increased dependence on public welfare schemes, and inter-generational vulnerability to crime. Furthermore, repeated offending and re-incarceration compound these hidden economic losses.

Traditionally, discussions on incarceration in India have centred around matters of prison reform, overcrowding, violation of human rights and prisoner wellbeing. However, deliberations on the economic landscape of over-incarceration have remained relatively underexplored, thereby necessitating a focused examination of its economic costs.

A. STATEMENT OF PROBLEM

The fundamental right guaranteed under Article 21 of the Constitution of India to every person is the right to life and personal liberty, and in its judicial interpretation, the right to speedy justice. However, the Indian subcontinent, as a result of delays in trial, continues to bear the weight of over-incarceration. This scenario has caused concern not only because it negatively affects the Indian criminal justice system, but also because it substantially burdens the country's treasury through hefty prison expenditure and hidden economic costs. This problem lies at the heart of the criminal justice system and the economy and hence demands an alternative form of punishment that is economically sustainable and effective in rehabilitation and deterrence. Bringing about such a solution will have a multiplier effect on the nation's economy and the welfare of its citizens.

B. Review Of Literature

John Schmitt, Kris Warner, and Sarika Gupta (2010)³ in their study revealed that the United States of America has the highest incarceration rate in the world, at 753 per 100,000 people in 2008. This is nearly 240 percentage higher than that of 1980. The study suggested a 50 percent reduction in incarceration for non-violent offenders, saving approximately \$16.9 billion annually. Such an initiative benefits the state without compromising criminal justice or the safety of the general public. More importantly, the study indicated that policy choices push for over-incarceration rather than crime rates.

Michael McLaughlin, Carrie Pettus-Davis, Derek Brown, Chris Veeh and Tanya Renn (2016)⁴ in their paper brought to light the undervaluation of the economic burden of incarceration (\$80 billion annual expenditure in the United States) due to its failure to account for hidden economic costs. It underscored that for every dollar spent on incarceration, an additional ten dollars of hidden costs are incurred, draining the nation's wealth.

Razdha Parveen (2017),⁵ in her work, highlighted that while incarceration is to reform, rehabilitate and reintegrate offenders into society, it does not affect them alone. Incarceration casts a shadow over the offenders' families and their community, subjecting them to societal stigma, economic hardship, and psychological distress. This study analysed and understood these crucial dimensions and the consequences of incarceration on not just the prisoners but their families and their surrounding community.

³John Schmitt, Kris Warner, and Sarika Gupta, *The High Budgetary Costs of Incarceration*, Vera Inst. of Justice (2010), <https://files.givewell.org/files/criminaljustice/The%20high%20budgetary%20costs%20of%20incarceration.pdf>

⁴Michael McLaughlin, Carrie Pettus-Davis, Derek Brown, Chris Veeh and Tanya Renn, *The Economic Burden of Incarceration in the United States*, Inst. on Assets & Soc. Pol'y (2016), https://static.prisonpolicy.org/scans/iajre/the_economic_burden_of_incarceration_in_the_us.pdf

⁵Razdha Parveen, *Impact of Imprisonment: Dimensions and Consequences* (2017), <https://d1wqtxts1xzle7.cloudfront.net/79324035/L0607025964-libre.pdf>.

Maresha N, Parashurma KG (2023),⁶ in their study noted that imprisonment significantly impacts the families of the offenders, with their spouses and children in particular being the most vulnerable. Additionally, the study revealed that children of incarcerated parents often are at a high risk of delinquency and, due to their low economic standing, are of poor physical and mental health, and face behavioural and cognitive issues. Moreover, they turn antisocial due to social marginalisation. The study suggests that there is a need for stronger reform-oriented policies and social schemes to mitigate the multidimensional consequences of incarceration.

In addition to the above international and thematic studies, significant Indian institutional reports have critically examined prison conditions and structural deficiencies contributing to over-incarceration. The Justice Amitava Roy Committee Report on Prison Reforms (2018), constituted pursuant to the Supreme Court's directions in *In Re: Inhuman Conditions in 1382 Prisons*, highlighted chronic overcrowding, excessive undertrial detention, and inadequate legal aid as systemic concerns warranting urgent reform.

Further, the Department-related Parliamentary Standing Committee on Home Affairs, 2023 Report on Prison Conditions, Infrastructure and Reforms underscored the persistent issue of overcrowding, infrastructural deficits, and disproportionate undertrial populations, emphasising the fiscal and administrative strain placed on State resources.

Earlier, the All-India Committee on Jail Reforms (Mulla Committee) (1980–83) had already recommended the reduction of undertrial detention, improved classification of prisoners, and greater use of non-custodial measures. Despite these longstanding recommendations, implementation gaps continue to aggravate over-incarceration and its associated economic burden.

⁶ Maresha N, Parashurma KG, *Imprisonment Beyond Prison Walls: A Review on Economic Condition of Prisoners' Families* (2022), https://d1wqtxts1xzle7.cloudfront.net/106581443/IMPRISONMENT_BEYOND_PRISON_WALLS_A_REVIEW_ON_ECONOMIC_CONDITION_OF-libre.pdf

These reports collectively reinforce the structural and policy dimensions of over-incarceration in India, thereby strengthening the domestic relevance of the present study.

C. Research Gap of the Study

While existing scholarly studies have examined separate aspects of over-incarceration, such as primary economic costs or hidden social and psychological consequences, there has been a lack of extensive research analysing over-incarceration from a comprehensive economic perspective. Moreover, India has limited scholarly matter on the subject despite several studies being conducted in developed nations like the United States of America. This study in particular seeks to understand the impact of rising direct and hidden economic costs incurred due to over-incarceration, be it the loss of a productive workforce or the cost of re-offending, etc. While most of the literature focuses on the Criminal justice perspective or the Human rights perspective of over-incarceration, this study seeks to bridge the gap by adopting a multi-dimensional approach to evaluate over-incarceration.

D. Objectives Of the Study

1. To understand the concept of over-incarceration and its prevalence in India.
2. To evaluate the burden of over-incarceration on the nation's finances.
3. To examine the various expenditures/costs that burden the State's Exchequer.
4. To find out the various hidden economic costs of over-incarceration in India.
5. To analyse the opportunity cost incurred by the nation due to over-incarceration.
6. To suggest policy alternatives and measures to reduce the fiscal burden and the economic loss caused by over-incarceration.

E. Methodology

This research employs both doctrinal and non-doctrinal methods of research. The data is collected from different sources, including newspapers, journals, magazines, All India reports, and e-resources. Further, this study uses some statistical tools, such as

the percentage method and the average method, to analyse the data. The population was sampled based on stratified random sampling. The sample size of the study is 135 respondents. The duration of the research study is three months.

F. Significance Of the Study

From a microeconomic perspective, the study is significant as it gauges the awareness level of the general public on the consequences of over-incarceration on individuals and families. The study brings to the limelight the deprivations faced by families due to over-incarceration, from lack of daily bread to being forced to discontinue education and being marginalised from society. The hidden economic costs are astronomical. This study also seeks to sensitise society and policymakers on the simple yet profound fact that incarceration affects not only the prisoner but also innocent dependants. This brings about the change needed to foster a more reform-oriented approach to the Indian criminal justice system.

From a macroeconomic perspective, the study dissects the heavy fiscal burden of over-incarceration on the state. These government funds could be productively utilised for nation-building or for the welfare of its people to provide food, healthcare and education, among others. Additionally, the study urges re-evaluation of existing penal laws to account for the hidden costs and the lost opportunity costs of over-incarceration. This study further suggests and supports several economically viable and sustainable alternatives to imprisonment, including community service and plea bargaining, which must be earnestly weighed. This research shall, therefore, be significant both on a personal and institutional level.

G. Hypothesis Of the Study

This research is based on the following hypotheses:

1. Over-incarceration heavily burdens the nation's finances.
2. Cost of recidivism is considered to be the primary hidden economic cost of over-incarceration.

H. Limitations Of the Study

The primary limitation of the study is the short three-month research period, which limits the scope for in-depth research. Further, the data was collected using a questionnaire and hence lacked face-to-face interaction, which might potentially fail to portray certain emotions. Additionally, the study relies on specific secondary data from government reports, which might not represent the unquantifiable economic losses incurred. Furthermore, there is difficulty in high-accuracy estimation of prison expenditure and workforce participation due to lack of extensive statistics on the subject matter.

IV. RESULTS AND DISCUSSION

A. PART - A: DOCTRINAL RESEARCH

Over-Incarceration refers to the phenomenon of prisons housing a substantially higher number of inmates than their actual capacity. Thus, leading to skyrocketing occupancy rates above the full capacity occupancy rate of 100%. In other words, excessive imprisonment of individuals during a period of time is known as Over-Incarceration. This form of excessive imprisonment creates massive direct and indirect economic costs, overcrowded prisons and undermines rehabilitation.

The American Civil Liberties Union (ACLU), in its submission to the High Commissioner for Human Rights, defined over-incarceration as “the excessive use of incarceration and correctional control”. It further went on to differentiate between over-incarceration and mass incarceration, wherein the latter refers to disproportionately excessive imprisonment of the poor and people of colour.⁷

U.S. Supreme Court Justice Anthony Kennedy, in his speech at a subcommittee meeting of the House of Representatives, remarked, “This idea of total incarceration

⁷ Am. Civ. Liberties Union, Over-Incarceration and Human Rights, <https://www.ohchr.org/sites/default/files/Documents/Issues/RuleOfLaw/OverIncarceration/ACLU.pdf>

just isn't working."⁸ This brings into perspective that incarceration is not the solution to rising crime rates or recidivism.

1. Over-Incarceration in India:

Over-incarceration is predominantly prevalent throughout Indian prisons with the exception of a few states and union territories. The National Crime Records Bureau (NCRB), in its Prison Statistics 2023, released the following data, showing inmate capacity exceeding prison capacity, indicating over-incarceration in Indian Prisons.⁹

Year	No. of Prisons	Actual Capacity of Prisons	No. of Prisoners at the end of the year	Occupancy Rate at the end of the year
2021	1,319	4,25,609	5,54,034	130.2%
2022	1,330	4,36,266	5,73,220	131.4%
2023	1,332	4,39,119	5,30,333	120.8%

- As per data provided by States/UTs.

Note: Figures as on 31st December of the respective year

SOURCE: Prison Statistics 2023 by National Crime Records Bureau

Despite the reducing occupancy rates in Indian prisons, the occupancy rate in comparison to nations like the United Kingdom, Estonia and Denmark is substantially high.

The NCRB report further revealed that the sanctioned budget for prisons throughout India has increased by 15% between 2022 (Rs.8,725.0 crores) and 2023 (Rs.10,035.6 crores).¹⁰ It is further worrisome to note that the budgetary allocation for legal aid (Rs. 240 crores)¹¹ constitutes approximately 2.39% of the total budget allocated to prisons.

Additionally, the Prison report also disclosed that despite a 10.2% decrease in the number of undertrial prisoners from 2022 to 2023, undertrial prisoners still constitute

⁸ Editorial Board, Justice Kennedy's Plea to Congress, N.Y. Times (Apr. 5, 2015), <https://www.nytimes.com/2015/04/05/opinion/sunday/justice-kennedys-plea-to-congress.html>.

⁹ Nat'l Crime Recs. Bureau, Prison Statistics India 2023, Ministry of Home Affairs, Gov't of India, <https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2023&keyword=>

¹⁰ Ibid

¹¹ Press Info. Bureau, Ministry of Home Affairs, Prison Administration Reforms (Mar. 2023), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1910032®=3&lang=2>

the largest section of the prison population. Thus, the undertrial population contribute substantially to the economic cost of over incarceration.¹²

Year	No. of Convicts	No. of Undertrial Prisoners	No of Detenues	No. of Other Inmates	Total No. of Prisoners
2021	1,22,852	4,27,165	3,470	547	5,54,034
2022	1,33,415	4,34,302	4,324	1,179	5,73,220
2023	1,35,536	3,89,910	3,916	971	5,30,333

- As per data provided by States/UTs.
- Figures are as on 31st December of each year

SOURCE: Prison Statistics 2023 by National Crime Records Bureau

2. Direct Economic Costs of Over-Incarceration:

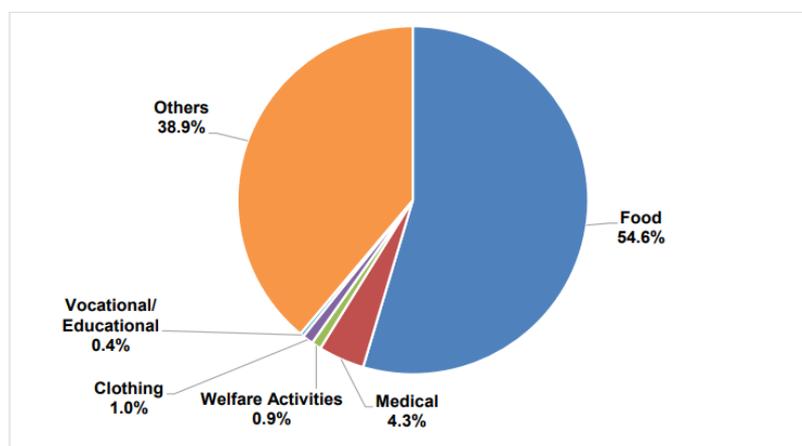
Direct Economic costs of Over-incarceration are those monetary costs that are incurred in direct consequence of over-incarceration. The following are the major direct costs incurred due to Over-incarceration:

- **Infrastructure Cost:** Infrastructure cost refers to the capital expenditure incurred by the creation, expansion and maintenance of prison facilities. The major measures undertaken as reported in the Prison Statistics 2023-24 in terms of infrastructure are jail construction, jail renovation or extension, construction of quarters for jail staff, investment in security devices, computerization of records, video conferencing facilities, and installation of Solar technology. It's pertinent to note that in the year 2023 alone, there were 11 new jails constructed and a total of 266 jails renovated or expanded. This is a dead investment with no productive economic returns, caused purely by over-incarceration.
- **Administrative Cost:** Administrative costs refer to the recurring operational expenses that are incurred while running a prison. This includes personnel salary of prison officers, superintendents, medical staff, social workers, Security costs for escort vehicles, jail transfers, arms, training personnel, uniforms, and utilities such as electricity, water, waste management and others. A high prison population

¹² Prison Statistics India, supra note 7

requires higher staff recruitment and thereby increases per-day administrative cost which substantially increases expenditure.

- **Medical Expenditure:** Medical expenditure includes all expenditure incurred on medical and mental health related issues of inmates. This includes primary health care, routine check-ups, medicine for chronic illnesses, treatment for mental health and control of communicable diseases. The following is a pictorial representation of various expenses incurred for an inmate, it shows that 4.3% of total expenses incurred amounts to medical expenses.



• As per data provided by States/UTs.

Percentage Distribution of Expenditure on Various Items on Prison Inmates during 2023-2024

SOURCE: Prison Statistics 2023 by National Crime Records Bureau

Further, the report also disclosed that Delhi Prisons have the highest medical expenditure amounting to 21.23 crores. This is a major cause of concern as overcrowded prisons significantly increase the incidence of communicable diseases and thereby raise per capita medical costs. A study reported in the Times of India revealed that Indian prisoners are at five times higher risk of developing tuberculosis than the general population.¹³

- **Cost per Inmate per day:** The Cost per inmate per day is a comprehensive economic indicator that shows the average daily

¹³ Prisoners in India Five Times More at Risk of TB: Study, Times of India (July 9, 2023), <https://timesofindia.indiatimes.com/india/in-india-prisoners-5-times-more-at-risk-of-tb-study/articleshow/101627829.cms>

expenditure incurred by the state for one prisoner. This includes all expenses of food, clothing, medical care, welfare, education and vocation among others.

It is calculated using the below formula:

$$\text{Total Expenditure on Inmates} \div \text{Total Prison Population} \div 365 \text{ days}$$

Applying this formula and the data provided by the NCRB as of 2023, the cost per inmate per day for the financial year 2023-24 is calculated as below:

$$2669.88 \text{ Crores} \div 5,30,333 \div 365 = \text{INR } 137.92 \cong \text{INR } 137 \text{ per day}$$

The following is the details of expenses incurred on inmates during the financial year of 2023-2024:

Details of Expenses on Inmates during the financial year 2023-2024

Sl. No.	State/UT	Expenses (₹ In Crore)						Total
		Food	Clothing	Medical	Vocational/Educational	Welfare Activities	Others \$	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	ANDHRA PRADESH	20.19	0.96	0.43	0.36	0.40	164.31	186.64
2	ARUNACHAL PRADESH	1.80	0.05	0.16	0.00	0.00	0.00	2.00
3	ASSAM	11.96	0.00	0.83	0.05	0.00	3.41	16.25
4	BIHAR	163.41	4.35	5.20	0.00	0.00	22.60	195.56
5	CHHATTISGARH	55.21	1.97	5.88	3.98	0.00	17.52	84.56
6	GOA	1.27	0.00	0.10	0.00	0.00	0.15	1.52
7	GUJARAT	33.54	1.12	1.12	0.02	0.60	5.55	41.96
8	HARYANA	76.19	0.05	2.97	0.00	0.12	376.49	455.82
9	HIMACHAL PRADESH	5.54	0.15	1.33	0.00	0.09	0.21	7.33
10	JHARKHAND	68.69	3.24	3.48	0.00	0.07	11.99	87.47
11	KARNATAKA	47.48	0.74	0.45	0.22	0.10	6.01	54.99
12	KERALA	39.80	0.17	1.67	0.39	6.55	17.45	66.03
13	MADHYA PRADESH	109.63	5.98	17.49	0.36	0.62	37.78	171.86
14	MAHARASHTRA	98.30	0.53	4.33	0.00	0.01	3.90	107.06
15	MANIPUR	2.92	0.23	0.10	0.00	0.13	1.30	4.68
16	MEGHALAYA	2.08	0.13	0.27	0.00	0.00	0.00	2.49
17	MIZORAM	1.66	0.00	0.05	0.00	0.00	0.09	1.81
18	NAGALAND	2.94	0.35	0.10	0.05	0.10	0.27	3.81
19	ODISHA	48.65	0.06	1.82	0.00	0.00	8.86	59.40
20	PUNJAB	70.00	0.42	6.10	0.00	0.00	0.00	76.52
21	RAJASTHAN	47.64	1.45	1.45	0.10	0.94	4.00	55.58
22	SIKKIM	1.87	0.01	0.47	0.21	0.00	0.04	2.60
23	TAMIL NADU	85.66	0.65	1.07	0.06	0.00	23.24	110.68
24	TELANGANA	24.40	1.17	0.18	0.01	0.65	7.22	33.62
25	TRIPURA	5.00	0.03	0.81	0.02	0.04	0.86	6.76
26	UTTAR PRADESH	269.12	0.46	20.00	0.00	0.00	100.46	390.04
27	UTTARAKHAND	17.52	0.03	1.78	0.01	0.01	1.32	20.66
28	WEST BENGAL	52.72	2.23	9.82	0.02	13.06	15.57	93.40
	TOTAL (STATES)	1365.18	26.52	89.47	5.84	23.48	830.62	2341.12
29	A & N ISLANDS	1.42	0.01	0.00	0.00	0.01	0.05	1.49
30	CHANDIGARH	4.65	0.08	0.41	3.23	0.30	0.01	8.68
31	DNH & DAMAN DIU	1.34	0.00	0.00	0.00	0.00	0.03	1.37
32	DELHI	52.79	0.15	21.23	0.01	0.10	208.38	282.65
33	JAMMU & KASHMIR	29.61	0.00	2.35	0.38	0.02	0.00	32.36
34	LADAKH	0.21	0.00	0.03	0.05	0.00	0.00	0.29
35	LAKSHADWEEP	0.01	0.00	0.00	0.00	0.00	0.02	0.03
36	PUDUCHERRY	1.88	0.00	0.00	0.00	0.00	0.00	1.88
	TOTAL (UTs)	91.91	0.24	24.02	3.67	0.42	208.49	328.76
	TOTAL (ALL-INDIA)	1457.09	26.77	113.50	9.51	23.90	1039.11	2669.88

* As per data provided by States/UTs.
 \$ may include expenses incurred on sanitation, Hygiene, the transport facilities for movement of prisoners during Remand, Trials, Transfers and Hospital etc.
 Note: Figures rounded off to double decimal digits.

SOURCE: Prison Statistics 2023 by National Crime Records Bureau

With every additional prisoner housed, the fiscal burden on the economy linearly rises, straining the Government's finances.

3. Indirect Economic Costs of Over-Incarceration:

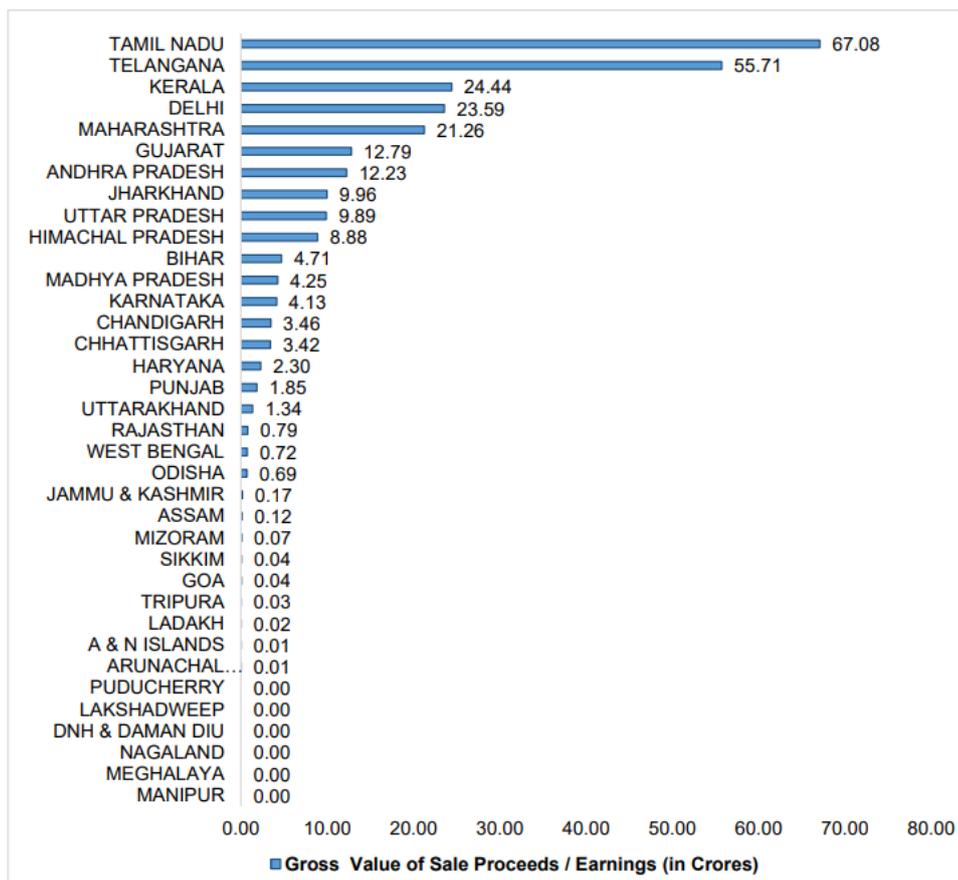
- **Cost of Recidivism:** Recidivism, the act of reoffending or being reincarcerated, is a perpetual fiscal cycle with each reoffender multiplying the state's expenditure. This not only includes the traditional costs of incarceration, such as infrastructure costs, administrative costs, medical expenditure and cost per inmates but also the cost of repeated investigation, fresh prosecution and judicial time. Whilst the prison statistics data of 2023-24 suggests a fall in recidivism by 0.5%. The Delhi and Chandigarh prisons report an alarmingly steady increase of 10.4% and 6.7%, respectively, between the years 2022 and 2023.¹⁴
- **Loss of family income and Inter-generational Economic Impact:** Most Indian families have a sole breadwinner, and when that individual is incarcerated, the entire household suffers an immediate loss of income. With a cycle of poverty, school dropouts, asset liquidation and informal borrowing, the loss is not temporary but a permanent downward spiral. This is the most profound and long-lasting impact of over-incarceration. Moreover, the cycle of imprisonment, education disruption due to poverty and hence, lack of employment again leads to crime and imprisonment, this is a never-ending trap. The NCRB reported an average of INR 136.59, INR 124.55, and INR 111.67 being paid per day to Skilled, Semi-Skilled and Unskilled prisoners, respectively.¹⁵ While the effort is appreciated that income is inadequate to support families. Additionally, the wage is below the minimum wage of INR 783 and INR 1035 for unskilled and skilled labour, respectively.¹⁶

¹⁴ Prison Statistics India, *supra* note 7

¹⁵ *Ibid*

¹⁶ ClearTax, Minimum Wages in India, <https://cleartax.in/s/minimum-wages-in-india>

- Loss of productive workforce:** Over-incarceration removes a large section of the working population between ages 18 and 45, indirectly causing a loss in the nation’s productivity. This occurs because, upon being imprisoned, prisoners are excluded from the labour market. Furthermore, being imprisoned for prolonged periods deteriorates and outdates an inmate’s skill set, which acts as a barrier upon release, along with the stigma and low employability with a criminal record. This is a case of lost opportunity cost if the individual had not been imprisoned. One might argue that prisons contribute to the economy; the following data also proves that, but one mustn’t forget that this is not the case in all the states and union territories of India. For example, most of the eastern states, including Nagaland, Meghalaya and Manipur, do not have any goods of value produced.



As per data provided by States/UTs.

State/UT-wise Value of Goods Produced by Prison Inmates during 2023

SOURCE: Prison Statistics 2023 by National Crime Records Bureau

- **Cost of welfare dependence:** Families of inmates most often shift from self-sufficiency to a state-supported survival mechanism where they depend on food subsidies from public distribution systems, health insurance schemes, cash transfers, housing assistance, and education scholarships. Thus, shifting the cost of incarceration from the prison budget to the social welfare budget creates a hidden cost of incarceration.
- **Alternatives to Incarceration:** The United Nations, in its position on over-incarceration, stated that there is a requirement for holistic reform approaches that aim to address the root causes of over-incarceration, including prevention of crimes and alternatives to imprisonment.¹⁷ Additionally, international frameworks like the Tokyo Rules (Non-custodial measures) and the Mandela Rules strongly advocate for imprisonment being the last resort. In light of this, the following are the major alternatives to Incarceration:
 - **Probation:** In this alternative, offenders are released under supervision instead of being imprisoned due to their good behaviour, proper reporting to probation officers, and effective participation in counselling or employment. This not only reduces state expenditure but also promotes rehabilitation and reintegration into society. Community. Governing probation is the Probation of Offenders Act, 1958.¹⁸
 - **Community Service:** This is an effective alternative for minor offences where offenders perform unpaid social work for public benefit, including cleaning public spaces, assisting hospitals, and other community-oriented services. This prevents unnecessary incarceration and social exclusion. Community service received formal statutory recognition under Section 4(f) of the Bharatiya Nyaya Sanhita, 2023, which expressly introduces it as a distinct form of punishment.

¹⁷ U.N. Office on Drugs & Crime, UN System Common Position on Incarceration, https://www.unodc.org/res/justice-and-prison-reform/nelsonmandelarules-GoF/UN_System_Common_Position_on_Incarceration.pdf

¹⁸ Probation of Offenders Act, 1958, No. 20 of 1958, India Code (1958)

- **Fines and Monetary Penalties:** This is an existing alternative and can be intensified; courts can impose proportionate financial penalties to avoid disproportionate hardship to the poor. Not only does it generate revenue for the government, but it also acts as a deterrence mechanism.
- **Restorative Justice:** This is an unrecognised form of criminal justice in India. This involves direct victim–offender mediation, restitution, and community reconciliation. This has been proven to reduce recidivism and can be adopted in juvenile justice systems and minor offence resolution.
- **Plea Bargaining:** This alternative involves the accused voluntarily pleading guilty in exchange for a lesser sentence or reduced charge, thereby avoiding prolonged trials and pre-trial detention. Plea bargaining was formally incorporated into Indian criminal procedure under Chapter XXI-A (Sections 265-A to 265-L) of the Code of Criminal Procedure, 1973, and finds corresponding provisions under the Bharatiya Nagarik Suraksha Sanhita, 2023. Its structured application substantially reduces undertrial detention and promotes expeditious disposal of cases.
- **Liberal Bail and Pre-Trial release reforms:** Reduction of unnecessary pre-trial detention can be done through liberal bail policies, personal bonds and electronic monitoring. This is a major alternative, as in India, undertrial detention constitutes a majority of the prison population. The use of ankle bracelets, GPS tracking, and home confinement instead of jail has proven extremely beneficial for several developed nations, including Canada, South Korea and others.
- **Drug Treatment and Mental Health Courts:** Another alternative for drug offenders and individuals suffering from addiction or mental illness is diversion to mental health centres, rehabilitation facilities, or supervised treatment programmes instead of incarceration. Such specialised mechanisms address the root causes of offending behaviour,

reduce recidivism, and mitigate the economic burden associated with repeated imprisonment.

B. RELEVANT CASE LAWS

1. State of Rajasthan v. Balchand (1977)

In this landmark judgment, the accused had been acquitted by the High Court, following which the State obtained special leave to appeal before the Supreme Court. Pending the appeal, the accused applied for bail. The Supreme Court, through Justice V.R. Krishna Iyer, granted bail and famously observed that “bail is the rule and jail is the exception.” The decision emphasised that deprivation of liberty pending trial or appeal must be justified by necessity, thereby underscoring the principle that incarceration should not be mechanically imposed. This judgment rendered by Justice V.R. Krishna Iyer underscores the economic losses of unnecessary incarceration.¹⁹

2. Hussainara Khatoon v. State of Bihar (1979)

In this matter of the Apex court, thousands of Bihar’s undertrial prisoners were detained for time periods longer than the potential maximum sentence for their alleged offences. The court dealt with the question of whether prolonged pre-trial detention violates right to speedy trial of the accused under Article 21 of the Constitution of India. It was held that speedy trial is a fundamental right, and it cannot be denied. This substantially reduces undertrial prisoner population which makes up the majority of Indian prison’s population, thereby reducing over-incarceration.²⁰

3. In Re: Inhuman Conditions in 1382 Prisons (2016)

The proceedings originated from a letter addressed by former Chief Justice of India R.C. Lahoti to the then Chief Justice of India, highlighting deplorable prison conditions. The Supreme Court treated the letter as a suo motu public interest litigation and examined issues such as overcrowding, custodial deaths, and inadequate staffing in prisons across India. The Court issued a series of directions to State Governments and Union Territories, including the constitution of a committee

¹⁹ State of Rajasthan v. Balchand, (1977) 4 S.C.C. 308 (India).

²⁰ Hussainara Khatoon (I) v. State of Bihar, (1979) 3 S.C.C. 532 (India).

headed by Justice Amitava Roy to recommend prison reforms. The case significantly revitalised discourse on prison administration and implementation of reform measures.²¹

4. **Arnesh Kumar v. State of Bihar (2014)**

This case arose from allegations under Section 498-A of the Indian Penal Code, 1860 (cruelty by husband or relatives of the husband) in a matrimonial dispute. The Supreme Court addressed the routine and mechanical arrest of accused persons in offences punishable with imprisonment of less than seven years. The Court issued detailed guidelines under Section 41 of the Code of Criminal Procedure, 1973, mandating that arrests must not be automatic and should be based on necessity and statutory safeguards. The ruling significantly curtailed arbitrary arrests and contributed to reducing unnecessary pre-trial detention and resultant prison overcrowding.²²

C. PART - B: NON-DOCTRINAL RESEARCH

The following tables represent the non-doctrinal analysis of the study. The numerical value denotes the number of respondents, while the figure in brackets represent the percentage calculated out of the total sample size (N = 135).

Table No.1: Prevalence of Over-incarceration in India

Particulars	Yes	No	Total
Rural	10 (7.41)	3 (2.22)	13 (9.63)
Urban	65 (48.14)	36 (26.67)	101 (74.81)
Semi-Urban	12 (8.89)	9 (6.67)	21 (15.56)
Total	87 (64.44)	48 (35.56)	135 (100.00)

Source: Primary Data

²¹ In re Inhuman Conditions in 1382 Prisons, (2016) 3 S.C.C. 700 (India).

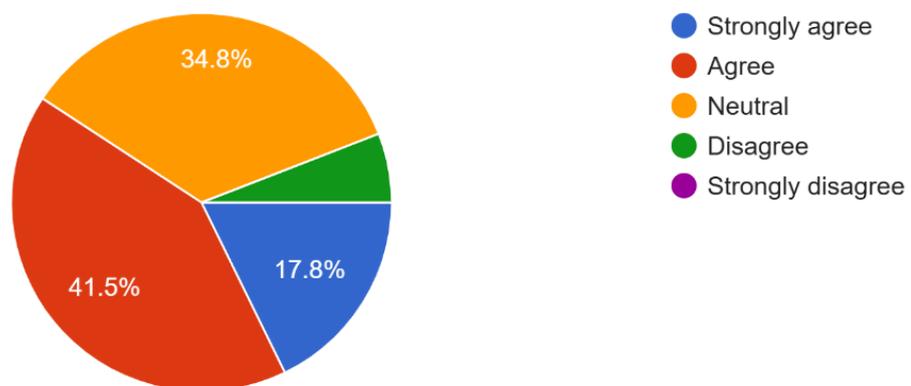
²² Arnesh Kumar v. State of Bihar, (2014) 8 S.C.C. 273 (India).

A vast majority of the respondents, roughly about 65.00 percentage of the respondent affirmed that over-incarceration is prevalent across India. The highest affirmations are from urban respondents, followed by semi-urban and rural respondents. The findings suggest a general consensus across all nativity categories that over-incarceration is prevalent in India.

Table No.2: Over-incarceration - A heavy burden on the nation's finances

Particulars	Rural	Urban	Semi-Urban	Total
Strongly agree	3 (2.22)	19 (14.07)	2 (1.48)	24 (17.78)
Agree	7 (5.18)	39 (28.89)	10 (7.41)	56 (41.48)
Neutral	3 (2.22)	36 (26.67)	8 (5.93)	47 (34.81)
Disagree	0 (0.0)	7 (5.19)	1 (0.75)	8 (5.93)
Strongly disagree	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)
Total	13 (9.62)	101 (74.81)	21 (15.56)	135 (100.00)

SOURCE: Primary Data



A substantial majority of the respondents expressed agreement with 41.48 percentage agreeing and 17.78 percentage strongly agreeing, constituting a total of about 60

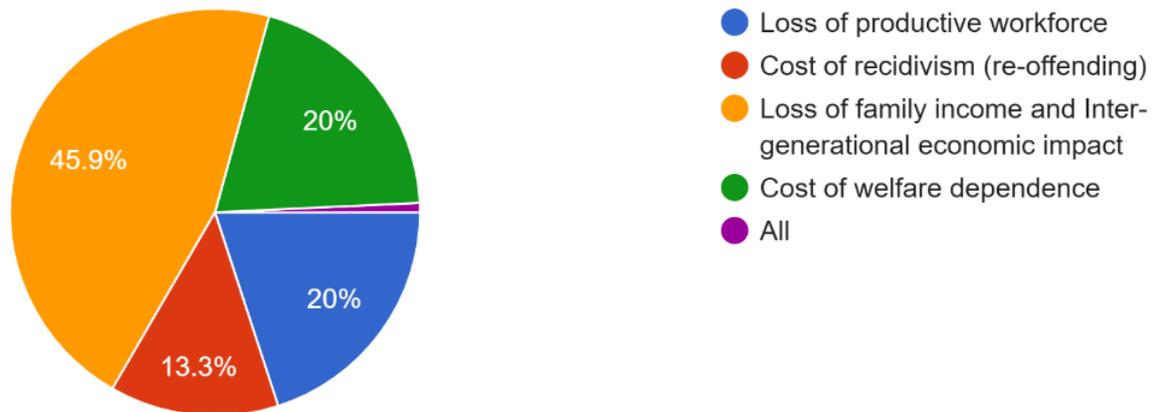
percentage of the sample. The majority of agreeing respondents belong to the urban region. Further, a notable estimate of 35 percentage of respondents remained neutral on the matter indicating a lack of understanding on the economic consequences of over-incarceration amongst them. The statement received minimal opposition with no respondents strongly disagreeing.

Table No.3: Primary hidden economic cost of incarceration

The data collected identified the loss of family income and inter-generational economic impact to be the most significant hidden economic cost of over-incarceration, accounting for 45 percentage of responses.

Particulars	Rural	Urban	Semi-Urban	Total
Loss of productive workforce	4 (2.96)	19 (14.07)	4 (2.96)	27 (20.00)
Cost of recidivism (re-offending)	2 (1.48)	12 (8.89)	4 (2.96)	18 (13.33)
Loss of family income and Inter-generational economic impact	3 (2.22)	50 (37.03)	9 (6.67)	62 (45.93)
Cost of welfare dependence	4 (2.96)	19 (14.08)	4 (2.96)	27 (20.00)
Others - All	0 (0.00)	1 (0.74)	0 (0.00)	1 (0.74)
Total	13 (9.63)	101 (74.81)	21 (15.56)	135 (100.00)

SOURCE: Primary Data



This was followed by 20 percentage of respondents each identifying loss of productive workforce and the cost of welfare dependence to be the primary hidden economic cost of over incarceration, respectively. Furthermore, 13 percentage of respondents acknowledged the cost of recidivism to be the primary hidden economic cost.

V. TESTING OF HYPOTHESIS

A. Hypothesis No. 1 - Over-incarceration heavily burdens the nation's finances

To test the hypothesis that over-incarceration heavily burdens the nation's finances, a weighted average score analysis was employed based on the Likert scale responses (Strongly Agree to Strongly Disagree). The computed weighted mean score was significantly above the neutral midpoint, indicating a clear inclination towards agreement.

Further, a Chi-square test was applied to examine the association between respondents' nativity (Rural/Urban/Semi-Urban) and their perception of fiscal burden. The calculated Chi-square value exceeded the critical value at the 5% level of significance, demonstrating a statistically significant association.

Accordingly, the null hypothesis that over-incarceration heavily burdens the nation's finances is statistically supported.

B. Hypothesis No. 2 - Cost of recidivism is considered the primary hidden economic costs of over-incarceration

To examine whether recidivism constitutes the primary hidden economic cost of over-incarceration, a comparative weighted score analysis was conducted across the identified variables. The weighted mean score for “Loss of family income and inter-generational economic impact” was the highest among all categories, whereas “Cost of recidivism” ranked comparatively lower.

A Chi-square test further indicated that the observed distribution of responses significantly deviated from what would be expected if recidivism were the dominant hidden cost ($p < 0.05$).

Therefore, the hypothesis that recidivism is the primary hidden economic cost is statistically rejected.

VI. CONCLUSION

The doctrinal analysis delved in depth into the concept of over-incarceration, its impact on India, the direct and indirect costs incurred due to over-incarceration. Building upon this theoretical base the empirical analysis records consensus among respondents that over- incarceration is prevalent in India burdening the nation’s finances, that it is a counterproductive form of punishment and that plea bargaining should be expanded. Furthermore, the respondents identified the loss of family income and Inter-generational economic impact to be the most severe hidden economic consequence of over incarceration. In light of the study, it is concluded that continued reliance on incarceration as a form of punishment is economically unsustainable, penologically counterproductive and socially detrimental.

VII. SUGGESTIONS

1. Re-evaluation of existing penal laws using cost-benefit analysis to gauge economic sustainability.
2. Expedite trial and implement plea bargaining to reduce under-trial detention.
3. Prioritising alternatives to incarceration, such as probation, community service, fines and restorative justice, among others.

4. Redirect mentally incapacitated prisoners to mental health facilities for better supervision and rehabilitation.
5. Foster academia in the intersection of economics and criminal law to deepen research and understanding.

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