Research Project-Group 6

Human Rights of Prisoners and Alternatives to Imprisonment

INTRODUCTION

Criminals are not born, usually society fails them.

- **The Indian State, is required by law to safeguard the rights of its citizens- prisoners form an important part of which. However, the laws and regulations for prisoners in this regard usually fall short.**
- **Prisons work on the concept of confinement rather than reformation.**
- **Prisons have existed in societies since long- detention cells for people awaiting judicial action**
- **First used- 18th century- North America and Europe**
- **Incarceration vs local culture debates.**
- **Prisons for capital punishment only VS prisons as deterrant to crime.**

A Different Reality

- **Inmates committing crimes after prison release**
- **Social, economic and psychological factors**
- **Close contact with hardened criminals**
- **Prisoners deserve protection of human rights**
- **Fundamental jail issues- Healthcare, cleanliness, food, torture in prison, mortality**

CRIME RECORD, 2020:

Total crimes	9,24,016 cognizable crimes
Increase percentage	7.6% against 2019 (8,59,117)
Murder cases	29,193
Crimes against women	3,71,503

RESEARCH METHODOLOGY

- **Descriptive and inductive, qualitative research**
- **Secondary sources of data collection**
- **government websites, previously conducted surveys, reports by major think tanks, scholarly articles.**
- **Contextualisation- General overview of Rights of Prisoners → efficacy of administration and judiciary to secure them**
- **Broad based analysis of intersectionality- General, Women, Minorities**
- **Analysis of alternate methods of imprisonment**
- **Case Study method of qualitative research for analytical generalisation - 2 case studies**
- **Solution oriented approach- recommendations**

HUMAN RIGHTS OF PRISONERS

HUMAN RIGHTS UNDER INTERNATIONAL INSTRUMENTS

Universal Declaration of Human Rights: (December 10, 1948)

- **Article 5- no one shall be subjected to torture or to cruel, inhuman, or degrading treatment**

The International Covenant on Civil and Political Rights (ICCPR)

- **Article 6(1)- every person, prisoner or free, has right to life**
- **Article 7- No one shall be subjected to torture or to cruel, brutal, or degrading treatment or punishment**
- **Article 10- all people who are deprived of their liberty must be treated with humanity and respect for the basic human dignity**

The United Nations Standard Minimum Rules for the Treatment of Prisoners

adopted at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955. Includes provisions relating to:

- **Separation of categories of prisons**
- **Accommodation**
- **Clothing and bedding**
- **Food**
- **Inhuman or degrading punishment**
- **Protection against double jeopardy**
- **Contact with family and reputable friends**

United Nations Basic Principles for the Treatment of Prisoners (December 14, 1990)

- **Respect and dignity to prisoners**
- **All fundamental liberties and human rights in international instruments be extendable to prisoners except freedom of movement.**

RIGHTS OF PRISONERS -INDIAN JURISPRUDENCE

The Supreme Court of India has created human rights jurisprudence for the preservation and protection of prisoners' rights to human dignity by interpreting Article 21 of the Constitution.

- ***T.V. Vatheeswaran v. State of Tamil Nadu*****-** both convicts and freemen are entitled to the protections of Articles 14, 19, and 21
- ***State of Andhra Pradesh v. Challa Ramakrishna Reddy*****-** SC- a prisoner, convict or under-trial, continues to enjoy all his fundamental rights including the right to life.
- ***Maneka Gandhi v. Union of India*****-** 'procedure established by law' for depriving a person of his life and personal liberty must be just, fair and reasonable and not arbitrary, fanciful or oppressive.

RIGHTS OF PRISONERS UNDER ARTICLE 21-

- **Right to Free legal aid**
- **Right to Speedy trial**
- **Right against public hanging**
- **Right to fair trial**
- **Right against delayed execution**
- **Right to reasonable wages in prison**
- **Rights against solitary confinement, handcuffing & bar fetters and protection from torture.**

RIGHTS OF PRISONERS UNDER PRISONS ACT (1894)

- **Accommodation and sanitary conditions**
- **examination of prisoners by qualified Medical Officers.**
- **shelter and safe custody**
- **separation of prisoners - male/female, civil/criminal, convicted/undertrial**
- **prisoner’s right to health.**
- **Provisions of 30 days parole for pregnant prisoners**

STATE OF PRISONERS IN INDIA AND THEIR HUMAN RIGHTS ABUSES

INTERSECTIONAL ANALYSIS - GENERAL, WOMEN, MINORITIES

GENERAL

- **Prison torture becoming ‘normal’ and legitimate**
- **67% of prison population- under-trials - psychological and physical torture**
- **Loss of ties with family, neighbours community**
- **Social stigma**
- **Shrinking employment for undertrials post acquittal**
- **Three structural constraints of prisons in India**
  - **Overcrowding**
  - **Understaffing**
  - **Underfunding**
- **Major Human Rights violations- treatment, custodial deaths, physical and mental torture, poor health system, lack of provision of medical aid, lack of proper nutritious food, inadequate supply of water, forced labour, delayed trials, etc.**

WOMEN

National Crime Records Bureau's (NCRB) annual 'Prison Statistics India 2020-

- Tamil Nadu had maximum women arrests
- Uttar Pradesh- most women convicts- 1182, women undertrials- 3344
- Highest inmates- Uttar Pradesh (3.19 lakh), Bihar (2.3 lakhs), Madhya Pradesh (1.26 lakhs)
- Ministry of Home Affairs' Model Prison Manual 2016- "sterilised sanitary pads" to be distributed to female prisoners as needed.
- Lack of implementation of provisions
- Menstruating prisoners purchase sanitary napkins from canteens/rely on family
- Commonwealth Human Rights Initiative Report- most female prisoners unaware of provisions, rely on clothes and rags.
- Hindustan Times Report 2017- women often confined to small wards inside male prisons.

MINORITIES

Prison Statistics in India (NCRB):

- **Share of marginalised communities in total population- 39%**
- **Share in prison population- 51%**
- **Max undertrials prisoners- Muslims(21.5%) , Dalits (64%) , Adivasis**
- **2013 data of NCRB- only 6.27% of police personnel in India were Muslims**
- **Reservation policies of GOI have helped SC and ST communities.**
- **Over-representation of so called 'upper castes' at institutional level.**
- **Over-policing, inherent caste-discrimination, religious discrimination**

- **Paper published in Economic and Political Weekly by IRFAN AHMAD and Dr. MD ZAKARIA SIDDIQUI - "Democracy in Jail" (2017) elaborates on "(the) over-representation of minorities in Indian prisons" using government data and comparing them with other countries.**

Comparing Ratios of the Prison Population of Religious and Social Communities against Their Ratio in Total Population, by State, 1998–2014

State	Hindu	Muslim	SC	ST
Andhra Pradesh	0.86	1.49	1.32	1.75
Arunachal Pradesh	1.08	6.95	–	0.76
Assam	0.88	1.09	2.35	1.22
Bihar	0.92	1.32	1.41	4.23
Chhattisgarh	0.88	3.48	1.77	1.08

Prepared by Irfan Ahmad and Dr Md Zakaria Siddiqui

Alternatives to Imprisonment

Alternative 1: Periodic Detention, Probation and Community Correction

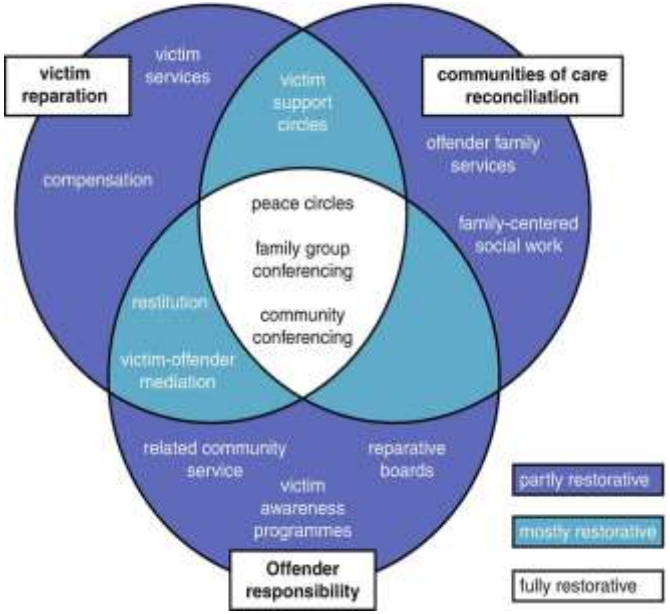
- **Periodic Detention : Detention only on specific days, normal socio-economic life on rest of the days.**
- **Case Study of Australia: Only 15% repeat offenders.**
- **Probation: Convict allowed to freely interact in society; S.360 CrPC.**
- **Conduct monitored by Probation officers.**
- **Regular Visits by Community/religious help groups.**
- **Integration into socio-economic life; Shielding from horrors of prison.**
- **Key Tenets: Accountability; Independence; Will to Reform.**

Alternative 2 : House Arrest

- House arrest, sometimes interchangeably used with home confinement or home detention is an alternative to jail sentencing.
- Not directly available within CrPC.
- House Arrest - Preventive Detention U/s 5 of the National Security Act, 1980.
- Constraints on Activities in terms of movement and travel.
- Gautam Navlakha vs NIA - Application through CrPC
- Electronic Monitoring; Privacy Concerns ?
- Usage for Political Offenders, non-violent convicts and convicts of civil offences.

Alternative 3 : Victim Offender Mediation and Restitution

- **Victim offender mediation(VOM).**
- **Restorative Justice.**
- **Prevalence of Dialogue and sharing of experiences.**
- **Acceptable Restitution Plans.**
- **Researching recidivism, Jiska Jonas-van Dijk, Sven Zebel, Jacques Claessen and Hans Nelen (2019) in Participants.**
- **Karan Vs. State Nct of Delhi 2020 - Victim Impact Report.**



Alternative 4 : Open Prisons

- **What are open Prisons ?**
- **Goals and Objectives.**
- **Types of Open Prisons - Bureau of Police Research and Development.**
- **Examples in India - Sanganer and Anantapur.**
- **Social And Economic Advantages.**
- **Lower rates of Recidivism.**
- **78 times cheaper on the public exchequer - (Chakraburtty 2015)**
- **Upskilling and Education of Inmates.**

Khula Bandi Shivir; Sanganer Rajasthan


RESEARCHER
KNOWLEDGE
CIRCUMSTANCES
CRITERIA
CASE STUDY
CASE
DATA
ANALYZING
KEY

CASE STUDY-1

CASE LAW: PROBATION OF OFFENDERS ACT, 1958

PETITIONER: RAMJI MISSIR AND ANOTHER vs..**RESPONDENT:** STATE OF BIHAR

DATE: 6/12/1962

BENCH: AYYANGAR, N. RAJAGOPALA IMAM, SYED JAFFER SUBBARAO, K. MUDHOLKAR, J.R.

JUDGEMENT:

- Appellants- Basist (19) and Ramji (21)- found guilty and sentenced to imprisonment.
- Conviction under Section 326 + 307 and 324 of IPC respectively.
- Appeal to High Court- imprisonment reduced to 2 years and 9 months respectively (Ramji suffering from TB).
- Assistant Sessions Judge refused to apply the the provisions of Probation Act 1958 holding that the crucial age shall be determined not as per date of offence but date of finding of guilty.
- Supreme Court- held that provisions of Probation of Offenders Act (1958) to have a wider interpretation and not restricted.

CASE STUDY-2

CASE LAW: HOUSE ARREST

PETITIONER :GAUTAM NAVLAKHA vs. **RESPONDENT**: NATIONAL INVESTIGATION AGENCY

DATE: 12/05/2021

COURT: THE HON'BLE SUPREME COURT OF INDIA

BENCH: JUSTICE UDAY UMESH LALIT AND JUSTICE K.M. JOSEPH

JUDGEMENT::

- Gautam Navlakha arrested under Sc 167 of CrPC in connection with an FIR in Pune under UAPA.
- Placed under House Arrest by Delhi HC
- 34 days later, detention declared unconstitutional by Delhi HC.
- Bombay HC refused to dismiss FIR against him.
- Under Supreme Court orders, Navlakha surrenders to NIA.
- Total period of detention- 34 days House Arrest+11 days NIA detention+64 days judicial detention +
- Navlakaha petitioned SC for default bail as his period of arrest exceeded 90 days limit

The bench delineated to leave it up to legislators to decide to issue warrants for home arrest under Section 167 in post-conviction cases, keeping in view prison overcrowding and the state's cost of keeping prisons open. Under Section 167, judges will be able to impose home arrest in the right circumstances.

GENERAL ASSUMPTIONS FROM THE ALTERNATIVES:-

Following assumptions can be drawn from the alternatives discussed so far

- The objective of achieving a safe, secured, positive and harmonious environment would be achieved.
- Management of prison administration would be more effective and constructive. .
- It might also prevent the first timeoffenders from being influenced by hardcore criminals in prisons, which means the process of reformation of new offenders would be easier and prompt.
- Juvenile offenders would be less prone to perform the misdemeanour again and would be considerate beneficiaries of the way forwards.
- Victims Offender Mediation (VOM) may prevent any further amplification of violence and revenge attitude.

- Victim Offender Mediation may reduce the tendency and possibility of recidivism and it is also a cost effective process scheme for both the parties.
- Probation may somehow reduce the expenditure of the state in maintaining prisoners in incarceration.
- The alternative of mediation and restitution is one of the best alternatives to imprisonment. Countries like the US, Canada, UK, Germany, Singapore have successfully adopted and established good examples too.
- Open prison may give the required space to prisoners to get reformed quickly by allowing them into social life and working in the mainstream of society.
- Alternative ways of imprisonment may keep the prisoners mentally and physically fit by indulging them in different activities rather than keeping them in a confined area.Hence,reformation may become easier.

RECOMMENDATIONS

1.Knowledge base

Authorities must have proper analysis of prison population, their nature of crime etc. They must have readily available answers to questions like these:

- the social characteristics of persons held in prison
- For how long are convicts are being held awaiting trial.

2. Legislative Reform

Administration should make sure that there is a statutory mandate of legal foundation and implementation of alternatives. The use of alternatives to imprisonment should be emphasized by the law, with imprisonment being not the first choice.

3. Political Initiative

Top politicians and policymakers should ideally share a commitment to decrease the prison population and examine overcrowding issue.

4. Constant monitoring

The concerned authorities must review the implementation of these alternatives effectively. Setting deadlines for particular benchmarks to maintain the credibility of the alternatives should be promoted.

5. Infrastructure and resources

As some alternatives may require development of new infrastructure. Authorities must ensure adequate funds for development purpose.Authorities must have an estimate project cost where in necessary resources are dedicated and also their optimum utilization is ensured.

CONCLUSION

- With the escalating population, more vigilant public safety measures need to be adopted.
- Alternatives to imprisonment here play a vital role in not only combating violation of human rights but also reducing the cost of prisons on the state.
- Keeping offenders out of the criminal justice system is one methodology .
- Not all socially unacceptable behaviour needs to be classified as a crime or handled through the criminal justice system.
- These measures if planned and carried properly can be a boon to the criminal justice system.

HUMAN RIGHTS OF PRISONERS
&
ALTERNATIVES TO IMPRISONMENT

Research Paper Group 6

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HUMAN RIGHTS OF PRISONERS AND ALTERNATIVES TO IMPRISONMENT

INTRODUCTION

India is the largest democracy in the world, and following the legacy of a democracy, it promises to safeguard its citizens' human rights. The State is required by law to protect its residents, and in order to fulfil this commitment, the Indian Constitution and other laws acknowledge a number of fundamental rights for citizens. But when it comes to the rights of prisoners, the laws and regulations usually fall short. Prisoners are seen as the evil of society and rather than reforming them, our system usually focuses on confining them and depriving them of various personal freedoms. The concept of prison revolves around the concept of confinement, i.e., the people who disobey the rules/ laws of the society are physically confined and are deprived of personal freedom to a certain extent. In order to safeguard society from crime and criminals' prisons are created.

The concept of prisons has existed in most societies since time immemorial. Typically, they served as detention cells while people were awaiting judicial action. Occasionally, those who represented a specific threat to the state may be detained without charge for an extended length of time. In the 18th century, Western Europe and North America first adopted the use of jail as a direct punishment by the court. It has steadily expanded to the majority of nations, since then as a result of colonial tyranny. The idea of incarcerating people does not always mesh well with the local culture. There has been a heated discussion throughout the years regarding this. Some state that prisons should be restricted to criminal punishment while others contend that the birth of prison was to keep criminals from committing further crimes. While in an idealistic world this might seem a perfect setting but the reality is quite different. There are many inmates who come out of prison and commit further crimes as the prison itself has pushed them on that path. And many inmates while being in close contact with hardened criminals are influenced to commit such dangerous crimes once they are out. The reason behind a criminal committing a crime can be multiple, but it generally boils down to the interrelationship between social, economic and

psychological factors. Criminals aren't born but they take the path of crime because most of the time society fails them.

In the year 2020 itself, a total of 9,24,016 cognizable crimes comprising 6,68,061 Indian Penal Code (IPC) crimes and 2,55,955 Special & Local Laws (SLL) crimes were registered in 19 metropolitan cities, showing an increase of 7.6% over 2019 (8,59,117 cases). Wherein a total of 29,193 cases of murder were registered, showing a marginal increase of 1.0% over 2019 (28,915 cases). and a total of 3,71,503 cases of crime against women were registered during 2020, showing a decline of 8.3% over 2019 (4,05,326 cases).

These data prove that crime is on an ever-increasing trend and hence there are lakhs of people who are getting convicted each year and being sent to prison as a retributive measure. But are our prisons capable of maintaining so many inmates and are our prisoners given the basic human rights is the question that needs to be asked.

Prisoners like any other individual are human beings at the end of the day, they too deserve basic human rights. Human rights issues such as health care, cleanliness, food, torture in custody, and mortality, are one of the fundamental issues prevalent with the jail management in India. The reality is prisoners cannot be reformed only via the use of punitive techniques of therapy. In modern times the criminal justice system's techniques have changed to a great extent thanks to various human rights theories, laws protecting such rights, and the courts. Further as Gandhi Ji said hate the crime and not the criminal, we as a society should strive to provide a better alternative to these prisoners and make sure that they get their basic human rights.

RELEVANCE AND SIGNIFICANCE OF THE STUDY

In light of the atrocities being committed against inmates, primarily at the end of prison authorities as also the politico-legal structures of governance, it is pertinent to address the issue of dereliction of Human Rights of prisoners. Human Rights, as the jurisprudence establishes, are fundamental to leading a life of dignity and constituent an inherent part of what constitutes in being a human. That this proclivity for Human Rights violations has been a persistent phenomenon across regions, regimes and national boundaries is a serious cause of concern. In the midst of these brutalities and objectionable acts of torture that go beyond the prescribed legal

mandate and sometimes within the legal mandate too, a consistent point of contention has been the negligence reflected on part of public-policy enthusiasts, legal fraternity and administrative machinery in addressing these exigencies. That Human Rights for prisoners exist and that the same Human Rights are violated on a routine basis, is a rather under-acknowledged phenomena, both within the public and academic discourse. Given this tenuous approach in terms of catering to the conditions of inmates, it is more than pertinent to draw attention to this festering problem.

That the established methods of imprisonment and torture, in the wake of rectifying the monumental wrongs committed on part of the inmates, concomitantly perpetuate other serious forms of 'passive crimes' is a rather missed phenomenon. The need for discovering, analysing and devising alternate methods of imprisonment thus becomes important at this stage.

RESEARCH METHODOLOGY

For the purpose of this research, the methodology used information gathered mostly from secondary sources of data collection, most notably government websites, previously conducted surveys, reports by major think tanks and scholarly articles. The contextualization of the issue at hand has been accomplished by pursuing a general overview of the Rights available to Prisoners in India and thereafter examing how far the administrative, legislative and judicial structures have been able to safeguard these rights and liberties guaranteed to them. In order to broaden the contours of their analysis, a broad-based perspective has been drawn, integrating within the analysis the situation of a cohort of intersectional communities/categories of prisoners- women, caste/class-based, etc. Issues are presented in this section so that the complexity of the case can be understood by readers. This complexity is also built by referring to other related research strands and also researchers' interpretations of them.

Post contextualization, various alternative methods to imprisonment have been observed and analysed. To study the efficacy of these methods, the authors have resorted to the case study method of qualitative research, whereby 2 major real-life case studies of the various alternative methods stated, have been undertaken. The said method has been undertaken primarily to increase the richness of the arguments stated and conclusions are drawn. These two case studies, cross-case analysis, help to ensure external validity, are an important medium for theory

development and provide a good basis for analytical generalisation. Data collection for the case studies has been sourced from multiple channels of information like observations, interviews, audiovisual material and documents, and reports to achieve deep understanding. Documents like public records, personal documents, popular culture documents, visual documents, artefacts, physical materials and researcher-generated documents. Extensive work has also been done to address the issue of rigour in the case study as well as qualitative research. In the context of qualitative research, many perspectives have been developed to establish reliability and validity. Qualitative information thus gained has been represented pictorially and graphically for a better, argumentative and vivid layout of the data acquired.

Thus, the research methodology adopted herein is descriptive and inductive aiming to reach generalised results which identify the problem, followed by a thorough and rich description of the context or setting, description of multiple intersectional ties, and past understanding. Finally, in light of qualitative and quantitative evidence and with the help of the case study method, outcomes of the inquiry are presented in the form of lessons learned and recommendations prescribed for a solution-oriented approach.

HUMAN RIGHTS OF PRISONERS

In certain respects, prisoners have the same rights as other people do while they are outside of jail, although these rights are constrained by legal requirements. Numerous national and international laws, as well as treaties, guarantee the rights of prisoners. Prisoners still have their fundamental constitutional rights since they are people with rights. Human rights are unalienable, and no authority has the right to violate a person's fundamental human rights. This is one of the best principles of human rights legislation. It is commonly known that sometimes this principle is not applied to inmates.

Human rights of prisoners are divided into two broad categories:-

A. Rights of Prisoners guaranteed under various International Instruments.

The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the United Nations Standard Minimum Rules for the Treatment of Prisoners, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the United Nations Basic Principles for the Treatment of Prisoners, among others, all contain provisions relating to the rights and treatment of prisoners.

The following are the clauses of these international agreements covering the rights and treatment of prisoners:

- **The Universal Declaration of Human Rights (UDHR)**

On December 10, 1948, the General Assembly of the United Nations (UN) approved the Universal Declaration of Human Rights (UDHR) to advance human rights across the world. According to Article 1 of the UDHR, all people are born free and with an equal sense of worth and rights. They should behave toward one another in a brotherly manner because they are gifted with reason and conscience. Everyone has the right to all of the freedoms and rights outlined in this Declaration, according to Article 2 of the UDHR, without exception based on anything, including race, colour, sex, language, religion, political opinion, national or social origin, property, birth, or another status.

It would be obvious that convicts are included when the terms "all human beings" and "everyone" are used in Articles 1 and 2, respectively. Every person has the right to life, liberty, and personal security, according to Article 3 of the UDHR. One of the fundamental human rights is the right to life, which is guaranteed to both prisoners and free people. In jails, prisoners are not subjected to torture or other cruel or inhumane treatment. Article 5 of the UDHR, which provides that no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment, makes this obvious.

- **The International Covenant on Civil and Political Rights (ICCPR)**

The International Covenant on Civil and Political Rights (ICCPR), which was adopted by the United Nations General Assembly on December 16, 1966, and entered into force on March 23,

1976, contains provisions on the treatment of prisoners. Every human being, whether a prisoner or a free person, has an intrinsic right to life, according to Article 6(1) of the ICCPR. No one's right to life shall be arbitrarily taken away; this right shall be guaranteed by legislation. No one shall be subjected to torture or to cruel, brutal, or degrading treatment or punishment, as further stated in Article 7 of the ICCPR. The most significant provision of the ICCPR regarding prisoner treatment is Article 10. It states that all people who are deprived of their liberty must be treated with humanity and respect for basic human dignity. The distinction between those who are accused and those who have been found guilty must be made.

It is necessary to keep accused people apart from those who have been found guilty and to treat them differently in accordance with the fact that they have not yet been found guilty. However, in rare cases, exceptions might be made. For juveniles who are accused, similar measures are offered. They should be separated from adults and brought as speedily as possible for adjudication. The essential aim of the treatment of prisoners should be their reformation and social rehabilitation.

- **The United Nations Standard Minimum Rules for the Treatment of Prisoners**

It was authorised by the Economic and Social Council in resolutions 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977. It was adopted at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955. There are numerous guidelines covering prisoners' rights and treatment in the United Nations Standard Minimum Rules for the Treatment of Prisoners, but we can only list the most significant ones.

The following are these:-

- Provisions relating to the separation of categories of prisoners.
- Provisions relating to the accommodation.
- Provisions relating to the clothing and bedding.
- Provisions relating to the food.
- Provisions relating to exercise and sport.
- Provisions relating to the medical services.

- Provisions relating to the protection of prisoners against double jeopardy.
- Provisions relating to the prohibition of corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishment.
- Provisions relating to the information and complaints by prisoners.
- Provisions relating to the rights of prisoners to contact their family and reputable friends.

In addition to these guidelines, the United Nations Standard Minimum Rules for the Treatment of Prisoners also provided extensive guidelines for how to treat people who are being held without charge or being served a sentence, as well as those who are insane or mentally ill.

- **The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**

On March 1, 2002, the European Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment came into effect. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is established by the Convention (the Committee).

Once a state government is notified of the intention of the Committee to carry out a visit it is required to allow access to the territory with the right to free travel without restriction, full information of the facility in question, unlimited access to the facility and free movement within it, the right to interview any person being held within the facility, communicate freely with any person whom it believes can supply relevant information and access to any other information which the Committee feels is necessary to carry out its task. All information gathered is confidential. In exceptional circumstances, a state may make representations based on grounds of national defence, public safety, and serious disorder in custodial facilities against a visit to a certain place or at a certain time. After each visit, a report is drawn up with any possible suggestions for the state in question.

- **United Nations Basic Principles for the Treatment of Prisoners**

Aside from the aforementioned international agreements on the rights and treatment of prisoners, the United Nations General Assembly also adopted a set of basic principles for the treatment of prisoners on December 14, 1990. These principles make it clear that all prisoners must be treated with respect for their inherent dignity and worth as people, without any form of discrimination. All of the fundamental liberties and human rights outlined in generally accepted international treaties should be extended to them, with the exception of the freedom of movement.

B. Rights of Prisoners guaranteed under various National Instruments including the Constitution of India.

In India, prisoners are granted nearly all of the same rights as other people, although these rights are also subject to legal limits that are fair in nature. The Indian State has ratified a number of international human rights treaties, including the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, which guarantee human rights to everyone, including prisoners. Therefore, the Indian State is required to uphold and ensure that both inmates and freemen are afforded their essential human rights.

It can be divided into two components, which are as follows, for a proper understanding of the human rights of prisoners as provided by the various national instruments:-

- **Rights of Prisoners under the Constitution of India**

The Indian Constitution does not specifically mention provisions relating to the rights of prisoners, but it was determined in the case of *T.V. Vatheeswaran v. State of Tamil Nadu,* that both convicts and freemen are entitled to the protection of Articles 14, 19, and 21. Fundamental

rights are not barred by prison walls. The Supreme Court of India has created human rights jurisprudence for the preservation and protection of prisoners' rights to human dignity by interpreting Article 21 of the Constitution.

The State shall not deny to any individual within the territory of India equality before the law or the equal protection of the laws, according to Article 14 of the Indian Constitution. As a result, Article 14 offered the idea of reasonable classification as well as the principle that like should be treated alike. The prison authorities can determine different prisoner groups and their classifications with the aim of reformation by using this article as a guide and a foundation.

Six liberties are guaranteed to all Indian people by Article 19 of the constitution.

Certain freedoms among these cannot be exercised by inmates due to the nature of those freedoms. The right to move freely throughout India's territory or the freedom to perform a profession are just two examples of fundamental rights that convicts are denied by virtue of their conviction.

According to Article 21 of the Indian Constitution, no one may be deprived of their life or personal freedom unless doing so in accordance with a legal process. It is evident from Article 21 of the Indian Constitution that it is open to both individuals who are free and those who are incarcerated. Article 21 requires the State to protect everyone's life, regardless of their guilt or innocence.

In the case of *People's Union of Democratic Rights v. Union of India,* the Supreme Court put a strong emphasis on the value of human dignity by stating that the right to life guaranteed by Article 21 includes the right to live with basic human dignity and that the State cannot deprive anyone of this priceless and invaluable right without violating international law.

Again in the case of *State of Andhra Pradesh v. Challa Ramakrishna Reddy,* the Supreme Court made the observation that the right to life is one of the basic human rights and held that even a prisoner, be he a convict or under trial, continues to enjoy all his fundamental rights including the right to life guaranteed to him under the Constitution. However, the convicts by mere reason of their conviction are deprived of some of their fundamental rights such as the right to move

freely throughout the territory of India or the right to practice a profession. It was also held that on being convicted of the crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights. Here it is important to know about the term "procedure established by law", it was firstly held in the cases of *A.K. Gopalan v. State of Madras, and A.D.M. Jabalpur v. Shivakant Shukla* that the term "procedure established by law" in Article 21 means procedure prescribed by law as enacted by the State and rejected to equate it with the American "due process of law" (due process of law means to enshrine the principles of natural justice).

But in the case of *Maneka Gandhi v. Union of India,* the Supreme Court pronounce protection under Article 21 against the legislature also and held that the procedure established by law for depriving a person of his life and personal liberty must be just, fair and reasonable and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirements of Article 21 would not be satisfied.

A crucial argument for defending the rights of prisoners was made in the landmark case of *Sunil Batra v. Delhi Administration.* Justice Krishna Iyer stated that subject to reasonable prison management standards, convicts who are under sentence of death shall not be denied access to any communal facilities, including games, newspapers, books, moving around, or meeting other inmates and visitors.

The following rights for prisoners are implicitly guaranteed by Article 21 of the Indian Constitution:-

- Rights of inmates of protective homes.
- Right to free legal aid.
- Right to a speedy trial.
- Right against cruel and unusual punishment.
- Right to a fair trial.
- Right against custodial violence and death in police lock-ups or encounters.
- Right to live with human dignity.
- Right to meet friends and consult a lawyer.

- Rights against solitary confinement, handcuffing & bar fetters and protection from torture.
- Right to reasonable wages in prison.
- Right to compensation for wrongful arrest, detention and torture.
- Right against delayed execution.
- Right against public hanging.
- Right of release and rehabilitation of bonded labour.

Apart from these above rights, prisoners are also entitled to the following rights:-

- Right to punishment as prescribed by law.
- Right to communication and information.
- Right to writ of habeas corpus.

It is important to note that a prisoner who is awaiting trial or who has been found guilty cannot be subjected to physical or mental restraints that: a) are not justified by the punishment the court has imposed, b) is excessive for maintaining prisoner discipline, or c) amount to degrading treatment of other people.

- **Rights of Prisoners under the Prisons Act, 1894**

  The earliest piece of legislation governing prisons in India is the Prisons Act of 1894. This Act primarily focuses on prisoner rehabilitation in relation to prisoner rights. The Prisons (Amendment) Bill, 2016 was passed by Parliament in 2016 to amend the Prisons Act, 1894 in order to provide protection and welfare of the prisoners in the current context and in accordance with the Constitution of India and to foster reintegration and socialisation of prisoners into society.

The following clauses of the Prisons (Amendment) Act, 2016, as well as the Prisons Act of 1894, are connected to the reformation of prisoners:-

- Accommodation and sanitary conditions for prisoners.
- Provisions for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison.

- Provisions relating to the examination of prisoners by qualified Medical Officers.
- Provisions relating to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and undertrial prisoners.
- Provisions relating to the prisoner's right to health.
- In the case of a pregnant prisoner, her diet and work allocation shall be determined as per medical advice.
- A pregnant prisoner shall be entitled to grant conditional parole for thirty days from the expected date of delivery or thirty days from the date of delivery if the delivery takes place while she is in prison.
- Provisions relating to the maintenance of hygiene or sanitation in jail premises so the prisoners could maintain their health.
- Provisions relating to the establishment of separate prisons to keep habitual and hardcore offenders separately from the first-time offenders and the offenders convicted for lesser crimes.
- Provisions relating to the skill training in prisons provided to the prisoners and conduct workshops and seminars on such subjects as would be helpful for rehabilitation of and for educating the prisoners.

Therefore, it can be claimed that while they are incarcerated, inmates have the same access to all of their fundamental rights as anybody else.

State of Prisoners in India and their Human Rights abuses

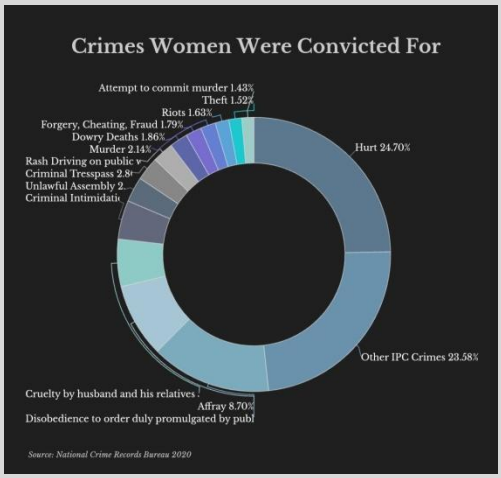
The widespread and predominant practice of torture in prisons are increasingly becoming 'normal' and legitimate over time. With the expanding horizon of human rights, the rate of crimes is also increasing. According to the seventh schedule of the constitution, the management of prisons in India falls under the responsibility of the state governments. Further on, in every state, the administration of each prison works under a senior IPS office, also known as the chief of prisons. Approximately sixty-seven per cent of the population held in Indian prisons is under trial, which includes those who are not convicted of any crime in a court of law.

In the case of undertrials, the inmates are subject to psychological and physical torture and in the process exposed to extremely inhuman conditions and violence. Many of them lose ties with their family, neighbourhood and community. As individuals and as community members, a significant amount of social stigma gets attached to them. After acquittal, it has been observed that the employment opportunities for the undertrials get jeopardised. Numerous people who are undertrials are poor, accused of minor offences, unaware of their rights and have no access to legal aid. Factors like lack of financial resources and the inability to connect with lawyers from the premises of the prison further hamper their strength to defend themselves.

Prisons in India face three structural constraints. First, overcrowding, due to the high proportion of undertrials within the prison population, second, understaffing, and third, underfunding. This results in the violation of human rights which include degrading treatment, custodial deaths, physical and mental torture, poor health system, lack of provision of medical aid, lack of proper nutritious food, inadequate supply of water, forced labour, not producing prisoners to the court of law, and frequent clashes between the inmates and authorities of the prison. A delay in trials further adds to the problem. The violation of human rights varies from society to society in India. Critics have pointed out inhumane living conditions, overcrowding, prolonged detention of undertrials, and unjust allegations by the prison staff. However, there have been no recent reforms concerning the issues of prison administration in India.

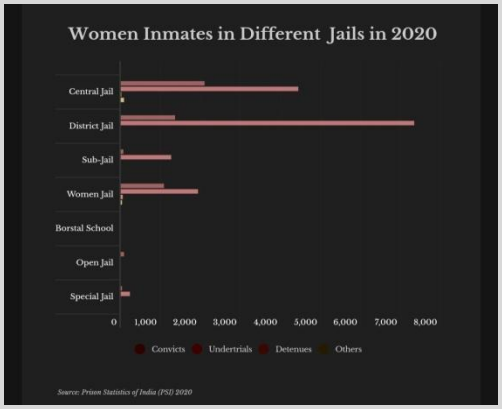
Women In Prison

Women have traditionally felt inferior to men in India as it is a patriarchal society. We continue to know about women being raped by men and abused by their family members. When she retaliates, she is labelled as an offender and thrown in prison, in violation of her fundamental human rights. Whereas, many women from lower socioeconomic classes are frequently drawn into illegal activities such as drug dealing, theft, and prostitution when all they want to do is meet their basic needs.



According to the National Crime Records Bureau's (NCRB) annual 'Prison Statistics India 2020,' as many as 4.83 lakh Indian nationals were lodged across the country's jails by the end of 2020, with over 76% being undertrials and 23% being convicts. Out of the 4.83 lakh inmates, 96 per cent were males, 3.98 per cents were females and 0.01 per cent were transgenders.

While Tamil Nadu has by far the most women arrested in 2020, Uttar Pradesh has the most women convicted (1,182) and women undertrials (3,344) that year. UP also admitted the highest inmates in 2020 (3.19 lakh), followed by Bihar (2.3 lakh) and Madhya Pradesh (1.26 lakh). Ahmedabad had the most female convictions (654), followed by Jaipur (220), Chennai (167), Delhi (146), and Coimbatore (133).



In The Case Of Female Inmates With Children

According to Supreme Court guidelines, children up to the age of six are allowed to stay in prison with their mothers, while children under the age of three should be cared for in crèches and those aged three to six should be cared for in nurseries run by organisations appointed by jail authorities.

UP leads the way with the most female inmates living with their children (397 women with 452 children), followed by Bihar, West Bengal, and Madhya Pradesh. (Jacob, 2022).

Menstruation & Diseases faced by female inmates

The discussion about MHM among menstruating prisoners in India has remained elusive.

According to the rules outlined in the Ministry of Home Affairs' Model Prison Manual 2016, "sterilised sanitary pads" should be distributed to female prisoners as needed.

However, there is a serious lack of implementation of the aforementioned provisions in all of the country's prisons. Menstruating prisoners in many prisons across the country must frequently purchase sanitary napkins from the canteen. They also frequently rely on visiting family members for sanitary napkins. Because of the existing cultural pressures surrounding menstruation, they frequently find it difficult to discuss this with male family members who come to visit them.

Female inmates at Tihar Jail complained that while sanitary napkins were previously provided to them, this practice abruptly ended. The napkins were then replaced with a coarse grey cloth, which they were instructed to reuse. According to the report, guards in Tihar Jail withhold sanitary napkins in order to assert their power. There aren't enough permanent female medical officers in India's prisons. As a result of institutionalised cultural pressure, prisoners who menstruate are hesitant to discuss their complications and issues related to menstrual and reproductive health with male medical officers. Female medical officers' irregular visits to prisons are also a major source of concern.

According to a Commonwealth Human Rights Initiative (CHRI) report, instead of the standard provision of free sanitary napkins, most female prisoners are unaware of such assistance and thus rely on clothes and rags.

In India, prisons also lack proper sanitary napkin disposal facilities. The filthy and unsanitary condition of the prison toilets exacerbates the problem by negatively impacting the prisoners' menstrual health. It is also critical to emphasise that access to basic menstrual hygiene materials is not a luxury but rather a fundamental right of inmates. These services should be extended to police stations and court lockups. It is critical to provide a safe and sanitary environment inside

the prison in order to protect inmates' fundamental rights to dignity and well-being. (Chowdhary, 2021)

The COVID-19 pandemic has highlighted the systemic deficiencies in India's prisons. The need for reforms in prison administration has emerged as a critical task. Prison inmates have the same right to life as any other Indian citizen, as guaranteed by the constitution. Overcrowding, poor sanitation, a lack of medical assistance, including a chronic shortage of medical personnel, and other issues. Such concerns during a pandemic lead to violations of prisoners' basic human rights.

According to the Hindustan Times Report of 2017, Women are often confined to small wards inside male prisons, their needs becoming secondary to those of the general inmate population.

Whereas Stitching, weaving, fashion jewellery, jute products, balwari, embroidery, envelope making, pottery, Diya and candle making, namkeen making, and artificial flowers are among the courses taught to female prisoners. Pearl Academy also offers fashion design classes in women's prisons, which benefit a number of inmates. (Dhrubo & Nair, 2017)

Minorities

Even days after a cleric and his relatives were assaulted and stabbed in the Baghpat district of Uttar Pradesh, the state police have not been able to make a single arrest. A piece of news daily has, meanwhile, quoted a police official as saying, "There may have been a trigger." The official was perhaps implying that the victims brought it upon themselves.

> Earlier, Pehlu Khan and Umar Khan, two dairy farmers from the Meo community who were lynched, were also blamed for their own murders. The charges against them were eating beef and "smuggling" cows, respectively. Cases were filed against them and those accompanying them and their family members. Some of them were also beaten but were lucky enough to escape death.
>
> These cases make one wonder if Indian society is fast turning hostile towards the second-largest community of the country which comprises 14.2 per cent (172 million) of the

total population? Put differently, is India's democracy "penal" and "punitive" towards its minorities?

Hostile To Minorities

A new collaborative study by Germany-based anthropologist and Australia-based economist argues, with the help of hard data, that India indeed is "unfriendly, if not hostile" to its minorities, including Dalits and Adivasis, explained by their disproportionately higher number in jails. They also stress that in this respect, India is no different from most democracies, including those in the West.

Comparing Ratios of the Prison Population of Religious and Social Communities against Their Ratio in Total Population, by State, 1998–2014

State	Hindu	Muslim	SC	ST
Andhra Pradesh	0.86	1.49	1.32	1.75
Arunachal Pradesh	1.08	6.95	–	0.76
Assam	0.88	1.09	2.35	1.22
Bihar	0.92	1.32	1.41	4.23
Chhattisgarh	0.88	3.48	1.77	1.08
Goa	0.95	1.96	2.57	0.72
Gujarat	0.81	2.71	2.94	1.36
Haryana	0.88	1.71	1.17	–
Himachal Pradesh	0.93	2.21	1.16	0.98
Jammu and Kashmir	1.18	0.88	0.87	0.50
Jharkhand	0.99	1.36	1.49	1.08
Karnataka	0.93	1.31	0.85	1.47
Kerala	0.85	1.14	1.38	5.70
Madhya Pradesh	0.93	1.93	1.33	0.93
Maharashtra	0.78	2.64	1.88	1.79
Manipur	1.42	1.38	0.26	0.62
Meghalaya	2.11	3.34	47.16	0.70
Mizoram	1.56	4.18	74.09	0.97
Nagaland	1.04	7.44	–	0.95
Odisha	0.93	2.71	1.43	1.12
Punjab	1.02	2.76	0.91	–
Rajasthan	0.87	2.07	1.23	1.47
Sikkim	0.70	1.29	2.09	0.90
Tamil Nadu	0.84	2.35	1.87	7.84
Tripura	0.85	2.07	1.16	0.96
Uttar Pradesh	0.89	1.36	1.21	15.13
Uttarakhand	0.63	2.32	1.16	4.44
West Bengal	0.66	1.83	0.77	1.58
Andaman and Nicobar Islands	0.35	0.99	–	0.45
Chandigarh	0.75	2.10	1.41	–
Dadra and Nagar Haveli	0.92	3.17	1.90	1.20
Daman and Diu	0.97	1.13	3.65	2.15
Delhi	0.86	2.03	1.32	–
Lakshadweep	1.64	0.94	–	0.67
Puducherry	0.97	0.79	1.57	–
All-India	0.87	1.50	1.36	1.58

Sources: Authors' calculation from the *Prison Statistics India*; Censuses 2001 and 2011.

Zakaria Siddiqui (Credit: Prepared by Irfan Ahmad and Md EPW)

Professor Irfan Ahmad, a senior research fellow at Max Planck Institute for the Study of Religious and Ethnic Diversity, Germany and Dr Md Zakaria Siddiqui, a research fellow at the Institute for Economics and Peace, Australia published a paper in the reputed Economic and Political Weekly (EPW) in November 2017. Titled, Democracy in Jail, the paper elaborates on "(the) over-representation of minorities in Indian prisons" using government data and comparing them with other countries.

The National Crime Records Bureau (NCRB) annually releases reports on Prison Statistics India (PSI) that figure on the inside pages of newspapers only to be conveniently forgotten for the rest of the year. Prisoners have attracted scant attention from even academics in India, and those who have focussed on their collective plight and violation of their rights. Only a few have actually delved into the caste or religious identities of prisoners.

The share of these marginalised communities in India's population is 39% but in prisons, it is 51%. In a chilling indictment of the prevailing social system, a recently released government report on prison statistics revealed that just over half of all convicts under trial in Indian prisons are Muslims or Dalits or Adivasis. The share of these three communities in India's population is 39.4%, according to the last Census held in 2011. But the proportion of prisoners from these communities is 50.8%.

These three communities are the most economically and socially backward ones in India. Literacy rates are lower, school and higher education access is more limited, poverty rates are higher, unemployment is higher and average landholding sizes are lesser than other communities in society. Besides this, they also are subject to social oppression, violence and discrimination by the so-called 'upper castes.

In the case of Dalits and Adivasis, this social oppression has been a centuries-old legacy. For the Muslim community, the recent rise of Sangha Parivar-affiliated outfits – both in the form of Bharatiya Janata Party-led governments at the Centre and several States and in various organisations active – has created a new era of vicious hate mongering and violence.

It is a feature of India's unequal and discriminatory socio-economic system, and not a mere aberration.

There are several factors at work in creating this shocking state of affairs.

The Role of Privilege -

1. First and foremost is the fact that persons belonging to these communities are mostly poor. This prevents them from getting access to proper legal advice right from the time of police investigation up to the proceedings in courts. Their disadvantaged position prevents them

from exercising such basic legal rights as getting copies of police or court documents and verifying that authentic information is being recorded, getting representation from lawyers who are well versed and skilled enough to negotiate the maze of judicial proceedings, applying for bail or parole, petitioning to higher appellate bodies, etc.

2. The second aspect of privilege playing a role in who is languishing in India's jails comes from the discriminatory nature of the justice system and state machinery itself. Over-policing, inherent caste discrimination, religious discrimination, and so on are some of the reasons why these communities face the brunt of state machinery. The ruling majority, in both a political and social sense, that is the BJP and the Upper-Caste Hindu, often, do not even face the justice system.

Whether one takes into account the current Munawar Faruqui case in Indore, where the comedian who was attacked on the suspicion that he might make an 'anti-Hindu' joke in the future is in jail, while his attackers, associated with the BJP are scot-free. Historically, there can be many examples that can be examined to show how privilege plays a role in who is arrested. Ranvir Sena, an upper-caste militia active in Bihar in the 1990s known for several massacres like Laxmanpur Bathe, is still active even after a ban in 1995, and most leaders are out on bail or not arrested. The BJP Murli Manohar Joshi and former PM Chandra Shekhar have even been complicit in their massacre of Dalits in Bihar.

Under-Trials and The Indian Justice System

Among the total number of prisoners in India, around 70% are currently under trial, i.e. still in court, according to the National Crime Record Bureau's 'Prison Statistics India 2019'. Only 14 countries in the world have a higher number of under-trial prisoners. Out of the many languishing in prison while under trial, a majority are from minority communities. Around 64% are Scheduled Castes (SC), Scheduled Tribes (ST), and Other Backward Classes (OBC). Another 21.5% of under-trial prisoners are Muslim. This means that more than 85% of those in jail who have not been adequately represented and protected by the justice system are oppressed.

Poor representations of minorities in government institutions

The problem is further aggravated by the fact that while in jails, minority communities, particularly Muslims, are over-represented - in other government institutions from elected representatives to police forces and judiciary their representation is abysmally low.

According to 2013 data from NCRB (the government has since stopped giving religion-wise data), only 6.27 per cent of the country's police personnel were Muslims. The percentage further goes down as the rank goes up. It is interesting to note here that according to data collected by IOS, their numbers had strangely continued to dwindle from 2001 onwards when it was 8.40 per cent.

Reservation policies of the government have considerably helped the SC and ST communities, who were 14.71 per cent and 10.82 per cent, respectively, in the police force, as of 2013. But the dominance of upper castes in decision-making positions, as well as institutional biases, has largely continued.

Social Controls

Social control is a sociological concept, defined simply as control of society over individuals. In a positive simplified sense, it is the mechanisms that make sure society functions and punishes, either formally through legal penalties or informally through shame, ridicule, etc those who are seen to be deviants from social norms. In the context of India, I use the word social control, when I talk about the incarceration of minorities, to shed light on the ugly mutation Indian society has been going through for quite some time. Within a society like this, any minority who does not tamely accept subjugation could be seen as a deviant and is punished both legally and informally. Legally, by what has been discussed

above, and informally, through the atrocities perpetrated on Dalits, Bahujan, Muslims, and women by the UC Hindu. To conclude, this incarceration of minorities at an excessive scale has always existed in India, as caste and majoritarian privilege have always existed in India. It has, however, never been as explicit as it is during the current times; when anyone who protests or demands their rights as a minority is punished through the state machinery, through lengthy under-trial periods, preventive detention, or continued harassment from the police.'

What needs to be done?

Most legal or prison reform commissions or committees set up by the governments have conveniently ignored this ongoing injustice. Most of the political parties, barring the Left, have never addressed this because they only seek to indulge in patronage politics – protect their own supporters and disregard others. Rights and advocacy groups, too, often tend to ignore this. Any of the usual prescriptions for changing this tragic situation are some kind of prison reform or measly legal aid. The system is too powerful and its arms too long.

To change this situation, first, a thorough and comprehensive enquiry needs to be carried out, which should include a collection of complete data on the economic, educational, and social background of the inmates of prisons, an analysis of the cases they are charged (or convicted) with and immediate disposal of all undertrials bail applications (as per legal provisions), especially those from Muslim, Dalit and Adivasi communities.

In addition, there should be an investigation of political or agitational charges against these inmates, and their speedy disposal. This is necessary because many Muslims, Dalits and tribals have been jailed for protesting a range of democratic demands, such as opposition to the takeover of forest land for unscrupulous natural resource exploitation or infrastructure building; against caste atrocities; against communal laws (like the CAA) or falsely implicated in charges of communal and casteist nature.

All this needs to be backed by a wider, more sweeping, movement in defence of the rights and interests of the minorities, Dalits and Adivasis, especially in these times when a government of revanchist and obscurantist standard-bearers is in power and is functioning with impunity.

ALTERNATIVES TO IMPRISONMENT

Alternative 1- Periodic Detention & Probation / Community Corrections

A man is not a born criminal. He shall be given the right to reform himself into a better human being.

Probation/Community Corrections – Usually referred to as "community corrections", probation keeps the offender in the community but puts limits and obligations on his freedom. Probation can come with many conditions attached, including meeting regularly with a probation officer, staying under house arrest during certain parts of the day, taking random urine tests, remaining drug-free, working, doing community service, and participating in substance abuse or mental health treatment. If an offender does not comply with the probation conditions, more stringent supervision can be required, or, if the violation is serious, probation can be revoked and the person can be required to serve time in jail or prison. There are different varieties of probation:

- On Intensive Supervision Probation and Parole (ISP), probation officers have fewer cases, monitor offenders more closely, and meet with offenders more often. (FAMM, 2022, p. 2)

- Day reporting requires offenders to report to a location similar to a probation officer on a daily basis. Here, they undergo daily drug and alcohol tests and inform their supervisors of their plans for the day, including where they will work or search for employment. (FAMM, 2022, p. 2)

The term probation comes from the Latin term probare, meaning "to prove." Because probation is a conditional release into the community, the probation period is a time of testing a person's character and his or her ability to meet certain requirements. That is, convicted persons must prove to the court that they are capable of remaining in the community and living up to its legal and moral standards. About 90% of all sentences handed down by the courts in the United States are probation orders.

Historical Evolution: The system of probation owes its origin to John Augustus of Boston (U.S.A.) around 1841.

Stage: Probation is probably the first stage of the correctional scheme (the second stage is parole).

Why Do We Need Community Corrections?

Community corrections may be defined as any activity performed by agents of the government to assist offenders to establish or reestablish law-abiding roles in the community while at the same time monitoring their behaviour for criminal activity. In theory, monitoring and assisting offenders while in the community protects society from criminal predation without taxpayers having to shoulder the financial cost of incarcerating all its offenders. Even if, as a society, we were willing and able to bear the monetary cost of imprisoning all offenders, incarceration imposes other costs on the community. These costs can and must be borne where seriously violent and chronic criminals are concerned, but to send every felony offender to prison would be counterproductive.

Indian Laws regarding Probation and Parole

Section 562 of the Code of Criminal Procedure,1898, was the earliest provision to deal with probation. After the amendment in 1974, it stands as S.360 (Order to release on probation of good conduct or after admonition) and S.361 makes it mandatory for the judge to declare the reasons for not awarding the benefit of probation.

In 1958 the Legislature enacted the Probation of Offenders Act, to supervise the accused during the period of his probation.

Periodic Detention

Periodic detention is a type of custodial sentence under which the offender is held in prison periodically, for example between Friday and Sunday evenings each week, but is at liberty at other times. Promoted by prison reformers as an alternative to imprisonment, periodic detention drew praise for allowing offenders to continue working, maintain family relationships, and avoid associating with more dangerous criminals in traditional prisons. It was also considerably less expensive to administer.

Periodic detention commenced in NSW (New South Wales), Australia in 1970 as an alternative to full-time custodial sanctions. Although NSW does not have a strict sentencing hierarchy, legislation and case law provide guidance on the relative severity of the various sentencing options.

Three-stage process in imposing a sentence of periodic detention:

When imposing a sentence of periodic detention, the court must first be satisfied that, having considered all other alternatives, no penalty other than imprisonment is appropriate. Secondly, the court must determine the length of the sentence. Finally, it must determine whether that sentence should be suspended or served by way of home detention, periodic detention or full-time custody. (R v. Zamagias, 2002)

Assessment reports:

In deciding whether or not to make a periodic detention order the court must have regard to:

a) The contents of an assessment report on the offender, produced by the Probation and Parole Service; and to
b) Any other evidence from a Probation and Parole officer, which the court considers relevant.

The assessment report must evaluate the offender's suitability for periodic detention with reference to the following:

- The degree to which the offender is dependent on drugs or alcohol;
- The offender's psychiatric and psychological condition;
- offender's medical condition;
- The offender's criminal record; &
- The offender's employment and other personal circumstances.

Despite the contents of the report, the court may refuse to order periodic detention even though the offender is deemed "suitable". Alternatively, the court may order periodic detention even though the assessment states that the offender is unsuitable. (NSW Sentencing Council, 2022, p. 20)

Administration By The Department

The NSW Department of Corrective Services administers periodic detention as a two-stage program:

1) Stage 1 detainees report to a detention centre by 7.00 pm on a specified day of the week (usually Friday) and remain in custody at the centre until 4.30 pm two days later;
2) During Stage 2 detainees do not stay overnight (essentially removing the custodial component of the sentence) but instead undertake supervised community service work each week.

This regime is repeated every week until the end of the term of the sentence or until the offender is released on parole unless the periodic detention order is sooner revoked.

During Stage 1, detainees may be directed to perform work within the Centre or to carry out work under supervision in the community. For that latter purpose, they are taken by Corrective Services staff to the worksite. Once in Stage 2, detainees arrange their own transport to and from a specified work site, rather than reporting to a periodic detention centre as is the case for Stage 1 detainees performing work outside the detention centre. (NSW Sentencing Council, 2022, p. 25)

A review of Periodic Detention

Statistics provided by the Department of Corrective Services shows that of the total of 790 offenders who were subject to periodic detention and released on parole, or on expiry of their sentence, in 2006-2007, about 38.2% (302) were on Stage 2 at the time of their release. As might be expected, the vast majority of offenders who served an episode of fewer than three months were released as Stage 1 detainees. Excluding those offenders, 44% of the remaining offenders (680) with episodes of 3 months or more were released from Stage 2. (NSW Sentencing Council, 2022, p. 54)

Re-conviction rates:- According to BOCSAR data to the effect between 2002 and 2004, 39% of all offenders sentenced to periodic detention had another proven offence within the following two years. That data, it was also asserted, disclosed that 55% of Aboriginal offenders

sentenced to periodic detention during the period, had been reconvicted within 2 years, as compared to 38% of non-Aboriginal offenders.

The Department of Corrective Services conducted a study on rates of imposition of full-time custody, to offenders who had successfully completed periodic detention in 2004-2005. It suggested that the re-conviction rate for those who successfully complete periodic detention orders is very low, at approximately 15%. Only 7% of those who successfully completed a periodic detention order in the period covered were recorded as subsequently returning to prison, while 8% were recorded as returning to some form of community corrections. (NSW Sentencing Council, 2022, p. 56)

Alternative 2 - <u>House Arrest</u>

The concept of House Arrest of Offenders is not novel; it dates back to a time as old as the 17th Century when the Italian Philosopher Galileo Galilei was put under house arrest indefinitely by Pope Urban VIII, for openly advocating the Copernican theory.

House arrest, sometimes interchangeably used with home confinement or home detention is an alternative to jail sentencing, wherein the offender is punished by keeping them confined within a set radius of their home under constant monitoring. However, they are still allowed to carry out certain pre-approved activities at agreed locations, thereby allowing them to simultaneously serve time as punishment for their crime and maintain their place in society.

Under Indian Criminal laws, the concept of House Arrest is not explicitly spelt out however it does exist as a means of Preventive Detention U/s 5 of the National Security Act, 1980 which lays down the power of the appropriate government to regulate place and conditions of detention of every such person in respect of whom a detention order has been made under the National Security Act.

In the case of A.K. Roy vs Union of India case [AIR 1982 SC 710] popularly known as the National Security Act case, the honourable Supreme Court issued a number of directions with a view to safeguard the interests of detenues detained under the NSA. They are as follows:

1) Immediately after detention the kith and kin of the detenu must be informed in writing about his detention and his place of detention.
2) the detenu must be detained in a place where he habitually resides unless exceptional circumstances require detention at some other place.
3) That detenu is entitled to his book and writing materials, his own food, and visits from friends and relatives.
4) Detenue must be kept separate from those convicted.
5) No treatment of punitive character should be meted out to detenu and he should be treated according to the civilised norms of human dignity.

Recently, the Supreme Court of India in the Gautam Navlakha vs NIA case has also observed that U/s 167 of the Code of Criminal Procedure a Magistrate has the power to order the detention of an individual, such detention including house arrest.
The decision of the Supreme Court is a welcome step and the Central government should seriously consider enacting statutory guidelines to enable magistrates to award house arrest in cases of first-time offenders and persons at risk, including the elderly and those with comorbidities, to ensure a more humane form of custody.

However, house arrest as a measure of detention has not been used for undertrial inmates. The need to implement such less punitive methods for undertrial inmates was emphasised in the 1973 Report by the Expert Committee on Legal Aid titled Processual Justice to the People. It considered entrusting the accused with his relatives or release under supervision as forms of conditional release in order to ensure distancing of the accused undertrial from possible exposure to convicts.

Countries such as New Zealand, the United States of America and Australia extensively use house arrest as an alternative to imprisonment and it is often coupled with Electronic Monitoring. In the State of South Australia in Australia for instance, the Department for Correctional Services has laid down a number of measures on how to smoothly over-see Home detention.

To begin with, the location of the person under home detention is strictly monitored by an electronic monitoring device and such persons can only leave their approved residence to attend pre-approved locations such as paid employment, study course and programs, and medical appointments. Pre-approved locations will be detailed in the offender's plan. The offender can discuss extra passes for leaving with their community correction officer and these additional passes are to be carefully managed and will always be checked in advance. The detenu is usually not allowed to leave their residence without prior approval. If urgent Medical Treatment is required they are supposed to contact the 24hr Monitoring Centre first. The home detention agreement signed by the detenu usually includes conditions such as a ban on the use of drugs (except for medical purposes), ban on alcohol consumption, ban on gambling, possessing firearms etc. The home detainees are supervised by community corrections and the level of such supervision will depend upon the conditions set and the existing regime of the detainee.
Supervisions are usually in the form of Visits or Telephone Calls from the Community Correction Officer at any time of day or night. Supervision can also be done with the help of GPS enabled electronic monitoring device that transmits the location of the detainee at all times or the detainee may be directed to attend the community correction centre by prior appointment or on short notice for random drug and alcohol testing.

In the United States too, the State of California's Department of Correction and Rehabilitation uses the Electronic In-Home Detention (EID) program to monitor offenders' compliance with imposed curfews as an enhancement to supervision and an alternative sanction to incarceration. The sentence is an alternative sentence to a traditional jail sentence or time in county jail or state prison.

When a judge imposes home confinement, the offender usually has to abide by certain home confinement rules, such as curfew restrictions, random drug testing by law enforcement, movement tracking anklets, alcohol monitoring via a SCRAM device, drug use monitoring via a drug patch, community service, and/or in-office face-to-face meetings or home visits with the offender's probation officer or parole officer.

Depending on the severity of a person's crime, a judge may allow an offender to leave his/her residence for certain purposes during the duration of the home confinement sentence For example, a judge may allow the offender to leave his/her home in order to: work, attend school, travel to medical appointments, attend and participate in counselling appointments or alcohol classes (maybe, for example, after a conviction for DUI), tend to family obligations, go to mandatory court appearances, and participate in any other court-approved activities. Offenders are generally responsible for paying any costs that are associated with a house arrest sentence. However, as per the California Penal Code people will not be excluded from participating in home detention based exclusively on their inability to pay.

In New Zealand, the Department of Corrections uses Home Detention as a sentence, both punitive and rehabilitative in nature. Such sentences require the offender to remain at a suitable and approved residence at all times and be monitored 24 hours a day, seven days a week. It is an alternative to imprisonment and is intended for offenders who otherwise would have received a short prison sentence (of two years or less) for their offending.

Only sentencing judges can impose home detention and in that too they must take into consideration advice provided by a probation officer who has assessed the offender, the home address and any people who live there.
Offenders who receive a home detention sentence are subject to Electronic monitoring and their compliance is monitored for the length of the sentence.

Offenders who are on home detention may also be required to: pay a fine, pay reparation to their victim/s and do community work, they must also complete programs designed to address the causes of their offending. They can be sentenced to home detention from 14 days up to one year. Offenders must apply to their probation officer if they need to be absent from their home detention address. Their probation officer will decide whether to approve the request. Post-detention conditions are applied after an offender has completed home detention to provide the offender with additional supervision and support for their rehabilitation needs and transition back into society. The conditions could include requirements like having a curfew and completing community work.

Home detention allows an offender to seek or maintain employment, complete a sentence of community work if imposed, access programs to address their offending and maintain their family relationships.

All in all House Arrest can be an effective alternative to Imprisonment for under-trial prisoners and low-risk, non-violent convicts who have committed/ are charged with crimes that are not heinous in nature and where the victim is not a family member especially now that we're reeling with a pandemic that requires special measures like social distancing to contain it.
It would not only decongest the prisons but also reduce the burden on the already understaffed prisons of India. (As per NCRB's Prison Statistics India Report of 2020 the number of prisoners at the end of the year 2021 was 4,88,511 as against the actual capacity to hold 4,14,033 prisoners). In fact as we know in 2020 the Supreme Court of India taking suo-moto cognizance of the Covid-19 virus and overcrowding in prisons directed the States and Union Territories to constitute a High powered Committee to determine which class of prisoners can be released on interim bail and upon the findings and recommendations of the Committee, prisoners sentenced to imprisonment for less than 10yrs were recommended to be released on parole and States and Union Territories across India complied with these recommendations, to help with decongestion.

In the present date and time, with GPS technology becoming cheaper, modern means of monitoring such as electronic tagging, as recommended by the Law Commission in its Report

No.268, can easily be incorporated as a cost-effective measure to ensure compliance with bail conditions. This would allow easy monitoring of the prisoners and give them the opportunity to care for their family especially if they are a parent and not absentee parents, it would also allow them to continue their studies or have a job so that they can support themselves and their families and most importantly it would reduce the risk of them coming in contact with hardened criminals and becoming one themselves.

Alternative 3 - Victim- offender Mediation and Restitution

According to the United Nations Office on Drugs and Crime, restorative justice is an inclusive, flexible and participatory approach to crime which provides an opportunity to all affected parties – offenders, victims, their families and the community – to participate in addressing the crime and repairing the harm caused by it. ("UNODC Tools and Publications - Restorative Justice", 2022)

It sees crime as more than a violation of the law—violating human relationships and even offenders. The term “restorative justice” was first adopted by American psychologist Albert Eglash in his 1959 article “Creative Restitution: Its Roots in Psychiatry, Religion and Law”. Elmar G.M. Weitekamp and Stephan Parmentier, in their paper Restorative as healing justice: looking back to the future of the concept, argue that today’s restorative justice field can be broadly differentiated into four areas: 1. Victim-offender mediation scheme 2. Conferencing 3. Peace- circles 4. Extension of restorative justice philosophy to the realm of international crimes. (Weitekamp & Parmentier, 2016)

Victim offender mediation(VOM) scheme brings together victim and offender in a safe manner to share experiences, discuss and understand the emotional and material harm that has been caused, examine meaningful ways to repair that harm and help people move forward, and provide a chance for victims and offenders to develop mutually acceptable restitution plans. In many countries like the USA, Canada, UK, Germany, Singapore and Australia, VOM has been successful in juvenile delinquency and serious crimes. The Supreme Court verdict of Salem

Advocate Bar Association v. Union of India provided the framework for model rules and the establishment of mediation centres. Today it has become a popular means of resolving civil cases in India. Between 2011 and 2015, 79.85% of the cases were matrimonial disputes and 8.86% were property cases in mediation at Bangalore Mediation Centre. In the Afcons Infrastructure v. Cherian Varkey Construction case it was recommended that criminal cases were unsuitable for mediation.

After 20 years of development and many thousands of cases (primarily property crimes) in more than 1,000 communities throughout North America (more than 300) and Europe (more than 700), VOM is beginning to draw towards the locus of criminal and juvenile justice systems (table 1).

Table 1: International Development of Victim-Offender Mediation Programs

Country	Number
Australia	**5**
Austria	**17**
Belgium	**31**
Canada	**26**
Denmark	**5**
England	**43**
Finland	**130**

France	**73**
Germany	**348**
Italy	**4**
Norway	**44**
Scotland	**2**
South Africa	**1**
Sweden	**10**
United States	**289**

According to Mark S. Umbreit, Robert B. Coates, and Betty Vos with 20 years of experience and research data, there is a solid basis for saying: 1) for those choosing to participate—be they victims or offenders—victim-offender mediation and dialogue engenders very high levels of satisfaction with the program and with the criminal justice system; 2) participants typically regard the process and resulting agreements as fair; 3) restitution comprises part of most agreements and over eight out of 10 agreements are usually completed; 4) VOM can be an effective tool for diverting juvenile offenders from further penetration into the system, yet it may also become a means for widening the net of social control; 5) VOM is as effective in reducing recidivism as traditional probation options; 6) where comparative costs have been considered, VOM offers considerable promise for reducing or containing costs; 7) there is growing interest in adopting mediation practices for working with victims and offenders involved in severely violent crime and preliminary research shows promising results, including the need for a far more lengthy and intensive process of preparing the parties.

Researching recidivism, Jiska Jonas-van Dijk, Sven Zebel, Jacques Claessen and Hans Nelen compared reoffending rates of three different offender groups: offenders who participated in VOM; offenders who were willing to participate, but whose counterparts declined VOM; and offenders unwilling to participate (total N = 1,275). Results showed that participation in VOM predicts lower reoffending rates.Hence, Victim-offender mediation(VOM) can become a tool to humanize the criminal justice for both the victim and the offender and India should develop this mechanism as an alternative to imprisonment.

Restitution

In many settings, restitution is attached to victim-offender mediation. Studies under review gauged at restitution as an outcome of VOR (Collins, 1984; Coates and Gehm, 1985, Perry, Lajeunesse and Woods, 1987; Umbreit, 1988; Galaway 1989; Umbreit, 1991; Umbreit and Coates, 1992; Warner, 1992; Roy, 1993). The United Nations Standard Minimum Rules for Non- custodial Measures (Tokyo Rules), Juveniles: the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), and Drug users: the Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations set forth the tool of restitution in non-custodial measures. The Handbook on Justice for Victims deals with the value of restitution, figuring out that this is a socially constructive program which offers “great scope for rehabilitation”.

However, there are Substantive and procedural constraints on restitution which include limitations on who may be considered a victim for restitution purposes, the nature of the offence for which restitution may be ordered, the type of disposition and the offender's ability to pay. In India, The Delhi High Court, in the landmark judgement of Karan Vs. State Nct of Delhi 2020 devised the formula of Victim Impact Report for determining the quantum of compensation to the victim in conjunction with the paying capacity of the accused.

Alternative 4- Open Prisons

Symbolism and Normative Positions

Possibly, the most evident symbolism which is invoked from the idea of a prison is that of the dark corridors of Bastille, the horrors of the Tower of London and the disarray of Guantanamo. A symbolism ingrained in lack of transparency, disproportionate punishment and absence of reform. In India, the situation is less different as prisons embody the same symbolism and possibly worse living conditions. A report of an inspection of 58 prisons in Bihar yielded that overcrowding, forced hard labor, lack of medical care, gang violence, abuse of power by prison authorities, limited access to legal aid and sexual violence were issues faced by the inmates (Chakraburtty, 2015).

In light of such problems (a broad view of which has been discussed in the preceding sections), there are two normative propositions, we begin with. First, the sentencing of a person to prison is a retributive act itself. That once a person's liberty is constrained to a cell, society's claim against the individual stands extinguished. Accordingly, inhumane living conditions in prison are excessive and unfounded burdens placed upon the inmate who already has been punished by being imprisoned. The prison is the punishment, the prison need not punish more (Paranjape, 2001).

Second, that the training of people to live as responsible free persons cannot be achieved through imprisonment using the most restrictive methods (Paranjape, 2001). Since, behaviour is learned, there exists a high possibility that inmates permanently lose their ability to live as independent persons considering the compulsory mechanised schedule inmates repeat for years. Additionally, violence by prison authorities and fellow inmates and its lack of rectification can set perverse incentive mechanisms wherein prisoners might indulge in more violence for personal fulfilment. Thus, the contradiction of prisons is that they try to achieve a limited certain world through limitless uncertain violence.

A brief history and Introduction of open prisons in India

Owing to such factors, open prisons have become a viable alternative. The Rajasthan Prisoners Open Air Camp Rules, 1972 define open prison as, “prisons without walls, bars and locks.” Roughly speaking, such prisons differ from conventional prisons as open prisons do not require total confinement. Prisoners are expected to leave the prison after the first roll call of the day to work and must return before the prescribed timings. Some open prisons even provide for families to live with the inmates and provide greater access to social life.

India first encountered open prisons in 1949 when a model prison at Lucknow was set up. In 1953, the state of Uttar pradesh established another open prison for providing labour for constructing the Chandraprabha dam near Benaras. Several open prisons sprung up throughout the 1950s in places like Shahgargh and Chakiya. In 1963, Open prisons conceptually evolved into reformative community centres from purely work camps with the establishment of the Sampurnanand Khula Bandi Shivir in Sanganer, Rajasthan. (Goyal & Vedula, 2021) The aim of open prisons was now understood to be the long term integration of inmates in the society and not merely providing work to inmates.

Needless to say, there is a qualification criterion for prisoners to be placed in open prisons. Usually, a screening committee evaluates the mental/physical fitness, behaviour, possibility of reform of the inmate and suitable inmates are recommended for transfer to open prisons. In specific, every state has a law which lays down the eligibility criteria for inmates who are eligible for open prison. For example, Rajasthan Jail Rules prescribe that the prisoner must be a convict and should have at least spent 5 years in prison.(Awasthi, 2022)

Models of Open Prisons

The Model Prison Manual (BPR and D 2003) lists three types of open prisons.

1.) Semi-Open Training institutions.

2.) Open Training institutions/Open Work Camps

3.) Open Colonies

These three types of prisons offer varying levels of flexibility and increasing order of freedoms for inmates. A remarkable feature of these institutions is that convicts have access to reading materials and especially designed vocational courses are made available for educating and skilling inmates.

Semi-open Training Institutions are usually attached to the vicinity of a regular prison and are under greater scrutiny. Inmates can learn skilled work and have access to greater social life than regular prisons. These institutions are the first stage of an inmate seeking fully open prisons.

Open Training Institutions/Work Camps are another type of open-prison institution. Inmates have access to a wide range of monitored work like constructing irrigation canals, land reclamation, building government infrastructure and environmental conservation. However, inmates are still monitored at such institutions and usually return to the prison at the end of work hours, giving limited time for recreation and social engagements.

In Open Colonies, inmates, and their family members cohabit the prison. Usual skilled and unskilled work for inmates like agriculture and small cottage industries is available. The inmates are lightly monitored at work, and they are given adequate opportunities to develop the ability to work without supervision. Inmates and their family members maintain themselves through the wages they earn which are at par with the outside world.

Examples of successful open-prisons in India.

Anantapur, Andhra Pradesh

Spread over 1427 acres of land, the Anantapur open prison allows prisoners who have completed 2/3rds of their punishment with good conduct to inhabit it. A remarkable feature of this prison is its collaboration with the Himalayan drug company to grow medicinal herbs (Goyal & Vedula, 2021). The inmates grow the plant for a suitable price whereas the corporate giant looks after the packaging and transportation of the product. Regular and practical agricultural training is also available for prisoners which allows them to earn a livelihood post the completion of their sentence.

Shri Sampurnanand Khula Bandi Shivir, Sanganer, Rajasthan

Spread over 4 hectares in Sanganer, the Sampurnanand Khula Bandi Shivir allows for families to live with convicts. The camp lacks the regular restrictive physical features of a jail like high walls and guard towers and tries to replicate a Gandhian sustainable model of community and economic life. Convicts are expected to build their own houses, to work from 6am to 7pm and their children to attend regular schools. Inmates and their family members integrate seamlessly into socio-economic life here and serve as teachers, daily wagers, and farmers in nearby areas (Goyal & Vedula, 2021). Usually, prisoners who have completed a third of their punishments and have been convicted of non-heinous offences are eligible to stay here.

Advantages of open prisons over traditional prisons.

There are two advantages that open prisons possess over traditional prisons. A) Economic and B) Social.

Economic Advantage

Indian prisons suffer from the problem of overcrowding. Indian prisons have an occupancy rate of 117.6% as of 31st december 2018, and the number is growing at a steady pace (National Crime Records Bureau, 2018). Though overcrowding in and off itself is not new to India; however, more inmates mean more costs to the state due to salaries of prison staff and maintenance. Open prisons alleviate a lot of these concerns by reducing the need for additional prisons, maintenance and operation costs.

Smita Chakraburtty in her role as the honorary prison commissioner of Rajasthan concluded that open prison systems were easier on the public exchequer (the research cited in Goyal & Vedula, 2021). Comparative data of Sanganer Open prison and Jaipur Central Jail yielded that only one prison staff was needed per 80 prisoners in an open prison. The per-person head cost in the Jaipur Central prison was Rs 7,094 per month whereas it was Rs 500 per month in the Sanganer open prison–which is 78 times cheaper on public taxes. These findings are corroborated by a separate research of the Rajasthan State Legal Services authority which concludes open prisons to be cost effective and thus suggests to increase the usage of open prisons (Bhatanagar, 2017).

Social Advantage

As noted before, behaviour is learned and that prison violence perversely impacts the psyche and physical health of inmates. Most importantly, it takes away from the ability of prisoners to live normal lives after their punishment is complete. In contrast, open prisons keep the mind of the inmate preoccupied with work and reformation which inculcates in them the value of responsible action. Such philosophy of reformation is consistent with the court's ruling in Ramamurthy v State of Karnataka (1997) which hailed open prisons for individualising punishment and not treating all convicts the same like a regular prison.

Open prisons also narrow the chances of recidivism in inmates. Since recidivism has been understood as a function of prisoner’s frustration and their lack of ability to integrate in society, recidivism gets diminished because of new found purpose and skill in open prisons (Goyal & Vedula, 2021). Resultantly, inmates find it easier to integrate themselves in a life of dignity because of economic sufficiency and social responsibility. Furthermore, the stigma associated with prisoners reduces with the popularisation of open prisons as the society recognized the possibility of reform in inmates.

The Supreme court in Dharambir v State of Uttar Pradesh (1979) noted that Open-prisons are advantageous for young offenders as they are protected from the well known vices of regular prisons. Families also gain from open-prison systems as often inmates are the sole breadwinners of their families and post imprisonment their families are left to fend for themselves. Lastly, long prison sentences make prisoners dependent on others for daily care and schedule, open prisons instil in them the ability to make everyday choices and perform basic functions of dignified sustenance.

CASE STUDIES

Case Study 1 - PROBATION

CASE LAW: *PROBATION OF OFFENDERS ACT, 1958*

PETITIONER: *RAMJI MISSIR AND ANOTHER*

Vs.

RESPONDENT: *STATE OF BIHAR*

DATE: *6/12/1962*

BENCH: *AYYANGAR, N. RAJAGOPALA IMAM, SYED JAFFER SUBBARAO, K. MUDHOLKAR, J.R.*

HEADNOTE:

The appellants, Ramji and Basist, who were brothers, were prosecuted for having assaulted Sidhant who as a result suffered grievous injuries. Both the appellants were found guilty by the Assistant Sessions judge, Arrah, and sentenced to various terms of imprisonment. While B was convicted under ss. 307 and 326 of the Indian Penal Code, the conviction of R was under s. 324. Section 6 (1) of the Probation of Offenders Act, 1958, enacts "When any person under twenty one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the Court by which the person is found guilty shall not sentence him to imprisonment. Though Basist was 19 years old, s.6 was inapplicable to him as he was found guilty of an offence punishable with imprisonment for life. Ramji, the older brother was aged 21, but the trial judge considered it inappropriate to afford him the benefit of the section on the ground that the. Act of assault was premeditated. On appeal, the High Court set aside the convictions of Basist and in their place a finding of guilty under s. 324 of the Indian Penal Code was recorded for which a sentence of 2 years was imposed, and, as regards Ramji, his conviction under s. 324 was maintained but the sentence was reduced from 2 years to 9 months. On the question of the applicability of the provisions of the Act to the accused, the High Court took the view that s. 6 was inapplicable to Ramji because though the lie might have been under 21 years of age and the date of the offence he was not a person under 21 years when the Sessions judge found him guilty, and that though under that though under. 1 1 of the Act, the High Court was competent to make an Order in favour of Basist, it was entirely discretionary for that Court to exercise the power conferred on it, under that section, and that in view of the fact that the court below had already dealt with the matter, it was not desirable to deal with the case of the appellant under the provisions of the Act at that stage.

***HELD**:*

The age referred to in s. 6(1) of the Probation of Offenders Act, 1958, is that when the courts deal with the offender, that being the point of time when the court has to choose between the two alternatives, whether to sentence the offender to imprisonment or to apply to him the provisions of s. 6(1) of the Act.

(2) That the courts mentioned in s. 11 of the Act, be the trial courts or courts exercising appellate or revisional jurisdiction, are empowered to exercise the jurisdiction conferred on courts not only under s.3 and 4 and the consequential provisions but also under s. 6.

JUDGEMENT:

The judge accordingly sentenced Basist to undergo rigorous imprisonment for six years under s. 307, Indian Penal Code, and four years under s. 326, Indian Penal Code, the sentences to run concurrently. As regards Ramji, the elder brother, he considered it inappropriate to afford him the benefit of this provision and recorded his finding on this matter in these terms:

"So far as accused Ramji is concerned I am not inclined to take recourse to the provisions of the Probation of Offenders Act, 1958, because the act of assault on the informant on the part of this accused is premeditated."

The judge sentenced Ramji to undergo rigorous imprisonment for two years under s. 324, Indian Penal Code.

Both the accused filed an appeal to the High Court.

The learned Single judge who heard the appeal considered the evidence in the case and the circumstances in which the injury was inflicted and held that there was no intention on the part of Basist to cause grievous hurt to P.W. 2, with the result that as against him the conviction under s. 307 as well as that under s. 326, Indian Penal Code, were set aside and in their place he recorded a finding of guilt in respect of an offence under s. 324, Indian Penal Code, for which he imposed a sentence of rigorous imprisonment for two years. As against Ramji the conviction was

maintained but being informed by counsel that the accused had been suffering from tuberculosis the sentence of imprisonment was reduced from 2 years to 9 months.

It was urged before the High Court that the reasons assigned by the Assistant Sessions judge for refusing to apply the provisions of s. 6 of the Act to accuse Ramji were not proper. This submission was, however, repelled since the learned judges considered the section inapplicable to that accused because, though he might have been 'under 21 Years of age' on the date of the offence (October 17, 1960), 'he was not a person under 21 years of age' on May 24, 1961, when the Sessions judge found him guilty and sentenced him to a term of imprisonment, holding that the crucial date on which the age had to be determined being not the date of the offence but the date on which as a result of a finding of guilty sentence had to be passed against the accused.

Taking first the case of Ramji, the elder brother, we entirely agree with the High Court in their construction of s. 6. The question of the age of the person is relevant not for the purpose of determining his guilt but only for the purpose of the punishment which he-should suffer for the-offence of which he has been found, on the evidence, guilty. The object of the Act is to prevent the turning of youthful offenders into criminals by their association with hardened criminals of mature age within the walls of a prison.

The question next to be considered is the result of applying the terms of s. 6(1) to a person in the position of Bassist. It was not disputed by learned counsel for the respondent that the learned Judge of the High Court failed to consider the case of this accused with reference to the terms of s. 6 since he has proceeded on the basis that he had an unfettered discretion in the matter and that in the circumstances of the present case he was not inclined to exercise in favour of the accused. Basist-must therefore be set aside and the High Court directed to exercise its discretion on the basis that it was judging the matter with reference to the criteria laid down in s. 6.

They considered that on the terms of the section, on grounds of logic as well as on the theory that the order passed by an appellate court is the correct order which the trial court should have passed, the crucial date must be that upon which the trial court had to deal with the offender. In this view as Basist was admittedly below 21 years of age at the time of the judgement of the

Assistant Sessions judge S. 6 was not inapplicable to him even assuming he was above that age by the date of the order in appeal.

DECISION:

The appeal was accordingly allowed in part i.e., in regard to the second appellant- Basist and was remanded to the High Court to consider the proper order to be passed in his case by applying the provisions of s. 6 of the Probation of Offenders Act, 1958.

Case Study 2 - HOUSE ARREST

Case Title: *Gautam Navlakha V. National Investigation Agency*

Date: *12/05/2021*
Court: *The Honourable Supreme court of India*
Judges: *Justice Uday Umesh Lalit and Justice K.M. Joseph*
Parties: *Gautam navlakha (Appellant)*
National Investigation Agency(Respondent)

Factual Background:

On August 28, 2018, Gautam Navalakha was arrested under Section 167 of the CrPC and appeared before a Delhi court for remand to be brought to Pune in connection with a FIR filed there under the Unlawful Activities (Prevention) Act (UAPA). On the same day, the Delhi High Court stayed the transit remand, preventing him from being transferred to Maharashtra. By the same decision, the high court placed him under house arrest.

After 34 days of house arrest, the Delhi High Court ruled that his detention was unconstitutional. Meanwhile, the Bombay High Court has refused to dismiss the FIR filed against him. After the high court denied his anticipatory bail application on February 14, 2020, the Supreme Court ordered him to surrender within three weeks on March 16, 2020, which was extended by one week on April 8, 2020 due to the COVID-19 epidemic. He surrendered to the NIA on April 14, 2020.

He asked for default bail because the NIA failed to file a chargesheet or seek an extension of time within the 90-day statutory period of his detention. The NIA special court, before which the application for default bail was brought, rejected the application on July 12, 2020. Navlakha filed an appeal with the Bombay High Court, contesting the decision of the NIA special court. On October 9, 2020, the NIA filed a chargesheet against Navlakha. The Bombay High Court denied Navlakha's appeal under Section 21 of the NIA Act on February 8, 2021.

Thus, Navlakha's imprisonment included 34 days of house arrest in 2018, 11 days of NIA detention in April 2020, and judicial detention from April 25 to June 28, 2020, all of which clearly exceeded the required period of 90 days and qualified him for default bail. The NIA applied to the NIA special court for an extension of time to file the chargesheet on June 29, 2020.

During his house arrest, Navlakha was not permitted to meet with anyone other than his lawyers and the regular residents of the house. He couldn't leave the premises. Two Delhi Police special cell guards were supposed to be stationed outside the residence. Before the NIA took over the investigation in January of last year, the Pune Police had no access to him and no opportunity to question him. Because the transit remand order was stayed, Navalakha could not be considered to be in police custody for investigation.

He petitioned the Supreme Court for default bail, claiming that his 34-day wrongful detention in 2018 should be counted toward the time limit for filing a charge sheet under the Unlawful Activities Prevention Act.

CORE ISSUE: *Whether the time spent in detention during home arrest qualifies as custody for default bail purposes?*

Bench Observation:

In appropriate cases, courts will be able to issue warrants for home arrest under Section 167.As to its employment, without being exhaustive, we may indicate criteria like age, health condition, and the antecedents of the accused, the nature of the crime, the need for other forms of custody and the ability to enforce the terms of the house arrest. We'd leave it up to legislators to decide how to use it in post-conviction cases. We've discussed prison overcrowding and the state's cost of keeping prisons open.

Apex Court Agrees with the NIA:

A Supreme Court bench agreed with the NIA on Wednesday that an accused remanded in detention under Section 167 of the CrPC cannot be released until he is bailed out or acquitted. At the end of his house arrest, he was not granted bail and was not remanded to judicial custody. According to the NIA, the so-called custody during the house arrest was not custody or imprisonment under Section 167. Because a person cannot be arrested for the same offence twice, Navalakha's anticipatory bail application assumes that her arrest on August 28, 2018 was non-est. Navlakha's surrender prevented him from claiming custody under Section 167 of the Criminal Procedure Code.

The bench reasoned that if the appellant's remand occurred in 2018, the remand to police custody well beyond the first 30 days of the remand in 2018 would be completely incongruous. The bench appeared to be forced to follow this logic in order to justify the police's refusal to question Navlakha during his house detention in 2018, as well as the new remand against him in 2020.

DECISION:

Under Section 167, judges will be able to impose home arrest in the right circumstances. Regarding its use, without attempting to be all-inclusive, we can mention factors such as the accused's age, health, and family history, the type of offence, the need for additional forms of custody, and the ability to execute the house arrest's restrictions. Additionally, we would point

out that under Section 309, courts are free to use judicial custody when it has been granted, provided the requirements are met. In the current case by the bench allowing courts to impose house arrests as a form of incarceration under the proper circumstances under Section 167 of the CrPC.

DRAWING GENERALISATIONS FROM ALTERNATIVES

There are various reasons behind alternatives to imprisonment as per the contemporary demand of the criminal justice system. As per Prison Statistics India 2020 and 2019 occupancy rate has been 118% and 120.1% respectively which results in overcrowding in the prisons. Some alternatives have been mentioned and explained above, from which following assumptions can be drawn:

1. The foremost problem of overcrowding would be solved and mitigated to some extent. Overcrowding is not only the problem of a single country or India but it's becoming a serious issue for many countries.
2. Management of prison administration would be effective and better.
3. The objective of achieving a safe, secured, healthy and harmonious environment would be achieved.
4. The process of reformation of new offenders would be easier and speedy. First time offenders get the opportunity to be reformed expeditiously and quickly.
5. It would prevent first time offenders from being influenced by criminals in prisons.
6. Juvenile offenders would be most benefited from methods other than imprisonment as it can reduce the child delinquency.
7. Probation somehow may reduce the expenditure of the state in maintaining prisoners in incarceration.
8. The alternative of mediation and restitution is one of the best alternatives to imprisonment. Countries like the US, Canada, UK, Germany, Singapore have successfully adopted and established good examples too.
9. Victims Offender Mediation (VOM) may prevent any further violence and revenge attitude.
10. VOM may also reduce court proceedings and burden in case of low level of offences.

11. VOM may also help in mitigating the problem of overcrowding.
12. Victim Offender Mediation may reduce the tendency and possibility of recidivism and it is also a cost effective process scheme for both the parties.
13. Open prison system may reduce the crowd of jails which will offer a safe and healthy environment for prisoners.
14. Open prison may give the space to prisoners to get reformed quickly by getting into social life and working in the mainstream of society.
15. Alternative ways of imprisonment may keep the prisoners mentally and physically fit by indulging them in different activities rather than keeping them in a confined area. The reformation may become easier.

RECOMMENDATIONS

Authorities must develop a comprehensive plan that continuously refocuses attention and resources on adopting prison sentences in order to lower the jail population in order to create the greatest results possible. In recent years, a number of nations have adopted these tactics and been successful in reducing their overall jail populations.

Given how complex these processes of change are, it is impossible to provide a prescription that will reduce the prison population in every society. The following crucial elements would be a part of any reasonable strategy for decreasing the prison population:

Knowledge base

Authorities require thorough analyses of the prison population as well as enough information on the whole range of criminal justice actions involving imprisonment and its alternatives. They must have readily available answers to questions like these:

- What are the social characteristics of persons held in prison? For what offences are they being held, if any?
- For how long are they being held awaiting trial?
- How long are sentences for various offences?

- What are the costs of imprisonment?

Political initiative

The knowledge base should be used by politicians to present and create a clear policy on alternatives to imprisonment that will decrease the jail population. Leading politicians and top policymakers should ideally share a commitment to ideologically decreasing the prison population and investigating prison sentences. Authorities must enhance public knowledge of the drawbacks and costs of imprisonment as well as the moral, practical, and financial benefits of alternatives in order to win the public's support for this strategy.

Legislative reform

In order to design a strategy for alternatives, authorities must analyse the law to make sure that, unless absolutely necessary, it does not criminalise behaviour and so unnecessarily increase the jail population.

Authorities should make sure that there is a statutory mandate for its implementation at every level and that there is a legal foundation for alternatives. The use of alternatives to imprisonment should be required by law, with imprisonment being the very last choice.

Infrastructure and resources

Some, but not all, alternatives to imprisonment require the development of new resources. When introducing new legislation, authorities should carefully estimate project requirements and take the need for additional resources into account. It is especially crucial for authorities to ensure the requisite infrastructure is in place and dedicate the resources required, not only for its start-up but also for its ongoing operation, in order to execute community punishments and treatment-based alternatives.

Net-widening

Community sentences and treatment-based options may be used in addition to, rather than as a substitute for, imprisonment if people are enthusiastic about them. States must make sure that they maintain a laser-like focus on the overarching goal of developing alternatives to incarceration that decrease the prison population.

Monitoring

The various approaches used to implement alternatives must be continuously reviewed by authorities. Setting deadlines for particular benchmarks is one strategy to help people recognize success and learn from failures. When benchmarks are not fulfilled, quick corrective action should be taken. For them to maintain credibility, alternatives must be executed well.

Promotion of alternatives

Authorities must ensure that the public understands the benefits of a comprehensive plan that employs alternatives to decrease imprisonment. This can be done through a variety of tactics. The state can start by making its own knowledge base more accessible to the general people so that they are aware of the costs of incarceration and the potential benefits of alternatives. Education for all people is crucial.

CONCLUSION

The consensus expressed by United Nations standards and norms is to encourage member states to seek alternatives to imprisonment to reduce prison populations because imprisonment has a number of major drawbacks. Standards and guidelines set forth by the United Nations encourage the use of imprisonment as a last resort and with the least amount of frequency.

Alternatives to imprisonment are frequently more successful in attaining significant public safety goals, such as increased population security, than imprisonment. If properly planned and carried out, they might lessen the violation of human rights while posing a shorter and/or longer-term financial burden. The focus of this project has been on criminal justice alternatives to imprisonment that are compliant with UN rules and norms.

Keeping offenders completely out of the criminal justice system is one tactic. Not all socially unacceptable behaviour needs to be classed as a crime or handled through the criminal justice system; decriminalisation redefines previously considered criminal behaviour so that it is no longer a crime. The next alternative is a diversion, which involves sending criminals to programmes for therapy or other purposes as opposed to formally adjudicating them in the criminal court system.

In order to determine which specific alternatives to imprisonment might apply and be most appropriate for these special groups, the project has also focused on specific categories of offenders who may be particularly vulnerable to the detrimental effects of prisons, such as children, women, and minorities.

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