

Deploring Conditions of Indian Prisons and Rights of the Prisoners

Mallika Sharma, BLS/LLB¹, Abdeali Kothawala, BLS/LLB²

^{1,2}Rizvi Law College, Mumbai, Maharashtra, India

Running Title: PRISON: Conditions & Reforms.

Abstract: *“Prisons really do not disappear social problems. They disappear human beings.” -Angela Davis. Iron bars cannot build better men and misery can only break what little goodness remains. The punitive institution does not help victims of crimes, but perpetuates the idea of retribution, thus maintaining an endless cycle of violence in our apparently civic society. The conditions in dungeons are appalling, exposing the prisoners to abuse, violence, addiction and shabby treatment. The punishment is highly disproportionate to the crimes committed by the prisoners, breaking their human spirit and detaching them further from the society and the need to refrain from lawlessness and disorder. The crimes of the rich and powerful go mostly unpunished. The institution is thus purposely invented for the production of depravity and vice, condensed to such a degree heaped upon the poor and vulnerable who could really not keep up with the system to be locked up to suffer violence, abuse, humiliation, isolation and the sheer helplessness to the extremes of grotesque human brutality. Ironically, the centric crime prevention and reduction system thrives on the perpetuates the very cores of violence.*

Keywords: Reforms, Committees, Conditions, Prisoners, Bail, Complaints

1. Introduction

‘Innocent till proven guilty’- the precious fundamental principle that holds together the very crux of Criminal Jurisprudence in India. He, who has been alleged of crimes against men and society, ought not be treated as a criminal or be made to suffer any ounce of chastisement unless he has been dealt with judiciously with the principles of natural justice, been offered a fair trial and presided over by an objectively neutral judge meticulously studying all the crucial evidences at length according the relevant sections and principles of law. If at all, ‘prison’ considered as an institutionalized system of reformation is supposed to come into play as a consequence to conviction of an accused post his trial, after scrupulously studying all the evidence pertaining to his alleged crime in course of his trial, including testimonial, corroborative and circumstantial evidence by the Court of law presiding the case. Prison is deemed to fulfill its primary objectives namely retribution, deterrence, reformation and rehabilitation. The fundamental objective of the institution being to make criminals pay and clear the debt they owe to the society on account of their crimes and reinstall in them the lost sense of justice, equity and fairness and thereafter to release them into the social structure to make their adaptation as responsible and law abiding citizens successful. But seldom does Prison as a concept and structure of punishment and reformation serve its purpose. The deploring conditions of these detention centres in India has not been unknown, including the abuses and exploitation faced by the detainees, the inhuman living conditions, the overwhelmingly crowded cells, the depleting efforts by the government to improve the same, the lack of compassion meted by the prison staff and the mismanagement of already poor funds. At the very least, prison is painful, and incarcerated persons often suffer long-term consequences from having been subjected to pain, deprivation, and extremely atypical patterns and norms of living and interacting with the rigorously and irredeemably

criminal minded. This adds in gruesome plenty to the woes of those persons accused of offences and their trials yet to commence or pending verdicts. So, such persons imputed in cases, languishing within four walls of the prison cell have to agonise the consequences of the conviction they have not been met with and therefore this unwarranted punishment jeopardises their lives mentally, physically and emotionally. Prison then treats unkindly to such persons, making them brutal, beast-like and hardening the once tender and mouldable, capable of being reinstated into society. Prison therefore acts detrimental to its main serving purpose - reformation and rehabilitation. Prison hardens the man who has undergone and spent years in prison, scraping away every fragment of his dignity and existence. A sense of hope and fairness in him is then fallen. He becomes less humane and more animal like- primal, repulsive and vengeful and thus mirrors the very system that inflicted on him disproportionately a punishment without instilling in him the incentive and reasons to look forward to living in a more civilised society.

This research paper therefore deals with the pitiable conditions of prisoners, their gravely neglected fundamental human rights, the disparaging gap between national and international prison standards vis-à-vis the failed system in India, the two fold problem of poor and rather absent prison reforms and the plight of the under-trial prisoners languishing in jail in denial of their right to Bail, the vague and almost contradictory legal principles laid down on the system of Bail in India, the further brutal discrimination against the poor man who is accused of an offence as against the rich and powerful alleged of crimes whilst the grant of bail and the efforts to be put in solving the problem after meticulous study of all analytical data. A total of 1,339 prisons are presently functional in India as in 2018 and the total population of prisoners in India is 4,66,084 against total sanctioned strength of 3,96,223. From 2013 to 2018, the total prison population in India has increased by 13.01% as against an increase of 13.09% in the prison sanctioned

Volume 9 Issue 4, April 2020

www.ijsr.net

Licensed Under Creative Commons Attribution CC BY

capacity. The prisoners awaiting their trial constitute about 69.42% of the entire prison population in the country which figuratively amounts to nearly 3,23,537 prisoners in all [1]. The shortage in prison staff account to about 30% to 40% of the total strength and thus is in urgent need to be remedied as it has hampered the implementation of Model Prison Manual, 2016 and various jail reforms.

A person ceases not be a human being once he dons the cloaks of a prisoner and thereby prisoners are entitled to human rights, universally recognised as intrinsic and inalienable to a free man. The need and importance of humane treatment of offenders and the consequential prison reforms was felt since the beginning of the colonial British rule in India.

The growth of prison reforms in India

The first decade after independence saw diligent efforts for improvements in living conditions of prisons. A number of Jail Reforms' Committees were appointed by the State Governments, to humanise prison conditions and to put the treatment of offenders on a scientific footing. On the recommendations of the Pakwasa committee a Model Prison was constructed at Lucknow in 1949. In 1951, Dr. W.C.Reckless, United Nations Technical Experts on Crime prevention and treatment of offenders, was called in to make recommendations on prison reforms. Consequently, a committee was appointed to prepare an All Indian Jail Manual in 1957 on the basis of the suggestions made by Dr.W.C.Reckless. An All India Conference of Inspector General of Prisons of the Provinces was also convened. The country saw a new wave of acceptance towards contemporary principles of reformation and rehabilitation. The prison system was no longer viewed merely as cages holding offending beings in shackles in a beast like fashion as deterrence or to prevent them from indulging in further crimes, but as reformatory centres to help and enable the once erring individuals on a path of rehabilitation and reinstatement [2]. The Government of India constituted Working Group on Prisons in 1972, which submitted its report in 1973. In 1979, a Conference of Chief Secretaries made a number of recommendations to reduce the overcrowding in Jails [3].

In 1980, the Central Government of India appointed committee under the chairmanship of Justice A.N.Mulla on All India Jail Reforms [4]. The recommendations reiterated the earlier deductions made by the former committees and proved to anchor the prison reforms in India as that committee examined all areas of the prison and prisoners, suggested to amend legislations relating to prisoners, to enact separate statutes for the protection of prisoners, facilities for the women prisoners, free legal aid to the under-trial prisoners, to construct separate jails for women and also for the improvements of prison conditions like sanitation, diet and medical care in prisons. A total of 658 recommendations made by this committee on various issues on prison management were circulated to all States and Union Territories for their implementation.

A Department of Prisons and Correctional Services dealing with adult and young offenders, their institutional care, treatment, aftercare, probation and other non-institutional

services was to be instituted in every state and union territories. Diligent endeavors would be promoted to treat empathetically, the alleged awaiting their trial to evolve proper mechanism to ensure that no undertrial prisoner is unnecessarily detained and achieved by speeding up trials, simplification of bail procedures and periodic review of cases of undertrial prisoners. Undertrial prisoners would be as far as possible not treated on the same footing as the convicted prisoners and be confined in separate institutions. Living conditions in every prison and allied institution meant for the custody, care, treatment and rehabilitation of offenders would be compatible with human dignity in such as accommodation, hygiene, sanitation, food, clothing, and medical facilities [5]. Opportunities for diversified education, development of work habits and skills, change in attitude, modification of behaviour and implantation of social and moral values would be consequently offered to them. Vocational training and work programmes in prisons for all inmates eligible to work would be developed, the aim of such training and work programmes to equip inmates with better skills and work habits for their rehabilitation. Payment of fair wages and other incentives was encouraged to reinforce inmate participation. The State was furthermore obliged to provide free legal aid to all needy prisoners. The jurisprudence on juvenile offenders to be treated with more reformatory and compassionate attitudes than punitive conceived the principle that children (under 18 years of age) would in no case be sent to prisons and further that all children already confined in prisons would be transferred forthwith to appropriate institutions, meant exclusively for children with facilities for their care, education, training and rehabilitation [6]. Young offenders (between 18 to 21 years) confined in prisons meant for adult offenders was discouraged. There were to be separate institutions for them where, in view of their young and impressionable age and would be given treatment and training suited to their special needs of rehabilitation. Women offenders would be confined in separate institutions specially meant for them. The staff for these institutions and annexes would comprise of women employees only. Proper arrangements for the care and treatment of mentally ill prisoners was encouraged to be drawn up. Persons courting arrest during non-violent socio, political, economic agitations declared as public cause would not be confined in prisons along with other prisoners, thereby the non-violent ones would be separated from the rigorous ones [7]. An All India Service namely the Indian Prisons and Correctional Service was to be constituted to induct better qualified and talented persons at higher echelons. Proper training for prison personnel was to be developed at the national, regional and state levels. Probation, aftercare, rehabilitation and follow-up of offenders would form an integral part of the functions of the Department of Prisons and Correctional Services. The development of prisons would gradually find a place in the national development plans [8]. The enactment of a uniform and comprehensive legislation on prisons would be possible within the existing provisions of the Constitution of India, as India had been an optimistic party to the International Covenant on Civil and Political Rights, 1966 [9].

Thereafter, Government of India constituted another committee on 26th May, 1986, namely, National Expert Committee on Women Prisoners under the chairmanship of

Justice V.R. Krishna Iyer who had submitted its report on 18th May, 1987. A recommendation was made for Construction of separate prisons for women prisoners, for the proper management of them, legal aid and other facilities to be offered [10]. The Ministry of Home Affairs, Government of India further constituted an All India Group on Prison Administration-Security and discipline on 28th July, 1986 under the chairmanship of Shri R.K. Kapoor who submitted their report on 29th July, 1987. In pursuance to the recommendations made by the All India Committee on Jails Reforms, the Government of India identified Bureau of Police Research & Development (BPR&D) as a nodal agency at the national level in the field of Correctional Administration on November 16, 1995 with specific charter of duties. The Juvenile Justice Act was enacted by the central government in 2000. The Central Government amended and enacted the Juvenile Justice (Care and Protection) Act, 2000, for the juvenile delinquents. It laid down a uniform legal framework so as to ensure that no child under any circumstances came to be lodged in jail or police lock-up. Juvenile welfare boards and juvenile courts were established to provide for a specialized approach towards neglected and delinquent juveniles respectively. The Act thus represented a blue print for fair, equitable and just treatment of juveniles with due emphasis on the rights of child. The Government of India also enacted The Human Rights Protection Act which was passed in 1993, for eradication of human rights violations by the executives and legislatures discretions, under this National Human Rights Commission at National Level and State Human Rights Commissions at state level was constituted. The NHRC in 1997 and in 1999 had stressed the need for setting up State Human Rights Commissions (SHRC) in States as expeditiously as possible. But, only eight States in the country had set up SHRCs, the New Prison Act of 1996 was finalized and further action on its implementation was to be taken soon. It also pressed the State Governments to set up State Human Rights Commissions and Human Rights Courts at the district level.

2. The Recognition of Prison Reforms at the International Arena:

Even in the international regime, since time immemorial, the rights of prisoners have been deemed to be an inextricable abstract of inalienable human rights. The rights of the offending men first found genesis in the International Convention of Human Rights which then riveted and progressed into different conventions the most crucial being the Standard Minimum Rules for the Treatment of Prisoners- Nelson Mandela Rules. The nations having had a unanimous consensus for solemnly striving towards a collective socialistic world environment have the responsibility to duly impart their obligations. India has been a proud member of the United Nations and therefore has been cast with the responsibility towards respecting various treaties, conferences and conventions of the UN and fulfilling its obligations as a member nation. The Supreme Court and other Courts in India have time and again drawn a reference to the internationally discussed recommendations and need to implement the same on a national basis in their judgments, appealing on several counts to the executive to set up committees and draw reports. But unfortunately, the

same have been mere dead letters and their execution thereof has never seen the light of the day.

The Standard Minimum Rules for the Treatment of Prisoners- The Nelson Mandela Rules

"Prison is designed to break one's spirit and destroy one's resolve. To do this, the authorities attempt to exploit every weakness, demolish every initiative, negate all signs of individuality--all with the idea of stamping out that spark that makes each of us human and each of us who we are."

-Nelson Mandela

At a time when the prisoners across India and several parts of the world were facing serious issues of human rights, space crunch and shoddy treatment by jail authorities, the United Nations came up with a new set of rules for the treatment of prisoners. These rules came to be known as "The Mandela Rules", to honour the legacy of the South African leader Nelson Mandela, who spent 27 years in prison in the course of his struggle for human rights, equality and democracy. The UN has also decided to extend the scope of Nelson Mandela International Day, observed each year on July 18, to be also known as Mandela Prisoner Rights Day, in order to promote humane conditions of imprisonment, to raise awareness about prisoners being a continuous part of society and to value the work of prison staff as a social service. The Nelson Mandela Rules initially were adopted by the UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955, and approved by the UN Economic and Social Council in 1957. They were again revised by a resolution adopted by the UN General assembly in 2016 and are deemed to be a part of every country's prison manual. The Mandela Rules thus embody a total of 120 rules significantly drawing an outlay on the treatment of prisoners, the humanization of prisons and prison reforms.

The Mandela Rules [11] inaugurate the subject with the primal rule that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times. Thus, the rules reinforce and perpetuate the very concept that the prisoners are entitled to their inalienable human rights and under no plausible circumstances can they be devoid of these rights. Further, the subsequent rule to the above goes to state that the above rules and reforms will be applied impartially and on an equitable basis to all prisoners, abolishing all forms of discrimination in terms of treatment meted out to prisoners, yet at the same time a more sensitized treatment of vulnerable categories of prisoners considering their mental and other disabilities and subsequent special needs would be regarded as reasonable and rationale basis of classification. The Mandela Rules re-establish the paramount principle of the separation of prisoners. It holds that different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment; thus- women shall be detained in separate

institutions as men, untried prisoners from convicts, young, juvenile and redeemable offenders from the more rigorous ones and civil and debt offenders from heinous crime offenders.

The outlay progresses with emphasizing rigorously on the point of individual prisoner space and liberty and stated that every prisoner should have his personal head space in his individual prison cell, bolding mentioning that even the exceeding prisoner population would not justify depriving the inmates of their individual space and cell particularly dealing with the working and living conditions of the prison cells, making elaborate comments on sanitation, hygiene water and bath works of the prison system, drawing a fundamental abstract that the right to attend to the calls of nature in hygienic and sanitized prison cells is a excerpt of human dignity and self-respect and the prisoners should be able to avail of scrupulously clean bathrooms, toilets and amenities of personal hygiene as a matter of mandatory and requisite principle.

The rules further lay out standards of the daily and adequate quantities of food and safe drinking water to be made available to the prisoners for 24 hours of the day. The prisoners should be entitled to health care services that ensure evaluating and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation, catering to emergencies and casualties, ruling out the possibilities of venereal and contagious diseases and seclusion of the patients to prevent manifestations of contamination to other prisoners, studying and ruling out the history of torture or custodial abuse and the withdrawal of alcohol and drugs. Further it embodies a resolute that in no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment and has passionately condemned indefinite solitary confinement, prolonged solitary confinement, placement of a prisoner in a dark or constantly lit cell, corporal punishment or the reduction of a prisoner's diet or drinking water and collective punishment and detested the use of chains, irons or other instruments of restraint which are inherently degrading or painful and other instruments of restraint shall only be used when authorized by law. The rules fervently advocate and reiterate that the prisoners should be allowed to complain about the treatment meted to them to competent authorities without censorship and the same should be immediately investigated into and promptly replied specially in cases of inhuman and degrading treatment, categorically stressing that in case of custodial death, especially in cases of alleged torture or inhuman treatment, prompt investigation must be carried out and a report must be made. The Mandela rules propagate for imparting education and skills to the prisoners, their work and fair and proportionate remuneration for reformation and reinstatement in society. The rules vehemently stress on the problem of over-crowding and state that overtly crowded prisons depict the blatant disrespect of human life and dignity and thus must be avoided and solved at all costs. The Covenant empathetically speaks about mentally ill prisoners who are not totally responsible for crimes to be treated such, offering socio-psychiatric care rehabilitating them in special care

centres. Un-convicted i.e. under-trial prisoners are presumed to be innocent and shall be treated as such. Untried prisoners shall be kept separate from convicted prisoners particularly advocating availing them of their own clothing, legal aid and the opportunity to prepare for their defence. These rules reiterate the golden thread that runs through criminal jurisprudence of innocent till proven guilty.

3. The Miserable Conditions of Prison Cells

It is a grave spectacle of tragedy that the life in jails have always faced the wrath of anarchy and the conditions of the prisoners continue to run inversely proportionate to the development of civilisation in human society. In spite of the recommendations conceived and reiterated by numerous committees and organisations both on National and International platforms, the problems of the prison cells have remained unresolved, stagnant and in fact have worsened and penetrated rigidly to be uprooted. The crux of the miserable conditions in prisons is twofold- the overly clustered prisons i.e. overcrowding of prisons far beyond their extended capacity and the shabby or rather absent basic amenities and prison reforms. Occupancy rate is defined as the number of inmates occupying one prison cell as against the authorised capacity of 100 prisoners. If this number exceeds 100, it amounts to over-crowding of the prison units. On meticulous analysis of the whole problem of prison management, over-crowding of jails goes to the root of the matter. It is pertinent to note that the number of functional prisons in India amounts to a total number of 1339 of prisons. On the careful perusal of statistical data, it was observed that the total extended capacity of prisoner intake was 3,66,781 in 2015, but the total prisoner population was 4,19,623 prisoners, the occupancy rate being 114.4% [12] and in the year 2018, the total population of prisoners constituted to 4,66,084 against total sanctioned strength of 3,96,223. The occupancy rate as of 2018 was 117.6%. It can be easily inferred that though the allowed capacity/strength of the prison cells did increase over the years, but the population of inmates in the prisons increased manifold and at a steeper rate thus intensifying the problem. Since the 2016 to 2018, though the sanctioned capacity of the cells increased by 4.03%, the population of inmates increased by 7.64%. [13]

a) The Two Categories of Prisoners

The two important categories of prisoners include the convicted prisoners and the undertrial prisoners. Further out of the total number of inmates in 2016, the convicts amounted to the total number of 1,35,683 and the under-trials amounted total number of 2,93,058. The total number convicted prisoners in the year 2018 were 1,39,488 and the under-trial inmates numbered a 3,23,537. A total of 59,357 undertrial prisoners were released based on acquittal on the first instance and 24,651 undertrial prisoners were released subsequent to the acquittal on appeal [14].

The Link Between the Untried Inmates and the Deplorable Prison Conditions:

The prisons are holding a huge quantum of inmates who do not deserve to be held and can be easily let out till the pronouncement of their verdicts. This gravely would help evacuate the problem of over-crowding of prisons. The

overloaded prison cells grotesquely treat its inmates, depleting gravely the quality of life that the prisoners deserve to lead inherently as human beings. The overcrowded prisons are weakened in their management and the prisoners suffer and struggle to avail of the basic amenities to life including particularly safe drinking water and food, shower rooms and sanitised toilets. The dreadfully stuffed prison cells mimic the holocaustic chambers of the Jews, smothering countless lives to the point of spreading serious diseases and even causing deaths- both natural and unnatural. The serious perils of jail-overcrowding can be studied extensively by categorising the problems into four main branches- Compromised or absent amenities to life including toilets, drinking water, food and nutrition, sanitation, toilets and basic hygiene, the consequent spread of diseases and deaths both natural and unnatural, the lack of medical and other prison staff and facilities to diligently manage and the run the institution and the non-utilisation of funds for the betterment of prison life, thereby not implementing the budget allotted to prison reforms.

b) Compromised or Lack of Basic Amenities Essential to Life According to Minimum Standards Set:

Article 10 of the International Covenant on Civil and Political Rights, 1966 [15] says that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Theoretically, the living conditions in every prison and allied institutions meant for the custody, care, treatment and rehabilitation of offenders was meant to be compatible with human dignity in all aspects such as accommodation, food, sanitation, clothing and medical facilities.

• Accommodation

Accommodation is a basic need of a human being and a prisoner is also entitled to a minimum space of accommodation during incarceration. According to The Prison Manual, 2003 [16], each berth ideally should be six and a half feet long, two and a quarter foot broad and eighteen inches high and constructed with a slight slope down from the head. However, the actual situation is that the berths have been broken to give space to the inmates because of overcrowding which shows the poor quality of life in the prisons. The situation is very alarming and has adversely affected supplementary conditions like food, hygiene and sanitation such as health and drinking water. In a space for 25-30 people, more than 70-80 people sleep, the barracks are very crowded offering less than minimum space with insects roaming on the inmates' bodies and mosquitoes' bites during night. The barracks are very dirty, old and dilapidated and infected with bees, ants, insects, rats. The sleeping khadas (berths) are broken and there is only one bathroom in the barrack for 50 to 70 inmates. The conditions are not favourable for human beings and two living men sleep in the space of one man. There are frequent quarrels for space and the inmates contract many diseases especially skin diseases and asthma. With overcrowding, smoking, inhuman accommodation, one has to lie down on the floor. There are no basic storage cupboards in rooms and the lighting is not proper at night. In summer, the power cuts often occur at night and it becomes difficult to breathe in that suffocated room.

• Food and Nutrition and Drinking Water

Further according to the Model Prison Manual [17], every person requires 2000 to 2400 calories per day and a person engaged in rigorous work requires 2800 calories. It also states that every prisoner should be made avail of one morning light meal before work, a mid-day meal and an evening meal. The diet of the inmates should include appropriate quantities and good quality vegetables, pulses, fruit and milk. But unfortunately, such is a distant utopian dream for the prisoners and they are forced to eat cold, hard and uncooked food. The hygiene conditions in the kitchen is not maintained even to the bare minimum and many times, the inmates are not even given milk, fruits and vegetables. The prisoners have a basic and inherent right to clean and safe drinking water. The prime area of concern is unavailability of filtered water and the fear of its being mixed with toilet water. To bring out actual situation on the facility of drinking water, some of the inmates were interviewed in an informal atmosphere. There are inadequate water coolers which do not suffice the outnumbering inmates. There are no proper water filters and the drinking water is mixed with toilet water. Drinking water is contaminated with green calves. Water is not available 24 hours. The available water is not drinkable and there is joint supply of water for toilets and bathrooms. People get water from the toilet tap. The same tap is used for toilet purposes and for drinking. The water supply pipes are in very bad conditions due to which there is always a risk of diseases. Cold water is not provided in summer and the available water is too hot for drinking.

• Sanitation and Hygiene

The right to sanitation is an inalienable right of every man and the deprivation of his liberty cannot take away his right. Sadly, hygienic conditions in prisons are adversely affected by the shortage of latrines, urinals and bathrooms due to overcrowding, improper construction of urinals and night latrines inside barracks, general non availability of the flush system in latrines and no sewer lines in prison campus, leading to choking of sewerage system. Sock pits are choked due to the entry of water other than meant for, improper and obsolete drainage system, no rain water harvesting system to recharge the ground water. The rooms of the barracks have one single toilet to be used by 80 to 100 persons and there are one queues outside the toilets, leading to chaos and mismanagement. It causes a lot of problems during the lockup period as well as at night. The sewerage system is pathetic and there is an acute shortage of toilets. The existing toilets are of the old obsolete model and built on traditional pattern without flush system. Seats are broken and full of germs. There is acute shortage of water in the toilets. Soaps and toothpaste are provided only once a month. The conditions are far worse for women inmates who have to additionally deal with their monthly cycles of menstruation and the pregnant and lactating women. They are not provided with proper hygienic and adequate sanitary pads and the supplementary supplies of towels and disposables, making them all the more susceptible to serious illnesses mainly those of the urinary tract. Thus, it is seen that sanitary conditions in the jails are inhuman and require to be dealt with sincerely.

• **Absence of Adequate Medical Staff and Facilities to Effectively Manage the Health of Inmates:**

Every incarcerated human being is entitled to adequate medical facilities as per need. It is another grey area in the prison conditions which affect the lives of the inmates severely. Lack of adequate medical staff and other healthcare facilities are main area of concern in the jails resulting in deteriorating health conditions of the inmates. Many of the inmates have died in the jails because of lack of timely medical care. The Body of Principles (UNO, 1988) has also given due consideration to the health of prisoners. It says, "A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary [18]. This care and treatment shall be provided free of charge." Chapter 7 of the Model Prison Manual (BPR&D, 2003) has given detailed specifications for the requirement of medical facilities in the prisons [19]. But sadly, there is discrimination in providing medical facility with the influential people getting hospital facilities even outside the jail and the poor suffering from their ailments with no-one to tend to them. In many prison units, the hospitals are being run in a make-shift accommodation and there exists no proper building for the hospital.

To add to the dreadful problem of the lack of amenities, the prisons have also to hold up to the lack of medical and other prison staff and medical facilities. The lack of the facilities reflects the system's incompetence to deal with medical emergencies of the inmates, leading to their health deteriorating and even deaths. The actual strength of the prison staff is far less than the sanctioned appointments and in the year 2015, the total strength of the medical and other staff was 53,009 as against the sanctioned strength of 80,236 and even over the years the prisons have not seemed to cope with the increasing sanctioned strength of 85,840 and the actual strength marking a mere 60,024 [20]. The medical staff out of this, were a mere 1914 as against the authorised strength of 3220. This goes to show that a prison shares a ratio of 1 medical officer responsible for and catering to 1375 inmates. The sanctioned strength of prison staff over the years from 2013 to 2018 has increased by 11.9% and the total prison staff have also increased by 15.8% [21]. In many prisons, there is no lady doctor despite the fact that more than 100 women prisoners housed in them. Similarly, there is neither a psychiatrist nor a dentist in most of the prisons. But this trend of increase in the actual strength is unfortunately not enough to match the increasing trend of the sanctioned strength to overcome the problem of paucity of prison staff.

As a result of the poor hygiene and sanitary contains and the inadequate or rather the absence of medical staff and facilities to salvage the health of the prisoners, there are large numbers of prison deaths, both natural i.e. due to diseases and unnatural i.e. custodial violence, abuse and suicides. The category Natural Deaths has been divided into deaths due to Ageing and Illness. Illness has been further sub-categorised into major causes/diseases such as:

- a) Heart Problems,
- b) Lung problems,
- c) Liver problems,

- d) Kidney problems,
- e) HIV,
- f) Cancer,
- g) Tuberculosis (TB),
- h) Paralysis,
- i) Cholera/Diarrhoea,
- j) Schizophrenia with Epilepsy,
- k) Brain Haemorrhage,
- l) Intestine Perforation,
- m) Due to Drugs/Alcohol withdrawal Symptom,
- n) Others.

Unnatural deaths include suicide, murder by inmates, death due to assault by outside elements, death due to firing, death due to negligence or excesses by jail personnel, etc. Besides, Accidental Deaths inside Prison has also been added under the category Unnatural deaths. and (h) Others.

The total number of deaths in prison in the year 2016 amounted to 1655, out of which 1424 were natural deaths and 231 were unnatural deaths. This trend saw a sharp increase over the years and in 2018, the total prison deaths were 1845, out of which 1639 were natural deaths and 149 resulted out of unnatural causes. For a total of 57 inmates' deaths, cause of the death is yet to be known. The number of deaths in prisons has increased by 11.48% from 2016 to 2018. The number of deaths due to natural causes has increased by 15.10%. The number of un-natural deaths in prisons has decreased by 35.50% in 2018. In the total number of natural deaths, only 4.9% i.e. 80 prisoners died as result of raging and 95.1% i.e. 1559 prisoners died as a result of succumbing to serious treatable, but untreated diseases. Further these deaths arising out of illnesses are categorised as deaths from:

- a) heart-related ailments amounting to 411,
- b) lung disease accounting to 231,
- c) tuberculosis constituting an 85,
- d) cancer and liver disease upto 80 and 72 respectively,
- e) brain-haemorrhage holding a share of 59,
- f) drugs/alcohol withdrawal accounting to 25 deaths,
- g) kidney failure, HIV and intestine perforation contributing to 58, 46 and 17 deaths respectively,
- h) paralysis related deaths to about a 10,
- i) cholera/diarrhoea accounting to 5 deaths,
- j) schizophrenia with epilepsy amounting to 5 deaths and
- k) 344 deaths from other illnesses.

Among the 149 un-natural deaths of inmates, 129 inmates have committed suicide, 5 inmates died in accidents, 10 inmates were murdered by inmates and 1 inmate died due to assault by outside elements during 2018 [22].

4. The Mismanagement and Non-Utilisation of Funds for Prison Reforms:

Provision of adequate fund is prerequisite in effective functioning of prison institutions. The pitiable plight of the Indian prisons is that the actual expenditure spent for the management of prisons, their infrastructure, development and maintenance, food and nutrition, sanitation, clothing, medical, vocational and education and prison welfare is less than the sanctioned budget. It is quite an irony as we infer that in comparison to all the systems, institutions and

organisations in civic society, wherein the budget falls short to cover the expenses enthusiastically spent for better living standards, the punitive institution suffers in anguish, the wrath of insensitive attitude of the authorities towards its inmates. The sanctioned budget for the financial year 2015-2016 for prison reforms was Rs.5157.631 crores, but the actual expenditure incurred accounted to only Rs. 4628.573 crores i.e. almost 500 crores less than the budget [23]. This trend has continued relentlessly and has rather increased at a sweepingly alarming rate over the years and was reflected again in the financial year 2018-2019, wherein the sanctioned budget was Rs.6068.700 crores, but the expenditure incurred was Rs.5283.700, almost 800 crores less than the budget. It is highly worrisome that inspite of the alleged expenditure incurred on these fundamental branches of prison welfare, as reflected gloriously on paper, have not culminated into pragmatic and tangible elements of prison life. The conditions in prison continue to be miserable including poor hygiene and sanitation, lack of food and medical amenities, educational and vocational skill-based opportunities continue to be a distant dream and the walls and infrastructure of the dungeons continue to age and are barely holding themselves. The prisons have not witnessed any improvement in the existing conditions, let alone any infrastructural or welfare reforms over the years. It can be thus clearly inferred that there is, apart from the under-utilisation of funds, a scandalous mismanagement of funds. The prison staff and management authorities have since time immemorial meted an inhuman and degrading attitude towards the prisoners. The cries of the inmates are shackled with the prison walls and their lives continue to remain distraught.

5. The Complaints Made by the Prisoners and the Intervention by the Judiciary:

The theory of miserable conditions in jails has been validated by strong factual matrixes, through numerous complaints by the inmates of prisons all over India evening out their grievances to the judiciary, human rights organisations, the media and executive. These complaints in the form of letters, telegrams and newspaper clippings and articles clearly depict the awful plight of the prisoners, their helplessness and the sheer lawlessness which has clearly vitiated the whole objectives of justice and fairness of the reformatory institution. In the recent times, these complaints have been backed strongly through media platforms, thereby making it possible for the prisoners to correspond their legitimate displeasure with the authorities.

An Agonising Letter by an Arthur Road Central Prisoner to The Hon'ble High Court, Bombay:

An under-trial lodged at Mumbai Central Prison, better known as Arthur Road jail, had written a detailed letter to the Hon'ble Bombay High Court complaining about rampant corruption, extortion, sexual exploitation of inmates and deplorable medical facilities at the jail [24]. The under-trial's letter grotesquely described how jail officials get existing inmates to teach newcomers how things work within the confined world of the prison through abuse and intimidation. Those who enter are made to sit in a corner. Jail officials summon old inmates and tell them to abuse and intimidate them to teach them the 'rules and regulations' of

prison. The letter further stated that the new prisoners are made to sit in 'sexual positions' to create fear before an official informs them that they can enjoy the best of facilities by coughing up Rs. 6 lakhs. Those with money are sent to different barracks while the unlucky ones are dumped in overcrowded barracks. This method of sorting inmates based on their paying power allows prison officials to earn between Rs 5 crore and Rs 6 crore a month, the letter said.

As for the jail's medical facilities, it was alleged that the jail has 3,800 inmates but only four doctors, and that inmates are either denied medicines or given inferior quality ones. There is only one small and very dirty hospital, with poor amenities. The jail lacks facilities to deal with emergencies and 29 people have died there in the past two years because of this.

On drinking water, the letter said that the jail has a 25 sq. ft. water tank that's 10 feet deep and hasn't been cleaned in years and it is filled with insects. Water from an adjacent nullah that carries waste, mixes with the drinking water every time the nullah overflows.

The inmate concluded by praying to the Court to kindly grant them bail and to direct the government to compensate them and give them an opportunity to prove their innocence, on account of the atrocities meted against them and if not all of them to be killed in a police encounter so that they do not have to die every day in these conditions.

Chandigarh Bleeding on Her Prisoners:

'Torture is rampant in Haryana jails', was concluded by Haryana State Legal Services Authority (HLSLA), whilst studying prison conditions. Inside Haryana Prisons', a 180-page report was prepared by Commonwealth Human Rights Initiatives (CHRI) activists [25]. The study is based on personal interaction of the authors between December 2017 and May 2018 with 475 inmates, lodged in the 19 jails. The study revealed that 47.78% said they had been subjected to degrading and inhuman treatment, including torture, during police remand. The inmates revealed that along with forms of extreme torture like sexual assault, being hung naked and hung upside down, they were also subjected to verbal abuse, slapping and degrading behavior. Regrettably some of the methods- beating the soles of the feet with a baton, water boarding, hanging upside down, giving electric shocks, do not leave visible bars and it becomes difficult for the victims to register a complaint and prove their accusations. Even women inmates faced custodial torture, molestation and rape threats from the policemen and jail staff. The most alarming testimony was of a woman who claimed that a cop had stood on the thighs of a woman and threatened to insert chillies in her body. Commenting on the study, Parmod Kumar Goyal, HLSLA member secretary, said: "The Crime Investigation Agency of Haryana is notorious for its coercive ways of extraction of information and illegal detention. We are examining the complete report and are reviewing suggestions and recommendations to forward it to our seniors." To add to this, Punjab recorded the highest number of prison suicides in 2017 i.e. 13 out of 109 across the country and the accounted for the highest number of complaints i.e. 171 in total to the SHRC [26].

6. The Binary Redressal of the Problem / Recommendations

On meticulous assimilation and analysis of the crisis, we can infer a two-fold solution to the problem.

Reducing the load of the jails i.e. reducing the unnecessary over-crowding by letting inmates out on bail, specially the under-trials who have been lamenting in prison before their judgment and;

Using the existing resources and funds as also the additional funds made available as a result of the bail released inmates and concentrating them optimally towards bettering the lives and the quality of amenities offered to the prison population.

A. Bail- A Shackled Right in India

Bail is an integral element of the Criminal Jurisprudence and means the release of a person, charged with an offence, on his providing with security that will ensure his presence whenever required before the Court or other authorities. Thus, bail is a procurement of release by the accused awaiting their trial or appeal, thereby giving the accused an opportunity to defend himself to the charge before the Court of law. The offences under the substantive law i.e. The Indian Penal Code are broadly classified as bailable and non-bailable offences. Bail can be granted both by the Police and Courts by taking a cash bond or bond of sureties or both. Sections 436 to 439 of the Criminal procedure Code [27] deal with bail and its conditions for bailable and non-bailable offences respectively, anticipatory bail which in fact is a practice in few states like Maharashtra wherein the person is anticipating imminent arrest and the cancellation of bail and its precedent conditions. In India, bail or release on personal recognisance is available as a right in bailable offences not punishable with death or life imprisonment and only to women and children in non-bailable offences punishable with death or life imprisonment.

It is pertinent to note that the golden thread that runs through the Criminal Justice system is '*Innocent till proven guilty*'. The man alleged of an offence, however grave and heinous may be is innocent and shall be treated as such, unless he has been prosecuted in fair and prompt trail before the Court of law preceded over by an impartial judge and then been convicted. At the stage of granting bail, the evidence is not recorded before the Court, the witnesses are not summoned to depose their testimonies and have not been cross-examined to check the veracity of their depositions, the circumstantial evidence has not been scrutinised and as such the merits of the case cannot be looked into to. Arrest before the trial is only a matter to secure attendance of the accused before the Court or authorities and should in no way be punitive, but only a proactive measure to prevent him from absconding and escaping the clothes of law. To refuse bail to the accused, on reasons other than the triple test and to make him suffer this unwarranted punishment is therefore a blatant disregard to his fundamental right to liberty under Article 21 of the Constitution of India [28] and is a grave miscarriage of justice.

The objective of detention is to ensure the presence of the accused at relevant times during the course of his trial before

the Court and interrogation before the Police and investigating agencies. But if he can ensure his attendance, to refuse him bail, would be a blatant abrogation of his right to personal liberty. The Universal Declaration of Human Rights [29], to which India is a proud signatory also recognises the cardinal principle of 'Innocent till proven guilty' and the right to a fair and prompt trial.

Article 21 under Part III of the Constitution of India [30] provides us the right to life and liberty. Such right guarantees everyone in the territory of India, life with all the freedom to enjoy one's life and liberty. The right to bail is thus a fundamental right under Article 21. But, the refusal of the right to bail or demanding the amount that a person is unable to pay is said to be an infringement of article 21 of the Constitution. As Justice Krishna Iyer puts it with the full authority of the Supreme Court: '*Personal liberty is deprived when bail is refused, is too precious a value of our constitutional system, that the crucial power to negate it is a great trust exercisable not casually but judicially with lively concern for the cost to the individual and the community*'. The constitutional emphasis was made clear in *State of Rajasthan vs. Balchand (1977)* [31]: '*The basic rule may perhaps be tersely put as bail, not jail*'.

It is pertinent to observe that the rule favouring bail has been upheld and practised way back since 1983, when the Apex Court in *Bhagirath Singh S/O Mahipat Sangh vs The State of Gujarat* [32] reversed the High Court's decision of cancelling the bail and held that, The trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted ill his favour by tampering with evidence. The order made by the High Court is conspicuous by its silence on these two relevant considerations. It is for these reasons that we consider in the interest of justice a compelling necessity to interfere with the order made by the High Court.

Right to Speedy and Fair Trial- An Abstract of Article 21-

It has been laid down in *Hussainara Khatoon &Ors. vs. Home secretary, Bihar* [33], Justice Bhagwati observed that the unfortunate undertrials languished in prisons not because they were guilty but because they were too poor to afford a bail. Following *Maneka Gandhi v. Union of India* [34], he read into fair procedure envisaged by Article 21 the right of speedy trial and sublimated the bail process to the problems of the destitute. He thus ordered the release of persons whose period of imprisonment had exceeded the period of imprisonment for their offences. He brought into focus the failure of the magistrates to respect section 167(2) of Cr.P.C. which entitles an undertrial to be released from prison on expiry of 60 days or 90 days as the case may be. It was thus held that the right to speedy trial is implicit, in the rights enshrined in Article 21 and the Court, at the instance of an accused, who was denied this right, is empowered to give instructions to the State Governments and to other appropriate authorities to secure this right of the accused.

It was laid down in *Hussain and Ors. vs Union of India (UOI) and Ors.* [35] that speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21. This constitutional right cannot be denied even on the plea of non-availability of financial resources. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. This Court has held that while a person in custody for a grave offence may not be released if trial is delayed, trial has to be expedited or bail has to be granted in such cases.

The travails of illegal detainees languishing in prisons, who were unformed, or too poor to avail of, their right bail under section 167 Cr.P.C. was further brought to light in letters written to justice Bhagwati by the Hazaribagh Free Legal Aid Committee in *Veena Sethi v. State of Bihar* [36] and *Sant Bir v. State of Bihar* [37]. The court recognised the inequitable operation of the law and condemned it-

"The rule of law does not exist merely for those who have the means to fight for their rights and very often for perpetuation of status quo... but it exist also for the poor and the downtrodden... and it is solemn duty of the court to protect and uphold the basic human rights of the weaker section of the society."

The Analysis of the Problem in India- Jail: The Rule, Bail: The Exception-

It is a sheer sight of despair in this country the Courts follow the practice of- 'Jail the Rule and Bail as the exception.' This is particularly in case of the poor and meek and those who are armoured with influential connections. When it comes to the rich classes of society, the triple test is followed as condition precedent while granting bail i.e. he shall not abscond, he shall not tamper with the evidence and shall not intimidate the witnesses. The country has been an audience to the accused belonging to rich and influential backgrounds easily being granted bail-

- The Shiny Ahuja case [38], wherein the Accused, a famous Bollywood actor alleged of raping his maid was released on bail based on the triple test without exploring the merits of the case or considering the gravity of the crime, but the Court broadly determined whether the Applicant would abscond or tamper with evidence and released him on bail by imposing conditions.
- The infamous 2G spectrum scam case [39] wherein it was alleged that the politicians and private officials under the United Progressive Alliance coalition government in India were accused of committing a major scam of 2,867,800,000,000 rupees, but the gravity and magnitude of the offence were not considered rather it was freely expressed that- Ordinarily, persons accused of any offence at the stage of trial, should be enlarged on bail; The object of bail is primarily to secure the attendance of the accused at the trial; Grant of bail is the rule and refusal is the exception. Presumption of innocence is sacrosanct and, therefore, bail at the stage of trial is imperative to enable accused to look after his own case and establish his innocence.
- And the easy bail of Mr. P. Chidambaram, the then Union Finance Minister in the INX Media case [40] which is an ongoing high-profile money

laundering investigation in India. It involves the allegation of irregularities in foreign exchange clearances given to INX Media group for receiving overseas investment in 2007. The Court relied on the judgements far back and reiterated the principle of bail only to ensure attendance in Court and presumed innocence of the applicant, as abstracted from *Nagendra v. King-Emperor* [41] and *Emperor v. Hutchinson* [42] Then the Court concluded that the Applicant i.e. Mr. Chidambaram could not be considered as a flight risk 'and there was no possibility of tampering the evidence or influencing\intimidating the witnesses and thereby giving due consideration to his time spent in custody, it was deemed to be a fit case of bail and was released.

- In *Chhagan Chandrakant Bhujbalcase* [43]; whilst granting bail, the Hon'ble Bombay High Court staunchly relied on the landmark judgments of the Apex Court namely *State of Kerala Vs. Raneef* [44], wherein it was observed that – *"the primary test at the stage of bail is to secure the appearance of accused and submission to the jurisdiction and judgment of the Court and for that purpose inquiry is limited to as to whether recognizance or bond would suffice."*

But when it comes to the poor man, the courts disrespect and flout the guidelines of the Hon'ble Supreme Court by many contradicting rejected bail orders and the 'prima facie' element of the case suddenly emerges in the scene and Courts start scavenging into the merits for the case and additional conditions of intention, knowledge and the guilt of the accused, the weapon used in the alleged crime, etc. come to be explored. Statistically 90% of the prison inmates are poor. that trials are slow and take a long while to commence, completion being a far-fetched dream. The overloaded courts, the sluggish and lackadaisical attitudes of the Police and Investigating authorities worsen the problem. The large number of accused who in fact belong to the poor and vulnerable sects of the society are brandished as guilty before receiving the verdict and are shackled within four walls of the prison cell awaiting their trail for many years, sometimes even greater than the tenures of their possible punishment. The undertrials though innocent, have to go endure physical and psychological deprivations of jail life, they are prevented from contributing to the preparation of their defence, lose their jobs and thus are unable to support their family or in way contribute to the society. They are forcefully made to come in contact with the notorious and the rigorously criminal minded, thereby jeopardising their mental and physical security and the chances of reformation and reinstatement in society.

The Mercy of the Pandemic on Prisoners

The Supreme Court on 23rd March 2020, in an order by the bench headed by the Chief Justice of India, S.A. Bobde, asked all the states to consider releasing prisoners facing sentences of up to seven years in order to decongest prisons in light of Coronavirus (COVID-19) pandemic by forming a high-power committee to decongest prisons, by releasing them on parole or interim bail.

Preeminence has always been given by the Courts to Bail applications, applications for suspension of sentence in Appeals and Revisions but as to whether the same fall within

the category of "extremely urgent matters". During the COVID 19 pandemic, when the whole country was veiled under lockdown, the public authorities except for essential commodities and services quarantined, this question of was raised before the Rajasthan High Court in *Sharukh S/o Juharu Khan vs. The State of Rajasthan* [45], to which the Order stated that it is true that Right of liberty is a fundamental right and Citizens are free to move anywhere in the country but reasonable restrictions have been imposed due to the emergent situation to prevent the spreading of COVID-19 virus. The entire country is under lockdown. Release of an accused or convict at the cost of breaching the order of lockdown and at the cost of risking lives of many cannot be considered to fall within the category of "extreme urgent matter." The Hon'ble Supreme Court overruled this view of the Rajasthan High Court and stayed the erroneous Order clearly expressing that suspension of sentence comes within the purview of "extremely urgent matter" [46].

Contrary to the Hon'ble Supreme Court's Order to decongest jails in India and release incarcerated persons on bail or parole to contain the spread of the novel coronavirus in the prisons, the Bombay high court has observed that bail applications cannot be treated as an "urgent judicial matter" at the time of a pandemic. In an ex-parte hearing of a bail application filed in the case of *Sopan Ramesh Lanjekar vs. The State of Maharashtra* [47], for cheating, the single bench judge Justice Anand Badaron April 3, 2020, observed that-

"The term 'urgent' is subjective and it doesn't apply for those in jail and seeking bail."

7. Better Use of Funds for Prison Reforms:

It can be deduced from the statistics studied that, in fact there lies an accumulated amount of funds with the authorities, which unfortunately are not directed towards bettering the conditions in prison, let alone making them survivable. Some efforts that can be taken promptly towards this endeavour includes:

Accommodation and Separation of Prisoners-

- Immediate constructions of new buildings to serve as prisons and reconstruction of the old, dilapidated ones.
- There should be separate prison units constructed for categorising different classes of prisoners - the undertrials and the convicted, men and women inmates, prisoners convicted of heinous crimes and those of civil charges, financial debts or economic offences and petty charges. Efforts should be made to keep the young, juvenile and redeemable offenders strictly away from the irredeemable, hard-core and habitual offenders to shield them from contamination
- Each barrack should have independent enclosure having all essential facilities including kitchen and dining.
- The dormitory barrack system will have two dormitories with every dormitory having capacity to accommodate 25 inmates. Wooden beds should be provided in the barracks for sleeping rather than cemented berths.

Nutrition and Drinking Water-

- There should be a water-cooler with workable filter system in every barrack to provide for clean drinking water. There should be proper arrangement for drinking water particularly at night. Cold water should be provided during summer.
- A kitchen, pantry and dining room should be constructed in every barrack. There should be a water-cooler with workable filter system in every barrack to provide for clean drinking water. The mess should be provided with tables, chairs and fans for dining.
- Food should be clean, fresh and hygienic. Hot and freshly cooked food should be served. Milk, Vegetables, Fruits, Salad and Eggs should be provided. Food should be given in proper and entitled quantity. Three square meals a day should be catered to. Non-vegetarian meals and eggs should also be provided to the meat eaters.

Sanitation and Hygiene-

- Attached toilets with the ratio of 10 inmates using 1 toilet, thereby three to four toilets per room should be provided with proper flush and commode system, facilities and amenities of sanitation and hygiene, soap, adequate water, dental kits, towels and with a proper sewerage system and non-clogging cock pits. Care should be taken to see that the toilet toxic water does not mix with drinking water. Drinking water and toilet water must be in separate pipes. The sewerage and drainage system should be laid underground. The toilets and bathrooms should be neat and clean. Water supply should be provided round the clock. New Toilets should be constructed in every barrack with flushing system. The old model and broken toilet seats must on an urgent basis be replaced, to prevent cockroaches from coming out of the seats and roaming on the body of prisoners at night.
- There should be three to four separate bathrooms in every room. For bathing purpose, a big water tank with taps and covered bath room should be constructed in each barrack. Every ward and barrack in the jail should be a self-contained unit for sanitation and hygiene needs.

Medical Facilities-

- With regards to medical facilities, a new hospital should be constructed with modern medical facilities. Doctors should be available round the clock. Laboratory facility should be available at least for routine test. A quarterly medical blood test and monthly check-up of all the inmates should be conducted to rule out all possibilities of illnesses. This frequency must be increased with the already ailing prisoners.
- Doctors should visit the barracks regularly and examine the sanitary conditions as well as patients and give proper medicine to them.
- The number of doctors and other supporting staff should be increased as per norms given in the Model Prison Manual.
- Patients suffering from T.B. and HIV should be separated from other inmates.
- There should be equipment and instruments to deal with emergencies including ECG and revival machines. The prison hospital should have ties with the emergency catering hospitals outside the prison and should also be

well connected with the help-line numbers and ambulance providing agencies.

- One lady doctor should be appointed on permanent basis where more than 50 female inmates are lodged.
- Special care should be taken to provide for pregnant women, lactating mothers and menstruating women. Sanitary napkins, essential vitamins and disposables should be offered too them.

Increase in Prison Staff-

- The appointments of prison staff i.e. the correctional staff, executive staff, ministerial staff, medical and other staff should be increased on an urgent basis and the existing vacancies between the sanctioned strength and the actual strength should be filled.

Miscellaneous -

- The concerned authorities including prison staff should look into possibilities of torture and degrading treatment meted towards the inmates and quick action should be taken to investigate the same judiciously.
- The prisoners should be availed of educational and vocational amenities including books and writing material and recreational facilities with the additional funds.

8. Conclusion

'Overall, we need bold change in our criminal justice system. A good first step forward is to start treating prisoners a human being, not profiting from their incarceration. Our emphasis must be on rehabilitation, not incarceration and longer prison sentences.'

-Senator Bearne Sanders

Prison is cruel, less a chance for reformation. Like opening the birdcage to let the bird fly out, whilst all the while its tethered by the leg and freedom is only an illusion. With the large numbers of impoverished under-trials lamenting in prison, the jails are over-crowded which lead to deplorable conditions, lack of amenities and the spread of diseases. The innocent bears the brunt of this classist system of treating humanely the rich and smothering the poor through the discrimination meted towards them by depriving them of their fundamental rights of Bail. Therefore, releasing the under-trials on bail and respecting their fundamental right to personal liberty is the solution to all problems of prison mismanagement, over-crowding, poor hygiene and diseases and poor reforms. By granting bail to the under-trials, the burden of prison population will be reduced by half and therefore they can be efficiently run and managed, the existing prisoners can have a better quality of life an adequate and optimum amenities including food, water, sanitation, use of toilets and bathrooms, medical facilities and the additional funds from the release of the detainees, can be utilised words increasing the quality of the services offered to them. After all we are the not savage, brutal, primitive man from The Thomas Hobbes Model. We are rather the evolved, law-abiding society that recognises the need for justice, fairness and the due process of law. As such for the institution which stands for being just, reformative and humane to depict ironically in its endeavour proves to be tragic shame to civic sense. It has been empathetically stated by the famous Russian essayist and journalist Fyodor Dostoevsky that the degree of civilisation in a society can be

judged by entering its prisons and that a society should be judged not by how it treats its outstanding citizens but by how it treats its criminals. The conditions of Prisons in India are barbaric, the inmates being nothing but lifeless animals shackled to doom and the authorities acting as mute spectators to their ordeal. As such, a greater responsibility is cast on us as a society to sensitive the system in its treatment to the offenders and thereby reinstall in the institution, the principles of justice, humanity, fairness and reformation on which the system was actually built.

References

- [1] Prison Statistics India-2018, National Crime Records Bureau, Ministry of Home Affairs.
- [2] Prof. N.V. Paranjpe, Criminology and Penology, Central Law Publications, 12th Edition, 2006, p.361
- [3] Amerndra Mohanty, Narayan Hazary, Indian Prison System, Ashish Publications House, NEW DELHI, 1990
- [4] Justice Mulla Committee Report, 1983
- [5] Bansal V.K. Right and Personal Liberty in India, Deep and Deep Publications, New Delhi, Edition 1 (1987)
- [6] N. Ravi, Human Rights Scenario in India- An Overview, Lap Lambert Academic Publishing, 2013
- [7] Prof N.V. Paranjpe, Ciminology and Penology, Central Law Publications, Allahabad, 12th Edition, 2006
- [8] Dr. Gurubax Singh, Law Relating to Protection of Human Rights and Human Values, Vinod Publications (P) Ltd., 2008
- [9] The International Covenant on Civil and Political Rights, 1966
- [10] Justice A.N. Mulla Committee on All India Jail Reforms Report (1980-1983)
- [11] United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), United Nations Office on Drugs and Crime (UNDOC)
- [12] Prison Types and Occupancy, Prison Statistics India-2015, National Crime Records Bureau, Ministry of Home Affairs
- [13] Prison Types and Occupancy, Prison Statistics India 2018, National Crime Records Bureau, Ministry of Home Affairs, p.9
- [14] Prison Types and Occupancy, Prison Statistics India 2018, National Crime Records Bureau, Ministry of Home Affairs, p.11
- [15] International Covenant on Civil and Political Rights, 1966
- [16] The Prison Manual, BPRD 2003
- [17] Model Prison Manual BPRD 2003
- [18] Body of Principles (UNO, 1988)
- [19] Chapter 7 of Model Prison Manual BPRD 2003: *"Medical administration is one of the most important concerns of prison management. The Medical Officer of a prison has to give careful attention not only to the treatment of sick prisoners but also to every matter connected with the health of prisoners and overall hygiene of the prison". Further, "Hospital accommodation should be provided on the scale of 5% of the daily average of the inmate population in all Central and District Prisons. The prison hospitals may be of Types 'A' and 'B'. Big hospitals, with 50 beds and above shall be called 'A' type hospitals. Other*

- hospitals, with less than 50 beds, shall be called 'B' type hospitals"*
- [20] Strength and Training of Prison Officials, Prison Statistics India -2015, National Crime Records Bureau, p.139
- [21] Prison Staff- Strength and Training, Prison Statistics India- 2018, National Crime Records Bureau, Ministry of Home Affairs, p.221
- [22] Deaths and Illnesses in Prison, Prison Statistics India-2018, National Crime Records Bureau, Ministry of Home Affairs, p. 177
- [23] Prison Budget and Expenditure, Prison Statistics India-2015, National Crime Records Bureau, Ministry of Home Affairs, p.157
- [24] Under-Trial Tells of Rampant Abuse at Arthur Rd Jail-https://mumbaimirror.indiatimes.com/mumbai/cover-story/under-trial-tells-of-rampant-abuse-at-arthur-rd-jail/amp_articleshow/74533194.cms
- [25] Haryana Police uses torture against jail inmates and undertrials as a routine, finds study <https://timesofindia.indiatimes.com/city/gurgaon/haryana-police-uses-torture-against-jail-inmates-and-undertrials-as-a-routine-finds-study/articleshow/70867033.cms>
- [26] Punjab recorded highest no. of suicides in jail, prisoners' complaints to NHRC <https://indianexpress.com/article/india/punjab-recorded-highest-no-of-suicides-in-jail-prisoners-complaints-to-nhrc-6089532/>
- [27] Ratanlal and Dhirajlal's The Code of Criminal Procedure, 1973
- [28] Ratanlal and Dhirajlal's The Constitution of India, 1950
- [29] The Universal Declaration of Human Rights, United Nations General Assembly, 1948
Article 9- No one shall be subjected to arbitrary arrest, detention or exile.
Article 10- Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.
Article 11- Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
- [30] Supra
- [31] 1977 SCC (4) 308
- [32] 1984 SCC (1) 284
- [33] 1980 SCC (1) 98
- [34] 1978 SCC (1) 248
- [35] (2017) 5 SCC 702
- [36] (1982) 2 SCC 583
- [37] (1982) 3 SCC 131
- [38] Shiny Kadam Ahuja v. State of Maharashtra MANU/MH/1984/2009
- [39] Sanjay Chandra v CBI (2012) 1 SCC 40
- [40] P. Chidambaram v. Directorate of Enforcement, Cr. Appeal no. 1831/19 in SLP (Cri.) No. 10493 of 2019
- [41] AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732
- [42] AIR 1931 All 356, 358 : 32 Cri LJ 1271
- [43] Chhagan Chandrakant Bhujbal vs Assistant Director, Directorate of Enforcement, 2018(3) RCR (Criminal) 125
- [44] (2011) 1 SCC 784
- [45] S.B. Criminal Miscellaneous Second Bail Application No. 17767/2019
- [46] The High Court of Judicature for Rajasthan v The State of Rajasthan &Anr. Special Leave Petition (Cri) Diary No. 10825/2020
- [47] Cri. Bail Application No. 691 of 2020