

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS (ISSN 2582 - 6433)

VOLUME 2 ISSUE 5  
(March 2022)

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**IJLRA**

INTERNATIONAL JOURNAL  
FOR LEGAL RESEARCH & ANALYSIS

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# The Invisible Crisis: Mental Health of Prisoners in India

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## Introduction

Covid 19 created havoc, not just to life of people, but also crashed down economies, generated unemployment at a humongous scale but its biggest destruction has been giving rise to depression and anxiety in minds of millions of people. While we struggled locked up in our homes, it was those locked up in our prisons who suffered twice than normal citizen.

Henry David Thoreau had correctly said, “Not until we are lost do we begin to understand ourselves”<sup>1</sup>. The concept of imprisonment is based on the idea of creating a safe society where the wrongdoer is punished and he gets a chance of introspection, of bettering himself to be able to live in the society again peacefully. But Indian Prisons have failed to achieve its goal due to several reasons but the most undervalued of them is the mental health of those locked up for several of years.

Commonwealth Human Rights Initiative (CHRI)<sup>2</sup> reported that Prison inmates are twice more likely to die of suicide than the general Indian Population. The WHO and International Red cross has also reported that situations involving inadequate healthcare facilities, sexual and physical assaults, overcrowding tends to increase the possibility of mental health issues. In the year 2020, Tata Trusts’ Indian Justice Report stated that Prisons in India have a shortfall of medical staff by 41% while in 35 of 36 states/UTs, prison occupancy exceeds 50% of inmates<sup>3</sup>. Crimes that are committed are either done by someone already suffering from some mental disorder or result of extreme case of anxiety and depression, and if that’s not the case, then the said accused develop some mental disorder while locked up in jails, or worse solitary confinement. When mental health is holding centre stage in today’s generation, the mental health of convicts remain unattended.

Let alone psychiatric disorders and drug use, there are innumerable challenges that the convicts face while they are locked up in the prisons ranging from exhaustion of prison facilities, lack of privacy, feeling of isolation, lack of meaningful activities and scarce health services and all collectively contribute in worsening the mental health of the prisoners<sup>4</sup>.

In the mental health study undertaken by Project 39A, a research based brain child of National University of Delhi, for which 88 death row prisoners were interviewed across Delhi, Chhattisgarh, Madhya Pradesh, Karnataka, and Kerala, many respondents reported a troubling lack of quality mental health treatment in prison<sup>5</sup>. The Prison Statistics India (2016) report also reveals that in many states there are either no sanctioned positions for psychologists or psychiatrists in prisons, or that sanctioned posts have not been filled. For instance, Maharashtra has eight sanctioned posts but only three have been filled<sup>6</sup>.

<sup>1</sup> Rich Landers, *Celebrate Thoreau’s Birthday with few ageless quotes*, The Spokesman-Review, (March 1, 2022, 11:00PM), <https://www.spokesman.com/blogs/outdoors/2017/jul/12/celebrating-thoreaus-birthday-few-ageless-quotes-life-nature/>.

<sup>2</sup> Commonwealth Human Rights Initiative, *Mental Health and Prisons*, (March, 2, 2022, 10:00 AM), <https://humanrightsinitiative.org/download/Mental%20Health%20and%20Prisons.pdf>

<sup>3</sup> Tata Trusts, *India Justice Report: Ranking States on Police, Judiciary, Prisons and Legal Aid*, (January 28, 2021), <https://www.tatatrusts.org/insights/survey-reports/india-justice-report>

<sup>4</sup> Rabiya S, Raghavan V., *Prison mental health in India: Review. Indian J Soc Psychiatry*, 2018 (2022 Feb 27); 34:193-6, <https://www.indjsp.org/text.asp?2018/34/3/193/242358>

<sup>5</sup> Dr. Anup Surendranath, Maitryi Misra, *Mental Health and Criminal Law: A Chasm in need of a bridge, Reframe: Bridging the care gap*, issue 2. The Mariwala Health Initiative Journal, Sept 2019

<sup>6</sup> Sareen, J., Afifi, T., McMillan, K., & Asmundson, G. *Relationship Between Household Income and Mental Disorders. Archives Of General Psychiatry*, 68(4), 419. doi: 10.1001/archgenpsychiatry.2011.15 (2011)

During the study, Project 39A has identified about 30 death row prisoners suffering from major depression and majority of them were not being provided treatment. Five of these prisoners had actually went on to attempt suicide in prison, hence revealing a huge gap in timely identification and care of prisoners with certain kinds of mental illnesses that might have no identifiable symptoms – which, in turn, is likely to make the illness all the more horrific.

## Some Positive Steps in the Right Direction

The State has taken few steps in right direction to address this issue and one of them is The Mental Healthcare Act, 2017 which entered into force in May 2018.<sup>7</sup> It is a legislation that adopts a rights-based approach to regulate mental healthcare and treatment in India. It draws on the guiding principles of the UN Convention on the Rights of Persons with Disabilities (CRPD). The Act in itself is a huge achievement because it marks the first time an Indian Law recognises the right of all citizens to avail all healthcare services without any discrimination.

Under the provisions of the Act, all citizens suffering from mental disorder have the right to be treated equally<sup>8</sup>, and are protected from cruel, inhuman, and degrading treatment<sup>9</sup>. Its provisions include the right to confidentiality<sup>10</sup>, community living<sup>11</sup>, access to medical records<sup>12</sup> and legal aid<sup>13</sup>. It mandates the creation of regulatory bodies – such as the Central Mental Health Authority (CMHAs)<sup>14</sup> the state mental health authorities (SMHAs)<sup>15</sup> and the mental health review boards<sup>16</sup> (MHRBs) – and for governments to maintain a register of mental-health professionals and establishments.

Section 103 of the Act talks specifically about the Prisoners with mental illness, creating provisions in case a prisoner suffers from mental illness be shifted to any suitable mental health institutions or psychiatric ward in medical wing of the prison. The medical officer is required to send quarterly reports to the concerned Board certifying that no prisoner with mental illness is in prison or jail and also, is required to send special report regarding the mental and physical health of the prisoner to the authority under whose order such person is detained.

But such well detailed drafting is not supported by effective implementation. In RTI reply, dated 12 October 2020<sup>17</sup>, the Ministry of Health and Family Welfare said only three states i.e. Tripura, Uttarakhand, and Himachal Pradesh have constituted MHRBs.

## Indian Courts at Play

In case of Chiranjit Singh & National Human Rights Commission v. State<sup>18</sup>, the undertrial, accused of murder was suffering from Schizophrenia but for 15 years, he continued to languish in Tihar Jail, after which the Delhi High Court finally granted him bail. But it was cancelled mercilessly when he failed to appear on the next date of hearing. Lucky for him, letter dated 26 February 2002 from office of the Director General Prisons, Delhi alerted National Human Rights Commission who took up his case and was able to provide solution.

<sup>7</sup> The Mental Healthcare Act, 2017

<sup>8</sup> Section 18, The Mental Healthcare Act, 2017

<sup>9</sup> Section 20, The Mental Healthcare Act, 2017

<sup>10</sup> Section 23, The Mental Healthcare Act, 2017

<sup>11</sup> Section 19, The Mental Healthcare Act 2017

<sup>12</sup> Section 25, The Mental Healthcare Act 2017

<sup>13</sup> Section 27, The Mental Healthcare Act 2017

<sup>14</sup> Section 33, The Mental Healthcare Act 2017

<sup>15</sup> Section 45, The Mental Healthcare Act 2017

<sup>16</sup> Section 73, The Mental Healthcare Act 2017

<sup>17</sup> Ritika Goyal, *Prisoners are twice as likely to die of suicide*, (July 2021, 29, 11:48 AM), <https://theprint.in/opinion/prisoners-are-twice-as-likely-to-die-by-suicide-existing-laws-do-little-to-help-them/705282/>

<sup>18</sup> Criminal writ petition: 729/2002

Later, he was shifted to the Institute of Human Behaviour an Allied Science in Delhi where the primary reason for his bad mental health was found to be poor environment and lack of case in jails. Although his the trial proceedings were quashed under Section 482 CrPC by Delhi High Court but what couldn't be quashed was his mental conditions.

This case was significant as it led to issuance of several guidelines by the National Human Rights Commission, which compromised of effective psychiatric and psychological counselling, apt and suitable training to jail staff where they work in collaboration with various NGOs, and training being provided at Judicial Academies etc.<sup>19</sup>

In landmark judgement titled *Sheela Barse V. Union of India*<sup>20</sup>, the Supreme Court held the jailing of Non Criminal Lunatics to be illegal and unconstitutional, baed on the report submitted by Commissions apointed by the Supreme Court by an order dated 16th June 1992 appointing two commissioners - Prof. Srinivasa Murthy of NIMHANS Bangalore and Prof. Amita Dhanda, a law academic - to visit a representative sample of the jails and mental hospitals in West Bengal.

In *Accused X v. State of Maharashtra*<sup>21</sup>, The Apex Court stressed upon the importance of mental health and cited The Mental Healthcare Act, 2017 several times. While commenting on the mental health and wellbeing of prisoners, the bench observed, “.....the aspiration of the Act [MHCA] was to provide mental health care facility for those who are in need including prisoners. The State Governments are obliged under Section 103 of the Act to setup a mental health establishment in the medical wing of at least one prison in each State and Union Territory, and prisoners with mental illness may ordinarily be referred to and cared for in the said mental health establishment.”

Chapter 25 of the Code of Criminal Procedure, 1973 provides provisions as to the accused persons of unsound mind. An accused who is of unsound mind at the time of inquiry or trial will not be able to understand the charges that are levelled against him and may not be able put up the best defence along with his counsel, hence Chapter 25 of CrPC exists on the principle of the right to fair trial. Section 328 deals with the procedure in case the accused is lunatic and Section 329 deals with Procedure in case the person of unsound mind is tried before Court.

154<sup>th</sup> Law Commission Report has aptly pointed out the loopholes in Chapter 25 of CrPC in relation to undertrials locked away in prisons<sup>22</sup>. Under Section 329(1), if the undertrial is found to be incapable of standing trial due to his unsoundness, the trail will be postponed by Magistrate or Court. He can be released on bail on surety of safe conduct or else be locked away in safe custody which is either jail or mental hospital. The law, sadly, grants no entitlement of treatment to the insane undertrial. There is also no time limit provided for which the postponement will subsist, hence begins the indefinite confinement for an undertrial who already is fighting the demons of unsoundness dancing in his mind. The Right to therapeutic treatment of undertrial is protected under Right of Life under Article 21 of Indian Constitution. The Law Commission recommends that it is the standard to treatability that should provide justification for postponement of enquiry or trial, hence treatability and not dangerousness

<sup>19</sup> Sofia Bhambari, *Prisoner's right to mental health*, S. Bhambari and Associates, (May 24, 2021, 12:00 PM), <https://www.sbhambriadvocates.com/post/prisoner-s-right-to-mental-health-in-india>

<sup>20</sup> (1993) 4 SCC 204

<sup>21</sup> Criminal Appeal No. 680 of 2007

<sup>22</sup> Law Commission of India, *The Code of Criminal Procedure, 1973 (Act no. 2 of 1974)*, Vol II, Chapter 81, 20 1996

should be the guiding force of Section 328 and Section 329 of CrPC<sup>23</sup>.

In *Dr Sangamitra Acharya & Anr. v. State (NCT of Delhi)*<sup>24</sup>, the Delhi High Court directed the city's police to prepare a manual in consultation with legal and mental health experts to spread awareness on the MHCA's provisions regarding the rehabilitation of homeless persons with mental illness and further said that 'the Centre and SMHAs in collaboration with the state judicial academies' to 'hold programmes on periodic basis with civil society groups, residents' welfare associations, police officers, lawyers and judges to sensitise them' about the various provisions of the MHCA.

The Supreme Court of India, in *Re: Inhuman Conditions in 1382 Prisons*<sup>25</sup> reiterating *Frances Coralie Mullin v. Administrator, Union Territory of Delhi*, upheld that by Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights that as a part of the right to live with human dignity, a prisoner is entitled to have interviews with members of his family and friends and no prison regulation and procedure to the contrary can be upheld as being constitutionally valid under Articles 14 and 21 of the Constitution unless it is reasonable, fair and just. Similarly, there cannot be any doubt that a prisoner must be entitled to have discussions with his lawyers so that he has effective legal representation and access to justice as well as remedies for justice. This would be equally applicable to death row prisoners for meeting mental health professionals for a reasonable period of time with reasonable frequency so that their rights can be adequately protected at all stages.

The welcomed self reflexivity by the Indian Courts points towards the blossoming awareness of the loopholes and shortcomings in Indian Criminal Justice System and offers an opportunity to cohesively study the field of mental health and criminal law, and in the end providing a beautiful amalgamation of both.

## What more can be done?

The Ministry of Home Affairs has recently released advisory on mental health issues of Prisoners<sup>26</sup> wherein telepsychiatry video consultations, risk assessment of Covid-positive prisoners with mental illness twice a day; and in-person or tele consultations at least once a day for elderly Covid-positive prisoners with mental illness have been suggested. It further recommends the presence of at least one doctor, a physician, a psychiatrist, a dermatologist, a gynaecologist, a surgeon, two nurses and four counsellors for every 500 inmates. One psychologist/counsellor should be there for every 500 inmates as per the Model Prison Manual, 2016<sup>27</sup>.

It also has been suggested in the guidelines that prisoners should be connected with their families through video-conferencing facilities. But unfortunately, only 10 out of 36 states/UTs

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<sup>23</sup> Law Commission of India, *The Code of Criminal Procedure, 1973 (Act no. 2 of 1974)*, Vol II, Chapter 81, 20 1996 (supra)

<sup>24</sup> W.P. (CRL) 1804 of 2017

<sup>25</sup> 2017 SCC Online SC 1109.

<sup>26</sup> Ministry of Home Affairs, *Addressing Mental Health Issues of Inmates and Staff in Prisons and Correctional Facilities during Covid-19*, Govt. Of India, (June 24, 2021, 10:30 AM).

<sup>27</sup> Ministry of Home Affairs, Model Prison Manual, Chapter 22, (2016)

have video conferencing option available in their jails. States like Mizoram, Nagaland, Sikkim doesn't have this technology in any of their prisons<sup>28</sup>.

Projects such as Project39A has taken praise worthy steps in this field wherein the team on 19<sup>th</sup> and 20<sup>th</sup> January, 2018 organised a training workshop on forensic psychiatry with Delhi Judicial Academy in collaboration with Death Penalty Project, London which was attended by fifteen Delhi Trial Court Judges, Fifteen Legal Aid Lawyers and Fifteen Mental Health Professionals. Such sensitisation regarding post conviction mental illness is highly required to the entire legal fraternity especially the jail staff who deal with such cases on day to day basis.

Along with effective implementation of the legal framework and systems already in place, there is also a necessity of recognising social workers, psychiatrists and psychologists as essential and indispensable part of the Criminal Justice System.

Nelson Mandela has aptly said, "No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens but its lowest ones"<sup>29</sup>. And this nation has so much left to do.

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<sup>28</sup> Shreehari Paliath, Shreya Raman, *As India's Courts went virtual, lack of technology in jails became a major hurdle to justice*, (Jan 31, 2021, 11:00 AM), <https://scroll.in/article/985451/as-indias-courts-went-virtual-lack-of-technology-in-jails-became-a-major-hurdle-to-justice>.

<sup>29</sup> Yuri Fedotov, *The Nelson Mandela Rules: The UN Standard Minimum Rules for the Treatment of Prisoners*, United Nations Office on Drugs and Crime (March 2, 2022, 11:00 AM), [https://www.unodc.org/documents/justice-and-prison-reform/16-05081\\_E\\_rollup\\_Ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/16-05081_E_rollup_Ebook.pdf).