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INVISIBLE INMATES: REVISITING THE POSITION OF ELDERLY PRISONERS IN INDIA

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Abstract:

Elderly Prisoners are part of the Indian Prison system, yet due to their small percentage and total number, they often become the invisible stakeholders in the prison system. This paper is an attempt to highlight the needs of elderly prisoners to have policies made for them in a manner that keeps them in the centre. It highlights the constitutional provisions, laws and policies that help delineate their rights and requirements. It mentions various judgements of High courts in India that pertain to rights of elderly prisoners and shares about the various policies made by different state governments to address the issues and policies regarding elderly prisoners staying in the state jails.

The Indian Constitutional framework and the judicial system in India have always upheld the idea of justice as the utmost priority and have guaranteed a life of dignity and a chance at reformation to every person who has been convicted of a crime and has been made a prisoner as a consequence thereof. This reflects the transformation of the Indian prison jurisprudence from a punitive to a reformatory model. This has been largely done through judicial activism by the court, upholding the fact that prisoners are not devoid of fundamental rights and that these rights do not extinguish the minute a person enters the confined walls of a prison¹.

Within any civilised society, however, the concept of 'justice' is measured by how it treats its most vulnerable members. In the context of the Indian Penal system, the elderly prisoners who stay in jails constitute the weakest and often forgotten group. It is this marginalised section of prisoners that faces a double burden- the loss of liberty, owing to their incarceration and the declining physical and mental abilities, owing to their advancing age. As of the latest available National Crime Records Bureau (NCRB) Prisons Statistics, 2024, the occupancy rates in Indian prisons are overflowing the capacity, it is at 120%. Amid this high occupancy rate, there are

¹ *Sunil Batra v Delhi Administration (1978) 4 SCC 494.*

senior citizen prisoners, i.e., those above the age of sixty. These prisoners are often subjected to the same treatment and facilities as others, which for them may amount to ‘unusually hard’ punishment owing to their infirm abilities caused by their advanced age. This treatment may end up violating their right to life and liberty, which is constitutionally guaranteed to them as well.

Need to readjust the focus on elderly prisoners in Indian Jails

The need to study the conditions of elderly prisoners languishing in jails comes from the very fact that due to the advancement in medical sciences and quality of basic human life, the average lifespan of humans has increased but the lack of resources at the level of prisons due to several factors like poor resource allocation, lack of political will, lack of public knowledge and sensitivity on the topic becomes imperative. This poor resource management affects the elderly prisoners the most, and if they belong to an already marginalised section of society owing to their gender or caste, this exacerbates their vulnerability in the system.

It is also an established fact that the behaviour of persons inside and outside jails is different. Incarcerated persons often have chronic and infectious diseases and mental health issues due to isolation, drug abuse, PTSD etc. These medical issues are compounded by the advanced age of elderly prisoners which also enhances their vulnerability towards victimisation inside prisons.²

The need to address this issue had recently been put forward by NALSA in the form of a Public Interest Litigation before the Supreme Court, the judgement for which has been reserved by the Hon’ble Court.³ NALSA, through the petition sought a compassionate release of elderly and terminally ill convicted persons across the country. It underscored the rise of elderly and infirm prisoners in jail, often without access to adequate medical care or dignified living conditions.

Constitutional Framework behind the Rights of Prisoners

As emphasised earlier, the Indian Constitution has not put a bar on the availability of the fundamental rights of a person the moment they become a prisoner.

² N Wolff, J Shi & J.A. Siegel, *Patterns of victimization among male and female inmates: Evidence of an enduring legacy*, Violence and Victims, NCBI, 24, 469-484 (2009)

³ NALSA v Union of India & Ors WP (CrI) No. 162/2025

The Supreme Court in *Francis Coralie Mullin v The Administrator, Union Territory of Delhi*⁴ established that the right to life includes the right to live with human dignity as guaranteed under Article 21 of the Indian Constitution. For an elderly prisoner, this translates to the right to adequate medical care, nutrition, and an environment that does not aggravate age-related ailments.

Similarly, treating elderly prisoners in the same manner as other, young prisoners is antithetical to the right to equality as it is against the idea of 'reasonable classification' as given under Article 14 of the Indian Constitution. The needs of a prisoner, both physical and mental, of a young and an old prisoner differ, so do their motive for reformation and the manner in which they shall spend their time in the prisons. Being mindful of this difference is necessitated by the authorities to plan the activities that the prisoners are supposed to do while their time in incarceration.

Defining an 'Elderly' Prisoner in India

Indian law does not provide a definition of who is considered a senior citizen. Under the Indian Majority Act, 1875, an adult is defined as a person above the age of eighteen years. However, policy frameworks and prison manuals have classified persons above the age of sixty years as elderly⁵ in the form of Geriatric prisoners. An elderly prisoner can belong to any of the following categories- s/he may be an older inmate- a person who was given a long imprisonment at an early age and has spent their youth behind the bars. It could be a person who has been convicted at an old age and is going to serve time in prison during their final years. It may also be a recidivist with an advanced age who may have faced multiple incarcerations⁶.

This classification becomes important as it helps design the best possible planning for reformation in prison. For the first category, the inmate may have been socially isolated from their families and may have developed mental health issues. Similarly, they may not have as easy access to medical diagnosis while being in prison, which a person outside of prison may have when they see symptoms of old-age related diseases. For the second category of persons,

⁴ 1981 AIR 746

⁵ Model Prison Manual, 2016

⁶ Megha Shree and Honey Aggarwal, 'Rights of Elderly Prisoners: A Study in Tihar Central Prison' in K Jaishankar and others (eds), *Indian Prisons: Towards Reformation, Rehabilitation and Resocialization* (Taylor & Francis 2014)

who may have pre-existing comorbidities associated with old age, they may not find the same level of care and comfort in prison that they would have in the outside world, with respect to their medical issues. This may include access to medicines, the choice of trying new therapies, treatments or consult doctors as per their own choice. For the third category of patients, it remains to be studied the causes of repeated recidivism, a part of it may be medical, which is difficult, if not impossible to address in a prison setting⁷.

Statutes and Policy Framework that governs Elderly Prisoners in India

Prison administration is a state subject under List II of the VII Schedule of the Indian Constitution under Article 246. There exists a Central Prisons Act, 1894, but states have made state-specific amendments as per their prevailing circumstances.

The Prisons Act, 1894, is the primary law that governs the working of prisons in India. being a colonial era law, it has majorly focused on custody than on reformation. The act is completely silent on age-specific provisions for prisoners, and therefore, there is no mention of elderly prisoners in it. The act says that a prison shall have a superintendent, Medical Officer (who may also be the Superintendent), a Medical Subordinate, a Jailor and such other officers as State Government may require.⁸ The act also mentions segregation of prisoners, but it focuses on separation on the basis of gender, for persons below the age of twenty-one, unconvicted criminal prisoners from convicted criminal prisoners and civil prisoners. It omits any segregation for elderly prisoners⁹. The act also makes provision for Prisoners to see medical officers but after the permission of the jailor.¹⁰ The act requires the medical officer to certify the fitness of a prisoner when s/he is supposed to undergo any punishment so as to preserve their health.¹¹ However, the act is completely silent on elderly prisoners. There exist no provisions for defining an elderly prisoner, their special treatment, rights, duties or obligations. To address a few of these gaps comes the Model Prison Manual, 2016. The manual was created by the Bureau of Police Research & Development under the aegis of the Ministry of Home Affairs by the constitution of a committee headed by Mr. Alok Kumar. The Model Prison Manual, 2106 is one of the only policies that mentions about elderly prisoners as ‘geriatric

⁷ Anushree Malviya, ‘Ageing In Captivity: Understanding The Needs Of Elderly Prisoners In India’, IJLLR (Journal 2024)

⁸ Section 6, Prisons Act, 1894

⁹ Section 27, Prisons Act, 1894

¹⁰ Section 37, Prisons Act, 1894

¹¹ Section 50, Prisons Act, 1894

prisoners' under Chapter I of the Manual. It also mentions elderly prisoners in the Classification of High-Risk Offenders as Security Category 5 (S5-Green).¹² The Manual mentions that the Chief Medical Officer shall ensure that the medical needs of aged prisoners in terms of ophthalmological care, dental care, physiotherapy, and clinical testing for diabetics.¹³ There exists a provision for legal aid and assistance to undertrial prisoners who are old and infirm in the manual¹⁴. A bar is also put on the transfer of old prisoners on account of their age, infirmity or sickness from one prison to another, except under special circumstances.¹⁵ It also provided for the premature release of Old and infirm offenders of 65 years of age on the day of the commission of offence who were sentenced to life imprisonment and have spent at least ten years in prison or have attained the age of seventy five years.¹⁶ The Model Prison manual has also gone to the extent of providing post-release rehabilitation mechanisms with special focus on the special needs of old persons.¹⁷ These provisions highlight how the committee had thought to inculcate the needs of elderly prisoners into the management of prison administration as well.

On the basis of the Model Prison Manual, 2016 the Ministry of Home Affairs released the Model Prisons and Correctional Services Act, 2023¹⁸. The Model Prisons and Correctional Services Act, 2023 has been shared with all States and Union Territories on 10.5.2023 with the request to take advantage from the same and enact a Prison Act in their jurisdiction, with such modifications which they may consider necessary¹⁹. This act, however, has failed to address many of the provisions that existed in the model Prison Manual, 2016, for elderly prisoners as a separate Category. The 2023 model act mentions the classification of prisoners on the grounds of age and infirmity only.²⁰ It is important to note that it is only a model act and that states can still choose to identify elderly prisoners as a separate, special, and marginalised category, therefore make enabling provisions for them that advance their well-being. As highlighted in the Rajya Sabha's reply to an unstarred question on the implementation of the model Prison

¹² 25.02, Chapter XXV, Model Prison Manual, 2016

¹³ 7.16, Chapter VII, Model Prison Manual, 2016

¹⁴ 8.48(i), Chapter VII, Model Prison Manual, 2016

¹⁵ 9.04.5, Chapter IX, Model Prison Manual, 2016

¹⁶ 20.08 (iv), Chapter XX, Model Prison Manual, 2016

¹⁷ 22.09, Chapter XXII, Model Prison Manual, 2016

¹⁸ PIB Delhi (*Under the visionary leadership of Prime Minister Shri Narendra Modi and decisive guidance of Union Home Minister Shri Amit Shah, a decision was taken to review and revise colonial-era outdated Prison Act in tune with contemporary modern day needs and correctional ideology*, 12 May 2023) <<https://www.pib.gov.in/PressReleaseDetailm.aspx?PRID=1923682®=3&lang=2>>

¹⁹ 'Prison Reforms' (https://www.mha.gov.in/en/divisionofmha/Women_Safety_Division/prison-reforms)

²⁰ Section 26, Model Prisons and Correctional Services Act, 2023

rules released with the 2023 model act, no state has yet confirmed to the Ministry of Home Affairs its adoption of the act and its associated rules²¹.

Even the Bhartiya Nagarik Suraksha Sanhita, 2023, has a provision for bail, even for non-bailable offences, if the accused suffers from a 'sickness or infirmity' at the discretion of the court.²²

In recent times, the National Legal Services Authority (NALSA) also organised special campaigns where it directed its district units to identify prisoners in various states and district prisons above the age of seventy years to facilitate their release through bail and remission²³. The campaign also made provisions for post-release care and assistance for old prisoners²⁴. The idea behind the campaign was that prolonged incarceration at such an advanced age serves no reformative purpose and goes against the idea of basic human rights and the right to live life with dignity.

International 'Soft Law' on Rights of Elderly Prisoners

While there is no specific treaty or convention that talks about the rights or roles of Elderly Prisoners, various conventions have mentioned the standards that must be applied to older persons who deserve to spend their final days on Earth with dignity.

The United Nations Standard Minimum Rules for the Treatment of Prisoners, called the Nelson Mandela Rules are the gold standard for prison management. While these rules are applicable to all sorts of prisoners, for the scope of this paper, the relevant rules that pertain to elderly prisoners are discussed briefly. Rule 2 on Non-Discrimination- it states that prison administrations is to take account the individual needs of prisoners, particularly those who are most vulnerable. Rule 5 on accommodation, requires that the 'different needs' of prisoners be met, which often translates to providing lower berths, handrails, or accessible sanitation for

²¹ Rajya Sabha, Unstarred Question No. 2004, 'ADOPTION OF MODEL PRISON RULES AND SUPPORT FOR PRISON LIBRARIES' Ministry of Home Affairs, Government of India, 6 August, 2025 https://sansad.in/getFile/annex/268/AU2004_QZ3PII.pdf?source=pqars

²² Section 480, Bhartiya Nagrik Suraksha Sanhita, 2023

²³ ANI, "Human Rights the Bedrock of Society, Imperative for Global Peace": CJI Khanna: India News' (*The Times of India*, 10 December 2024) <<https://timesofindia.indiatimes.com/india/human-rights-the-bedrock-of-society-imperative-for-global-peace-cji-khanna/articleshow/116181766.cms>>

²⁴ NALSA, 'Special Campaign for Old Prisoners & Terminally Ill Prisoners' (2024) <https://cdnbbsr.s3waas.gov.in/s38261bae60fce985b46667cf365e690b/uploads/2025/07/20250709139885588.pdf>

elderly inmates. Rule 24 regarding healthcare states that prisoners should enjoy the same standards of healthcare available in the community. For the elderly, this implies access to geriatric care and chronic disease management.

Under Article 7 of International Covenant on Civil and Political Rights, 1966, which prohibits torture or cruel, inhuman, or degrading treatment. It can be extended to old age prisoners also. Article 10 of the same treaty explicitly states, “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”.

Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966, recognises the right of everyone to the highest attainable standard of physical and mental health.

The European Prison Rules detail the duty of the state to provide medical services, which includes geriatric and palliative care for the ageing prison population.²⁵

Indian Judiciary on Rights of Elderly Prisoners

In India, the judiciary has been a pioneering force in transforming prisons from ‘houses of torture’ to ‘centres of reformation.’ The Supreme Court has consistently held that while a prisoner’s liberty is curtailed, they do not lose their fundamental rights. Various cases that have come before the Supreme Court and the High Courts across the country have highlighted these rights, a few of which have been mentioned here in this paper.

The landmark case of *Father Stan Swamy v. National Investigation Agency*²⁶ who suffered from Parkinson’s disease and died in custody while awaiting medical bail, sparked a national debate on geriatric rights, especially of geriatric prisoners. Although the final relief was moot due to his death, the proceedings emphasized that denying basic amenities (like a straw or sipper for a Parkinson’s patient) to an elderly prisoner constitutes a violation of the Right to Dignity.

The Bombay High Court in *Dr. G.N. Saibaba v. State of Maharashtra*²⁷, where the court was

²⁵ Rules 40-43, European Prison Rules, 2020

²⁶ (2021) 10 SCC 1

²⁷ Criminal Appeal No. 137 of 2017

dealing with a 90% physically handicapped professor, deliberated on whether deteriorating health in a high-security 'Anda Cell' justifies release. The case highlighted that for elderly/disabled prisoners, the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) must be observed, particularly Rule 24 regarding the State's responsibility for healthcare.

In *State of Karnataka v. Shri Ram Murthy*²⁸ which deals with prison reforms generally, it is often cited for elderly inmates. The Court noted that prisoners suffer a 'double handicap': they lack equal access to medical expertise and are more vulnerable to health hazards due to prison conditions. It established that the State has a positive obligation to maintain the health of all prisoners.

In *Kailash Wati v. State of Delhi*²⁹, the Delhi High Court held that Rule 1246A of the Delhi Prison Rules, 2018, which allows for the premature release of convicts above seventy years of age who are incapacitated and unable to perform daily tasks. The court emphasised that the State must prioritise the 'welfare aspect' for elderly inmates over mere discipline.

Although not strictly related to the rights of elderly prisoners, the PIL filed in the Supreme Court titled *Ashwini Kumar v. Union of India*³⁰ established that the Right to Dignity for the elderly (Article 21) includes a duty on the State to provide adequate medical facilities and 'palliative care.' This principle is now frequently invoked to seek bail for elderly inmates.

The court has often ruled on the right to access medical care in prisons as can be seen in the case of *Anil Kumar v. State of M.P.*³¹ where the prisoners at the time of their imprisonment in regard to their health especially relating to tuberculosis and AIDS can be also examined. It is an obligation of the State to ensure that such types of serious diseases are cured and not allowed to spread, not only to other prisoners but also to other persons living outside the prison.

On steps to be taken for giving proper medical facilities in jails, the court answered in affirmative to the question-whether a prisoner can seek any relief from the Court because of neglect of medical treatment on the ground of violation of their constitutional right is to be

²⁸ (1997) 2 SCC 642

²⁹ W.P.(CRL) 1976/2025

³⁰ (2019) 2 SCC 636

³¹ 2000(1) C Crj 118 at 131 (MP)

borne in mind by policy makers while deciding about recommendation of Mulla Committee report in the case of *Rama Murthy v. State of Karnataka*³².

Measures taken by various State governments to improve the situation of Elderly Prisoners lodged in the state prisons

Several states have taken measures to address the special needs of elderly prisoners while drafting their prison administration policies. A few of them, from Maharashtra, Kerala and Delhi, have been discussed below.

The Maharashtra Assembly recently passed the Maharashtra Prisons and Correctional Services Bill, 2025 that aims to replace the Indian Prisons Act, 1894, in the state³³. The bill focuses on safeguards for prisoners with disabilities among other provisions. It provides for ‘open prisons’ which can be used to house elderly prisoners who don’t possess any threat to the society.

Kerala, through the Kerala State Elderly Commission Act, 2025, has become the first state to grant its elderly commission established under the act to conduct surprise inspections of prisons and lock-ups specifically to investigate complaints of neglect or denial of rights to elderly inmates³⁴.

In Delhi, the Narela Jail Project, which is being constructed to house high-risk prisoners, a specialised Geriatric and Disabilities friendly ward shall be created to attend to medical emergencies on the spot and be able to address the needs of geriatric high-risk prisoners stationed there³⁵.

Suggestions for improving the conditions of Elderly Prisoners in Indian Prisons

To improve the conditions of elderly prisoners in India, a multi-pronged approach involving legislative, medical, and infrastructural reforms is required. Drawing from the Model Prison

³² 1997 Cri Lj 1508 at 1517 (SC)

³³ Tembhekar C, ‘Prison Reforms Bill Focused on Rehab Passed, to Go to Gov: Mumbai News’ (*The Times of India*, 4 March 2026) <<https://timesofindia.indiatimes.com/city/mumbai/prison-reforms-bill-focused-on-rehab-passed-to-go-to-guv/articleshow/129042233.cms>>

³⁴ Section 9 (2) (f), The Kerala State Elderly Commission Act, 2025

³⁵ Jha S, ‘Delhi to Get High-Security Prison to House High-Risk Prisoners’ (*Hindustan Times*, 27 March 2025) <<https://www.hindustantimes.com/cities/delhi-news/delhi-to-get-high-security-prison-to-house-high-risk-prisoners-101743071152683.html>>

Manual 2016, National Human Rights Commission (NHRC) advisories and recent NALSA campaigns, here are some essential measures that can be taken. It is important to mention that most of these suggestions have already been given in the Model Prison Manual, 2016, but have been omitted in the Model Prisons and Correctional Services Act, 2023, the reasons for which are best known to the government and the drafters of the act. This omission, however, can have serious repercussions, lest states choose to adopt the Model Prison Act rather than the rules, without specialised provisions for elderly prisoners.

Prisons should establish separate barracks or wards for elderly inmates to protect them from victimisation and ensure a peaceful environment. Infrastructure must include age-friendly modifications such as Western-style toilets, handrails, anti-skid flooring, and lower berths. Elderly prisoners require regular health screenings (at least fortnightly) for age-related ailments. The implementation of telemedicine allows inmates to consult geriatric specialists without the physical strain of transport.³⁶

States should implement robust mechanisms for the premature release of convicts above 70 years of age who are incapacitated or bedridden and no longer pose a threat to society on the lines of *Kailash Wati*³⁷ case.

Prison authorities must provide a specialized soft diet for elderly inmates who have difficulty chewing or suffer from chronic digestive issues, as prescribed by a medical officer³⁸. To combat social isolation and cognitive decline, elderly prisoners should be granted priority physical meetings and expanded access to video calls with family members.³⁹ For inmates with dementia or mobility issues, a formal "buddy system" should be established where younger, well-behaved inmates assist elderly prisoners with daily activities.⁴⁰

To minimise the physical exhaustion of transport, all court appearances and legal consultations for senior citizens should be conducted via Video Conferencing.⁴¹

³⁶ Ministry of Home Affairs, 'Advisory on Telemedicine Facilities in Prisons' (Government of India, October 2025)

³⁷ *supra*

³⁸ section 8.48, *Model Prison Manual* (Government of India 2016)

³⁹ Bureau of Police Research and Development, 'Best Practices on Prison Administration' (BPR&D 2025)

⁴⁰ National Human Rights Commission, 'Advisory on Special Needs of PwD and Elderly' (NHRC, May 2025)

⁴¹ Justice Amitava Roy Committee, *Report on Prison Reforms* (Supreme Court of India 2020)

Conclusion- Towards a Geriatric Prison Jurisprudence in India

The Indian penal system is currently navigating a significant transition from a colonial, punitive mindset toward a modern reformatory model. However, the efficacy of this transformation is ultimately measured by how the state treats its most vulnerable members. Elderly prisoners, who face the double burden of lost liberty and declining physical and mental health, remain a marginalised and often forgotten group within an overcrowded system. While Article 21 and Article 14 of the Indian Constitution provide a robust constitutional bedrock for the right to dignity and reasonable classification, the statutory framework remains fragmented. The primary legislation, the Prisons Act of 1894, is notably silent on geriatric needs. Although the Model Prison Manual of 2016 introduced progressive protections for elderly prisoners by identifying them as ‘geriatric prisoners’ and making a few provisions for them, many of these vital provisions were omitted in the Model Prisons and Correctional Services Act of 2023. This legislative gap places a heavy burden on individual states to adopt inclusive rules that prioritise the welfare of the elderly over mere discipline.

The judiciary has been a pioneering force in addressing these gaps, particularly through landmark deliberations in cases such as *Father Stan Swamy* and *Dr. G.N. Saibaba*. These cases, alongside the Nelson Mandela Rules, underscore the state’s positive obligation to provide specialised healthcare and accessible infrastructure. Furthermore, recent initiatives by NALSA and proactive measures in states like Maharashtra (open prisons) and Kerala (elderly commission oversight) offer a blueprint for systemic reform.

To truly realise a reformatory system, India must adopt a multi-pronged approach. This includes establishing separate geriatric wards and age-friendly infrastructure, integrating geriatric care in policy making and implementation of the schemes and policies in the strictest manner so as to be able to bring change on the ground.

Ultimately, prolonged incarceration of the infirm serves no reformatory purpose. By aligning domestic practices with international conventions and constitutional mandates, India can ensure that the ‘twilight years’ behind bars are defined by humanity and dignity rather than neglect.