PRISONS IN INDIA

Mapping Prison Manuals and Measures for Reformation and Decongestion

Prepared by
Centre for Research and Planning
SUPREME COURT OF INDIA

November, 2025
(Revised Edition)

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The first edition of the Report (November 2024) was prepared by Ms. Priya Baranwal, then Assistant Registrar (Research) (CRP), and her team comprising Rituja Chouksey, Ravi Parmar, Seerat Kaur, Piyush Yadav, and Adnan Khan, under the leadership of Dr. Sukhda Pritam, then Director-cum-Additional Registrar, CRP.

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Note: The discussions in the Report are not to be taken as the view of the Supreme Court and do not per se affect any matter that is sub judice.

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LIST OF ABBREVIATIONS

ACR	*Annual Confidential Report*	**MHA**	*Ministry of Home Affairs*
ADR	*Alternative Dispute Resolution*	**MLSA**	*Maharashtra Legal Services Authority*
AI	*Artificial Intelligence*	**MPA 2023**	*Model Prisons and Correctional Services Act, 2023*
AIJMC	*All India Jail Manual Committee*	**MPM**	*Model Prison Manual*
API	*Application Programming Interface*	**MTP**	*Medical Termination of Pregnancy Act, 1971*
APP	*Assistant Public Prosecutor*	**N/A**	*Not available/applicable*
BNS	*Bhartiya Nyaya Sanhita, 2023*	**NACO**	*National AIDS Control Organisation*
BNSS	*Bharatiya Nagarik Suraksha Sanhita, 2023*	**NALSA**	*National Legal Services Authority*
BPRD	*Bureau of Police Research and Development*	**NAPDDR**	*National Action Plan for Drug Demand Reduction*
CCTNS	*Crime and Criminal Tracking Network and Systems*	**NCRB**	*National Crime Records Bureau*

CFSLs	*Central Forensic Science Laboratories*	**NDPS**	*Narcotic Drugs and Psychotropic Substances Act, 1985*
CHRI	*Commonwealth Human Rights Initiative*	**NFLMW**	*National Floor Level Minimum Wage*
CIS	*Case Information System*	**NGO**	*Non-Governmental Organisation*
CJI	*Chief Justice of India*	**NHRC**	*National Human Rights Commission*
CJM	*Chief Judicial Magistrate*	**NIA**	*National Investigation Agency*
CNR	*Case Number Record*	**NIC**	*National Informatics Centre*
CPCB	*Central Pollution Control Board*	**NJDG**	*National Judicial Data Grid*
CrPC	*Code of Criminal Procedure, 1973*	**No.**	*Number*
CSO	*Community Service Order*	**NSTEP**	*National Service and Tracking of Electronic Processes*
D&D/DD	*Daman and Diu*	**OBC**	*Other Backward Classes*
DAC	*De-addiction Center*	**OS APP**	*Operating System Application*
DAW	*Dismissed as Withdrawn*	**PLAC**	*Prison Legal-aid Clinics*

DFSS	*Directorate of Forensic Science Services*	**PLV**	*Paralegal Volunteer*
DLSA	*District Legal Services Authority*	**Probation Act**	*Probation of Offenders Act, 1958*
DNA	*Deoxyribonucleic Acid*	**PP**	*Public Prosecutor*
DNH	*Dadra and Nagar Haveli*	**PWD**	*Public Works Department*
DPSP	*Directive Principles of State Policy*	**PwD**	*Persons with Disabilities*
EM	*Electronic Monitoring*		
FASTER	*Fast and Secured Transmission of Electronic Records*	**SC**	*Scheduled Castes*
FIR	*First Information Report*	**SCLSC**	*Supreme Court Legal Services Committee*
FSLs	*Forensic Science Laboratories*	**SFSLs**	*State Forensic Science Laboratories*
GOI	*Government of India*	**SLP**	*Special Leave Petition*
GPS	*Global Positioning System*	**SLSA**	*State Legal Services Authority*
HCLSC	*High Court Legal Services Committee*	**SNA**	*Single Nodal Agency*
HP	*Himachal Pradesh*	**SOP**	*Standard Operating Procedure*

ICJS	*Interoperable Criminal Justice System*	**SS**	*Sanctioned Strength*
ICT	*Information and Communication Technology*	**ST**	*Scheduled Tribes*
IGP	*Inspector General of Police*	**UN**	*United Nations*
iJURIS	*Integrated Judicial Upgradation and Reforms on Infrastructure and Services*	**UNODC**	*United Nations Office on Drugs and Crime*
IMEI	*International Mobile Equipment Identity*	**USA**	*United States of America*
IO	*Investigating Officer*	**UTPs**	*Undertrial Prisoners*
IPC	*Indian Penal Code*	**UTRC**	*UnderTrial Review Committee*
IT	*Information Technology*	**UTs**	*Union Territories*
JVL	*Jail Visiting Lawyer*	**VC**	*Video Conferencing*
LADC	*Legal Aid Defence Counsel*	**WP**	*Writ Petition*
LSA	*Legal Services Authorities*	**WS**	*Working Strength*

EXECUTIVE SUMMARY

Prisons play a crucial role in India's justice delivery mechanism, serving as a key component in the chain of institutions responsible for upholding law and order. Prisons fall in the legislative and administrative domain of the States under List II, Schedule 7 of the Constitution. Thus, there is a degree of diversity in the legal regimes governing prisons across India's numerous States. The prisoner population is also characterised by heterogeneity, comprising multiple interest groups including undertrials, convicts, males, females, transgenders, those with substance abuse or mental illness and different caste groups and income groups, each with distinct needs and challenges.

The evolution of a therapeutic approach in modern penology has changed the goal of punishment from retribution to reformation where prisoners are entitled to basic human rights and undergo rehabilitation-centric training to re-enter society. India follows the United Nations Standard Minimum Rules for the Treatment of Prisoners, known as 'The Nelson Mandela Rules', which advocates the humanisation of prison institutions. However, the prison system in India is still governed by colonial-era policies such as the classification of prisoners based on social status, delegation of prison work based on caste identities, meagre wages and so on.

With prisons having an occupancy rate of 131.4%, another Herculean challenge faced by Indian correctional institutions is overcrowding. The Supreme Court of India, through its various judgments, has been emphasising the need to reform and decongest the prison system through a human rights framework. The Centre for Research and Planning (CRP), the research wing of the Apex Court, collected relevant data from concerned departments regarding the implementation of the constitutional spirit in prisons, and prepared a report on prison reforms.

Following the judgement in *Sukanya Shantha v. Union of India,* this report on 'Prisons in India' seeks to highlight the complexities of India's prison system, with a focus on the system as a whole, including the role of Trial Courts and the potential for technology-

driven solutions through coordinated stakeholder engagement. The report is structured in five parts as shown below:

Part of the Report	Goal
Mapping Legal Architecture	Analyse the prison manuals of all the States and UTs to identify archaic and regressive provisions.
Reformation and After-care	Scrutinise the information received from various prison departments to check the status of reformation and after-care in prisons, with a special focus on open and semi-open prisons and the mental health of prisoners like those experiencing substance abuse issues and prisoners sentenced to death.
Access to legal aid to prisoners	Discuss the role of prison authorities, UTRCs and legal service institutions like NALSA and DLSA in providing access to legal aid to prisoners.
Role of Judiciary	Examine the role that the District Judiciary plays in deciding bail matters, using alternative methods of punishment like admonition and probation, and securing the right to a speedy trial for the prisoners.
Utilising Technology for Prison Reforms	Explore the use of electronic tracking technology and e-Prisons in the current correctional regime.

KEY INSIGHTS

1. **Combating stereotypes in prison manuals** - Many prison manuals refer to prison work related to conservancy and sanitation as '*menial*' or '*work of degrading character*', which perpetuates a hierarchical view of labour. In contrast, the Delhi Prison Rules, 2018 treats sanitation service as an institutional maintenance service and includes it in skill development programmes.

2. **Classification of prisoners based on social status** - Despite the prohibition in MPM, 2016, some prison laws classify prisoners into superior/special class and ordinary class and consider social status and superior mode of living as a criteria to classify prisoners to enable them to have more privileges than others.

3. **Division of prison work based on caste** - The Report highlights that prison manuals in some States continue to retain provisions which perpetuate caste-based prejudices by assigning prison work based on the caste identity of the prisoner and employ the use of terms such as 'good caste', 'suitable caste', and 'high caste'. This has been held unconstitutional in *Sukanya Shantha v. Union of India.*[1]

4. **Manual scavenging inside prisons** - Manual scavenging is prohibited by the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013. However, as per the information received from prison departments, the drains and sewers in some of the prisons are still cleaned manually using hand gloves, due to lack of an alternative method to clean.

5. **Fair and equitable wage to prisoners** - There is a huge disparity in daily wages paid to prisoners in India ranging from Rs. 20 in Mizoram to Rs. 524 in Karnataka. It is significant to note that while in Himachal Pradesh, Karnataka and Tamil Nadu, the prisoner's wage for unskilled labour is at par with the lowest minimum wage in the States, in several States, the prisoner's wage is significantly less (as much as 19 times) than the lowest minimum wage prescribed for the States.

[1] 2024 INSC 753.

6. **Mental health screening of prisoners** - As per an NHRC advisory,[2] the initial health screening report of the prisoner must be signed by both the medical officer and psychologist. However, the present proforma, as provided in MPM 2016, does not have a separate column for mental health diagnosis and signature by the psychologist. Besides, in most States, jail medical officers are not imparted basic and emergency mental healthcare training as mandated by the Mental Healthcare Act, 2017.

7. **Bail is the rule, jail is the exception** - Time and again, the Supreme Court has acknowledged the reluctance of the District Courts in granting bail. As per the data received from the High Courts, the rejection rate for bail applications for Sessions Courts is 32.3% and that of Magisterial Courts is 16.2%.

   As of 31 December 2023, 24,879 accused persons who were granted bail continue to remain in prison due to their inability to furnish bail bonds. To redress this challenge, the Report highlights various measures like modification or relaxation of bail conditions, releasing on cash surety, personal bond, avoidance of local surety, granting temporary bail or releasing after preparation of a socio-economic report of such prisoners.

   In this regard, the MHA has devised a scheme to provide financial assistance to prisoners who are not released from jail within 7 days of bail order or non-payment of fine. Many States have initiated the process of identification of prisoners eligible for the benefit of the scheme. As of 1 October 2024, the implementation is still under consideration in the States of Bihar and West Bengal.

8. **Vacancy in SFSL Personnel** - As per the data received from the SFSLs, there is 52% vacancy in SFSL staff. Furthermore, as of 31 December 2023, 1,237 custodial death inquiries were pending in District Courts for more than one year, with delay in submission of FSL reports being the major contributory reason.

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[2] National Human Rights Commission, 'Advisory to Mitigate Deliberate Self Harm and Suicide Attempts by Prisoners' D No R-14/6/2022-PRPP (RU-4) (19 June 2023) <https://nhrc.nic.in/sites/default/files/NHRC%20Advisory%20on%20DSH%20and%20Suicide%20attempts%20by%20prisoners_2023.pdf> accessed 23 March 2024.

9. **Alternatives to imprisonment** - The data received from High Courts shows that the provisions of the Probation of Offenders Act, 1958 are not effectively utilised by the District Judiciary. In 2023, District Courts under the jurisdiction of 10 out of 25 High Courts, have disposed of cases using the method of probation in less than 100 cases. Likewise, 12 High Courts have submitted that District Courts under their jurisdiction have used admonition in less than 100 cases. In contrast, District Courts in Rajasthan have utilised the method of probation in 53,938 cases and admonition in 1,45,953 cases in 2023.

10. **Speedy trial** - As per the data received from High Courts, cases of accused who were in custody for more than a year were pending at the stage of evidence (52.5%), appearance (37.4%) and arguments (6%) in 2023. Non-appearance of accused and witnesses, and delays in executing summons and warrants are the major causes of delay in trial. Further, as per data received from High Courts, in 2023, video conferencing was used in a total of 17,60,337 cases, mostly at the stage of appearance (86%).

11. **Delay in filing appeals by convicts** - As per the data received from NALSA, as of 31 December 2023, 1,220 prisoners are in prison for more than 10 years whose hearing of appeal has not yet started. In a positive step in this regard, the Legal Services Authority in Uttarakhand has drawn up a dedicated panel of lawyers to argue the appeals of economically marginalised convicts who have not engaged private counsels before the High Court.

12. **Prisoners sentenced to death** - As per the Prison Statistics Reports of NCRB, the rate of execution of death sentences in India is 0.3% in the period of 2006 to 2022. This Report identifies that some of the prison manuals label prisoners who are sentenced to death as '*condemned prisoners*' even before the exhaustion of all the legal remedies. It further discusses the issue of inordinate delay in death penalty proceedings particularly in deciding mercy petitions and the issue of solitary confinement of prisoners sentenced to death, as has also been recognised by the Supreme Court.

13. **Women Prisoners**

    a. **Menstrual health** - The Prison Statistics Report, 2022 by NCRB presents that 80.2% of women prisoners belong to the age group of 18 to 50 years, and are thus most likely to be menstruating. While many prisons provide menstrual supplies on a need basis, some prescribe specific limits for menstrual products per month. Kerala Prison Department, on the other hand, promotes the use of menstrual cups amongst women prison inmates. Moreover, while 50% of prisons use incinerators to destroy menstrual waste, a few prisons use manual pit systems for the disposal of waste.

    b. **Rights of women prisoners** - MPM 2016 and the State jail manuals do not explicitly provide for the right to reproductive choice for a woman prisoner. This has led to delay and ambiguity as making a reproductive choice is a time-sensitive decision. This gap needs to be filled by reading the prison statutes with the Medical Termination of Pregnancy Act and Rules.

    Further, as per prison laws of some States, women prisoners are limited to predominantly domestic tasks like cooking, sifting grains, preparation of food articles, hindering their employability in other sectors, and denying them equal access to work.

14. **Prisoners with Disabilities -** An analysis of the Supreme Court's judgements and the Nelson Mandela Rules reveals that there is a need to strengthen the infrastructure support available to prisoners with disability. Such support is imperative to ensure the dignity of prisoners with disability.

15. **Need for de-addiction initiatives under prisons** - As per information received from the prison departments, 55,502 prisoners are suffering from substance abuse addiction in 2023. There is a need for de-addiction centres in prisons especially those housing substantial numbers of prisoners with substance abuse addiction.

16. **Need of after-care for prisoners** - After-care is a core component of rehabilitative measures. The Prison Statistics Report, 2022 of NCRB further reports that over three consecutive years (2020-22), there has been a vacancy of 40%, 36.3% and 44.1% posts

of correctional staff in 2020, 2021 and 2022 respectively. In West Bengal prisons, the case of a released person is followed up for a period of three years according to the requirements of each case. Common challenges faced by the prison administration in this regard are communication with the released prisoners and lack of after care home/shelters.

17. **Underutilisation of open jails and semi open prisons** - As per the Prison Statistics Report of NCRB, open prisons remain underutilised with an occupancy rate of 74%. Prison rules related to open prisons show that in a few States, women, unmarried prisoners, and those below 30 years of age are ineligible for transfer to open prisons. There is also a need for data with respect to the number of semi-open prisons in India in the Prison Statistics Report of NCRB.

18. **Role of UTRCs in prison decongestion** - Under Trial Review Committees play a vital role in each district by recommending and releasing eligible cases of prisoners. There has been an increase in the number of prisoners released, as recommended by the UTRCs from 3% in 2019 to 6% in 2022. In 2023, 35,980 prisoners were released as per UTRCs' recommendations. (*Part III, 3.3)*

19. **Strength and representation of legal aid personnel** - As per the information received from NALSA, there is one panel lawyer for every 13 prisoners at an all-India level. Further, Uttar Pradesh with the maximum number of prisoners has 1 panel lawyer for every 60 prisoners; State of Maharashtra has one panel lawyer for every nine prisoners. As of 31 December 2023, out of 43,752 panel lawyers in India, 10,683 (24.5%) panel lawyers are women. With respect to representation based on caste, there are 13.4% (5,906) panel lawyers in India who belong to the SC/ST category.

20. **Ineffective legal aid due to infrastructural bottlenecks** - Information received from prison departments and High Courts shows that the quality of legal aid for prisoners suffers due to the lack of physical and digital infrastructure. For instance, in Purulia and Bankura District Correctional Homes, West Bengal, prison legal aid clinics are functioning in the space reserved for the library due to the non-allotment of dedicated rooms. It has also been pointed out that competent and efficient lawyers do not empanel

themselves as legal aid counsels due to lesser incentives, delayed payments, insufficient travel allowance and conveyance facilities for jail visiting lawyers.

21. **Use of Electronic Monitoring for prison decongestion** - Section 29 of MPA 2023 provides for use of electronic tracking technology in case of prison leaves. However, the deployment of electronic monitoring has attracted heavy scrutiny internationally and must be viewed with caution. E-Monitoring has resulted in perpetuating racial bias. In the Indian context, the implementation of such tracking must be viewed as violative of the Right to Privacy read into Article 21 in *Justice K.S. Puttaswamy (Retd.) v. Union of India.*

22. **Effective utilisation of e-Prisons** - Integration of e-Prisons with other platforms of ICJS like CIS and CCTNS will not only streamline all the prisoner information, accessible by automatic retrieval by the concerned authorities but will also reduce the delay caused due to physical correspondence of information. However, as per information received from prison departments, there is a need for real time updation of data for the success of e-Prisons. *(Part V, 5.2)*

INTRODUCTION

"No one wants to go to prison, however good the prison might be. To be deprived of liberty and family life and friends and home surroundings is a terrible thing... To improve prison conditions does not mean that prison life should be made soft; it means that it should be made human and sensible."

\- *Justice V.R. Krishna Iyer*[3]

A human being is a summation of their lived experiences in the family, at school, workplace, and in society at large. These experiences are shaped by multitudinal biological, social and environmental factors which determine the responsiveness of the person to any situation. It is the human response to a particular situation or sometimes the consequence of a mental condition or psychological factors which leads to commission of crimes in society. Systemic factors like poverty, unemployment, lack of education and lack of access to public resources also affect the totality of the human mind.

In this backdrop, Justice Iyer's insights on the prison system and the need to consider prisons as correctional institutions and remedy the disadvantage of those who face structural inequalities in income, status, resources and opportunities, are even more relevant.

Throughout the ages, there have always been some means of checks to regulate the conduct of individuals. Today, punishments are codified in criminal laws and are judicially inflicted to deter the potential criminals, and bring orderliness in society. With the evolution of penal theories from retribution to deterrence and now, to a more therapeutic approach, the types of punishments have also evolved from corporal punishment in ancient India to imprisonment in jails and recently, to community service.

While the positive shift in penological theories from retribution to reformation of criminals is evident in our prisons, the issue of increasing numbers of undertrial prisoners congesting

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[3] V R Krishna Iyer, 'Justice in Prison: Remedial Jurisprudence and Versatile Criminology' in Rani Dhavan Shankardass (ed), *Punishment and the Prison: Indian and International Perspectives* (Sage Publications 2000) 58.

the prisons has moved to the forefront. The purpose behind setting up prisons was to prevent criminals and potential offenders from committing further crimes. However, today, prisons have become a place to house persons who are not yet proven guilty. **In India, 3 out of every 4 prisoners are undertrials.**[4]

Figure 1 - Prison Population in 2022[5]

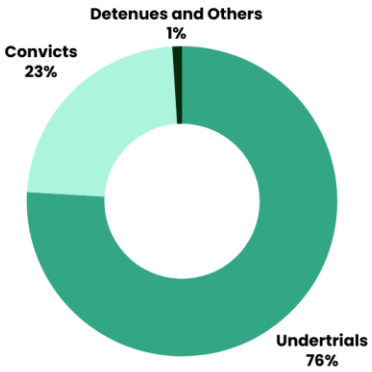

Figure 1 throws light on the prison population in 2022. As on 31 December 2022, a total of 5,73,220 prisoners were confined in various jails across the country, out of which 75.8% were reported as undertrial prisoners (UTPs), 23.3% as convicts and 1% as detenues and other prisoners.[6] Uttar Pradesh has the maximum number of undertrials (21.7%) and convicts (20.4%) in India in 2022.[7] This shows that there is a need to reflect upon the efficiency of the criminal justice system to ensure that the right to speedy trial is secured to the prisoners.

Undertrial prisoners who have languished in prisons for long periods and are later acquitted bear a sense of dissatisfaction and irreparable loss, since long incarceration periods dislocate them from their normal lives. While convicts need to be reformed, undertrial prisoners, particularly those who have been in custody for long periods, need to be rehabilitated to make a smooth transition into society.

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[4] National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs 2023) <https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2022&keyword=>.
[5] *Ibid.*
[6] National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs 2023) <https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2022&keyword=>.
[7] *Ibid.* Rounded off to one decimal place.

Rehabilitation of prisoners cannot be achieved if prisons are overcrowded, as it has a crippling effect upon the prison infrastructure and compromises with the basic amenities. On the Constitution Day Celebrations 2022 at the Supreme Court of India, the Hon'ble President of India, Smt. Droupadi Murmu spoke extensively in this regard:

> *"...कोई 10 साल से कोई 20 साल से कोई 25 साल से कोई 30 साल से वहां जिंदगी बिता रहे थे। ...गांव के लोग सालों साल उनको छुड़ाते नहीं हैं, उसका कारण जो कुछ भी घर पर बचा है - ज़मीन, जायदाद, बर्तन ख़त्म हो जाएगा।... हम उनको स्किल्ड करा सकते हैं। बाहर भी वो आना नहीं चाहते क्योंकि बाहर आके समाज उनको बुरा मानेगा।...कहते हैं, आजकल तो और ज्यादा जेल में इतनी ओवरक्राउडिंग हो गई है और बहुत सारा जेल बनाना होगा।* ***अरे! हम आगे विकास की और जा रहे हैं, फिर और ज्यादा जेल बनाने की क्या जरूरत है?*** *कम करना चाहिए।"*[8]

In this context, this Report on 'Prisons in India' aims to analyse the legal framework governing prisons from the prism of reformation, and discuss at length the role of the criminal justice system in relieving congestion in Indian jails. It is also pertinent to mention here that the judgement in *Sukanya Shantha v Union of India*[9] has prompted a relook at the prions systems and Prison Manuals across the states.

Methodology

The Supreme Court of India, by way of its judicial pronouncements, has time and again emphasised the need to reform the prison system in India from a human rights perspective.

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[8]President of India, 'Address on Constitution Day Celebration 2022' (Sansad TV, 30 November 2022) <https://www.youtube.com/watch?v=KVWdHJnvGXo> accessed 2 February 2024.
Translates as "*Some have been spending their lives for 10 years, 20 years, 25 years and some for 30 years...The villagers do not get them freed for years because whatever land, property, utensils is left in their house will get exhausted... We can make them skilled. They don't want to be released because society will look down upon them...It is said that jails are much more overcrowded now, and many new jails will have to be constructed. We are moving forward towards development, so what is the need to build more jails? They should be reduced.*"

[9] 2024 INSC 753

In this endeavour, the Centre for Research and Planning of the Supreme Court of India undertook an in-depth study of the prison system in India, with the objective of prison decongestion, reformation of prisoners, and identification of colonial vestiges in prison policies in the country. It focuses primarily upon the legal architecture of the prisons and role of the justice system in matters concerning liberty of the prisoners. It also discusses topics like community service and electronic tracking technology from an international perspective.

The Report employs the empirical research methodology to determine the reform areas in the working of prison and correctional institutions in India. It involved a two-pronged approach - collation and analysis of the data received from various stakeholders, and a comprehensive study into the prison manuals and rules applicable to prisons in India, in light of the judgment in *Sukanya Shantha v Union of India.*[10]

At the outset, the landmark judgments of the Supreme Court and the High Courts were carefully studied to track the evolution of prison reforms in India. Thereafter, qualitative and quantitative data was collected from the concerned stakeholders of the justice system, namely, the prison departments, High Courts and District Courts, NALSA, State Forensic Science Laboratories and the NHRC. The information received was key to identifying the pain points of the prison institutional framework, preparing a status report of the implementation of the directions passed by the Supreme Court, and proposing ways to create a humane prison system in India.

The laws related to prisons, responses received from various departments, and digital platforms like the National Judicial Data Grid (NJDG), National Prison Information Portal (NPIP), government websites, *iJuris*, court documents and judgments delivered by the Supreme Court and High Courts *inter alia* form the primary sources of the Report. The Report also relies on secondary sources such as the Prison Statistics Report, 2022 and Prison Statistics Report, 2023, of the National Crime Records Bureau, newspaper reports,

[10] *Sukanya Shantha v Union of India* 2024 INSC 753.

parliamentary questions, Labour Law Reporter, scholarly journal articles and other electronic sources.

The central thread running throughout the Report is that the ultimate objective of prisons and correctional institutions is reformation of prisoners.

PART I: MAPPING LEGAL ARCHITECTURE

1.1 Background

The administration of prisons is the exclusive domain of the State government. The Government of India Act, 1935 kept 'Prisons' in the Provincial Legislative List, a position which has continued under the Constitution of India with 'prisons/persons detained therein' being a State subject in Entry 4, List II of the Seventh Schedule of the Constitution. Every State and Union Territory (UT) therefore has its own legislative framework governing the operation of correctional institutions.

Nevertheless, considering the role and impact of prisons upon the criminal justice system, the Central Government has constantly been providing support and guidance to the State Governments to modernise the prison facilities across the country, and facilitate reform and rehabilitation to prisoners. Earlier, the Prisons Act, 1894 and the Prisoners Act, 1900 provided a streamlined framework for prison management and discipline in India. The Prisons Act, 1894 prescribed a uniform system of prison management covering aspects like duties of officers, maintenance and employment of prisoners, and prison offences (*refer figure 1.1*). On the other hand, the Prisoners Act, 1900 consolidated the law relating to prisoners confined by the order of a court, and dealt with specific aspects like delivery, discharge and removal of prisoners. It is apposite to note that while most of the States have their own prison legislations, some States are still governed by the centuries-old Prisons Act of 1894 along with regional variations.

As an instance of the legal architecture of prisons, in Rajasthan, the statute governing prisons is the Prisons Act, 1894 and various rules framed by the State Government in exercise of the powers conferred by Section 59 of the Prisons Act, 1894, like the Rajasthan Prison Rules, 2022, Rajasthan Prisoners Release on Parole Rules, 2021, the Rajasthan Prisoners (Shortening of Sentences) Rules, 2006 and the Rajasthan Prisoners Open Air Camp Rules, 1972. Some States have separate rules for open jails and release of prisoners

on parole and/or probation. Similarly, in Karnataka, the statutory framework governing prisons includes Karnataka Prisons and Correctional Manual 2021, Karnataka Prisons Act, 1963, Karnataka Prisoners Act 1963, and Karnataka Prisons Rules 1974.[11]

The enactment of the Model Prison Manual 2016 (MPM 2016) and Model Prisons and Correctional Services Act, 2023 (MPA 2023) are significant steps by the Central Government to guide the States in streamlining and updating the prison policy in India. A broad comparison of the new Model Prisons Act, 2023 with the Prisons Act, 1894 is done below:

	Prisons Act, 1894	Model Prisons & Correctional Services Act, 2023
1	The Act repealed the four local Acts in force for the regulation of jails and enforcement of discipline in British India and prescribed a uniform system of prison management.	It is an updated Act **assimilating** the Prisons Act, 1894, the Prisoners Act, 1900 and the Transfer of Prisoners Act, 1950, thereby, **replacing the obsolete and outdated provisions**.
2	It contains chapters related to the **duties of prison officers, prison offences, discipline,** health and employment of prisoners and admission, removal and discharge of prisoners. There is **no provision for reformation** and rehabilitation of prisoners.	It follows a **correctional ideology** as it contains chapters like 'Welfare Programs', 'Open and Semi Open Correctional Institutions', and 'After-Care and Rehabilitation Services'. It is an **inclusive document** with special provisions for transgenders, women, persons with disabilities and suffering from mental illness or substance abuse. It also includes **technological advancements** like use of tracking devices, ICJS, etc.
3	Section 46 provided **regressive forms of punishment** for prison offences like **whipping**, change of labour to irksome or severe form, substitution of coarse fabric for clothing, **imposition of handcuffs, fetters, penal diet, cellular confinement.**	The Act **removed regressive forms of punishment** prescribed in the Prison Act, 1894, and added prison offences like sexual harassment or sodomy, mass hunger strike.

Figure 1.1 - Comparison of Prisons Act 1894 and MPA 2023

[11] Karnataka Prisons <https://prisons.karnataka.gov.in/79/acts-&-rules/en> accessed on 20 July 2024.

The comparison given above must be viewed in light of the the Supreme Court's judgement in *Sukanya Shantha v Union of India,*[12] which followed the enactment of these statutes. The Court, in its ruling in this matter, ordered the Union and State governments to revise the Prisons Manuals in order to remove all caste-based references. The revised prison manuals are yet to be enacted.

1.2 Evolution of prison reforms in India

Before delving into the analysis of existing jail manuals applicable to States, it would be insightful to trace the evolution of prison reforms in India and how Indian prisons and penological theories have kept pace with the dynamics of the human rights jurisprudence with the passage of time.

The contemporary prison system in India has gradually evolved from its foundation in pre-independence era laws of Prisons Act, 1894 and the Prisoners Act, 1900. In the colonial period, the primary consideration of the Britishers was how best to punish the offenders.[13] They were majorly concerned with the management and discipline of the Indian *gaols* (as the prisons were then called).[14] For them, the first end of punishment was deterrence and therefore, the prison was a coercive apparatus, keeping any hope of correction of the prisoner at bay.[15] It was in 1919 for the first time that the Indian Jail Committee, constituted under the chairmanship of Alexander G. Cardew and comprising *inter alia* two Indian members, Khan Bahadur Khalifa Syed Hamid Husain and D.M. Dorai Rajah, which viewed prisons as a place for reform.[16] The flowchart on the next page depicts a chronological timeline of evolution of prison reforms in India from the pre-independence era till the 21st century:

[12] *Sukanya Shantha v Union of India* 2024 INSC 753.
[13] Report of the Committee on Prison Discipline, 8 January 1838.
[14] *Ibid.*
[15] *Ibid.*
[16] Report of the Indian Jails Committee, 1919-20.

Year	Event/Committee	Key Points
1836 – 1838	Report of the Prison Discipline Committee	Studied the physical and moral condition of inmates and recommended ending money allowances and reducing solitary confinement.
1894	Prisons Act	Enacted to streamline prison administration and standardize operations across provinces.
1919 – 1920	Indian Jail Committee	Identified reformation and rehabilitation as objectives of prison administration for the first time.
1935	Government of India Act	Shifted prison administration to the Provincial Legislative List, later becoming a State subject under the Constitution of 1950.
1951	Reckless Report	UN expert W C Reckless recommended transforming prisons into reformation centres and updating outdated jail manuals.
1957	All India Jail Manual Committee	Prepared a model jail manual, which led to the 1960 Model Prison Manual.
1972	National Policy on Prisons (MHA)	Working group emphasized the need for a national prison policy and uniform standards.
1980 – 1983	All India Committee on Jail Reforms (Justice A N Mulla)	Stressed the need for rehabilitation-focused prisons and a national policy on prison reforms.
1986	R K Kapoor Committee	Reviewed classification of prisoners and issues of security and discipline.

1987	Justice Krishna Iyer Committee	Examined the condition of women prisoners and recommended urgent reforms.
1996	Ramamurthy v State of Karnataka	Supreme Court underlined the need to replace the outdated Prisons Act of 1894.
1999	Prison Administration and Treatment of Prisoners Bill	Draft Model Prisons Management Bill circulated to states for feedback; not finalized.
2003	Model Prison Manual	BPRD and MHA formulated the Model Prison Manual to modernize prison management.
2016	Updated Model Prison Manual	Expert committee reviewed and updated the 2003 manual, used as a guideline for all states.
2023	Model Prisons and Correctional Services Act 2023	Replaced the 1894 Act by harmonizing laws into a comprehensive modern framework for prisons and correctional services.
2024	Sukanya Shanta v Union of India	The SC struck down all casteist provisions in the State Prison Manuals that segregated prisoners by caste, and directed the Union and State governments to revise all Prison Manuals with such provisions.

Evolution of prison reforms in India[17]

As shown above, in 1951, the Ministry of Home Affairs (MHA) requisitioned from the United Nations, the services of Dr. Walter C. Reckless, Professor of Criminology and Correctional Administration at the School of Social Administration, Ohio State University,

[17] Ministry of Home Affairs <https://www.mha.gov.in/sites/default/files/2022-09/PRV1_41TO80%5B1%5D.pdf> accessed 26 March 2024.
National Human Rights Commission, 'Publicity Details: 30 April 2024' https://nhrc.nic.in/sites/default/files/2024-4-30.pdf accessed 26 March 2024.

USA, for organising a training course for jail officers, and advising on criminology, probation, after-care and other jail problems.[18] Dr. W. C. Reckless submitted a report titled *"Jail Administration in India"* in which he *inter alia* recommended the establishment of after-care units and organising conference of senior staff of the correctional departments at periodic intervals.[19] In 1952, after a lapse of 17 years, the 8th Conference of Inspector Generals of Prisons (IGP) was held which approved the Reckless' recommendations.[20] The resolutions passed by the IGPs included the suitable alteration of the designation of the post of 'jailor', revision of jail manual in view of the changed attitude from mere deterrence to correction and rehabilitation and establishment of an after-care service in each State manned by after-care officers trained in social sciences.[21]

Later in 1972, a working Group on Prisons under the MHA recommended the inclusion of prisons and allied institutions in the Concurrent List, wherein the enactment of suitable legislation may be done by both the Centre and the States, thereby standardising the prison laws in India while keeping the State-specific needs into consideration.[22]

The All India Committee on Jail Reforms, the R. K. Kapoor Committee and the Krishna Iyer Committee Reports also served as vital guiding documents for actualising prison reforms in India.

Further, in *Ramamurthy v. State of Karnataka*,[23] the Supreme Court of India strongly emphasised the need for an All India Jail Manual to bring some level of uniformity in laws and regulations governing prisons in the country, which led to the passing of MPM 2003.

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[18] Dr. Walter C. Reckless, 'Jail Administration in India', United Nations Technical Assistance Programme, Ministry of Home Affairs, File No. 27/19/52-POLICE-I.
[19] Ministry of Home Affairs <https://www.mha.gov.in/sites/default/files/2022-09/PRV1_41TO80%5B1%5D.pdf> accessed on 26 March 2024.
[20] Recommendations of the 8th Conference of IGPs, 1952, Ministry of Home Affairs, File No. 31/1/52-POLICE-IV.
[21] *Ibid.*
[22] National Policy on Prison Reforms and Correctional Administration, Bureau of Police Research & Development, Ministry of Home Affairs, Government of India, (2007) <https://bprd.companydemo.in/uploads/library/pdf/1pdf-268fdfd54a70ac31424976ad0a461d5d.pdf> accessed 22 January 2024.
[23] *Ramamurthy v. State of Karnataka* [1997] SC 1739 [31].

In 2015, the Supreme Court directed the MHA to review the MPM 2003 in light of the change in circumstances and availability of technology.[24]

Therefore, the MPM 2016 was passed which added new chapters like Chapter X on 'Repatriation of Prisoners', Chapter XVI on 'LegalAid' and Chapter XIX on 'Parole and Furlough'. It takes into account the principles set forth by the Mulla Committee and various judicial precedents identifying the rights of the prisoners. To update the colonial era Prisons Act, 1894 in tandem with the changed socio-economic and political conditions with a correctional ideology, the MHA passed the Model Prisons and Correctional Services Act, 2023 prepared by the Bureau of Police Research and Development (BPRD) (*refer figure 1.1*). The Model Act is a guiding document for the States to enact their own laws and repeal the colonial Prison Act, 1894.

Despite a model prison policy embodied in the MPM 2016 and the newly enacted Model Prisons and Correctional Services Act, 2023, State prison manuals vary with respect to a myriad of aspects concerning the administration of prisons and rights of prisoners. Moreover, as was observed in the *Sukanya Shantha*[25] judgement, the State Prison Manuals and MPM must be revised in order to remove all caste-based references.

As per the information received from prison departments, many States are in the process of making necessary amendments in their respective prison manuals in light of the MPM 2016 and the MPA 2023.[26]

In Part I of this Report, various aspects concerning prisoners and working of correctional institutions have been addressed and analysed by studying in depth the prison manuals, rules and acts of the States and UTs, in the backdrop of judicial precedents and guidelines issued by the Central Government in the form of advisories and model legislations.

[24] *Re-Inhuman Conditions in 1382 Prisons,* Writ Petition (C) No. 406/2013, Order dated 24 April 2015.
[25] *Sukanya Shantha v Union of India* 2024 INSC 753.
[26]Annexure -R, Compilation of prison manuals - Highlights of Part I & II.

1.3 Identifying stereotypes in prisons and prison manuals

1.3.1 Stereotypes in Prisons

The Constitution recognises the dignity and individual autonomy inherent in all citizens and their right to life and personal liberty.[27] In *Navtej Singh Johar v. Union of India*, the Court observed that the Constitution envisages a social order in which every person can "grow and realise their potential as an individual."[28] The Supreme Court has repeatedly affirmed that imprisonment does not strip an individual of their fundamental rights, save those necessarily curtailed by incarceration.[29] Prisons, as institutions of the State, must function in accordance with the Constitution and cannot be spaces where its guarantees are suspended where not warranted.[30]

Despite this constitutional mandate, stereotypes based on caste and tribe have continued to shape the Indian prison experience.[31] They influence classification, labour, segregation, and treatment within prisons.[32] Such stereotypes are structural legacies of both pre-colonial social hierarchies[33] and colonial penal governance.[34] Their persistence reveals how inherited prejudices are reproduced within contemporary institutions.[35] The following analysis examines the historical, social, and legal foundations of such stereotyping within Indian prisons.

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[27] (2017) 10 SCC 1
[28] 2018 INSC 790
[29] Charles Sobraj v. Supdt., Central Jail (1978) 4 SCC 104; Sunil Batra (II) v. Delhi Administration(1980) 3 SCC 488; State of A.P. v. Challa Ramkrishna Reddy (2000) 5 SCC 712
[30] Ibid
[31] Nigam, S. (1990). Disciplining and policing the "criminals by birth", Part 1: The making of a colonial stereotype— The criminal tribes and castes of North India. The Indian Economic and Social History Review, 27(2), 131-164. https://doi.org/10.1177/001946469002700201 (Original work published 1990)
[32] Wadekar, Disha and Shantha, Sukanya, 'A note on Caste-based division of labour and discriminatory classification against denotified tribes inside Indian prisons' (April 01, 2024). Available at SSRN <http://dx.doi.org/10.2139/ssrn.4890628>
[33] Anastasia Piliavsky, "The "Criminal Tribe" in India before the British," Comparative Studies in Society and History 57, no. 2 (2015): 325
[34] Ibid
[35] Wadekar, Disha and Shantha, Sukanya, A note on Caste-based division of labour and discriminatory classification against denotified tribes inside Indian prisons (April 01, 2024). Available at SSRN: https://ssrn.com/abstract=4890628 or http://dx.doi.org/10.2139/ssrn.4890628

Historical Roots of Stereotyping

The origins of stereotyping in prisons lie in the fusion of caste-based social stratification with British colonial administrative control.[36] Before colonisation, the caste order regulated labour through the notions of purity, pollution, and hereditary occupation.[37] The colonial state transformed these social codes into instruments of governance.[38]

Colonial prison administration consciously incorporated caste hierarchies into prison administration. As early as the 1830s, official committees acknowledged that compelling prisoners of "higher castes" to work at any trade would be viewed as cruelty, while prisoners from "lower" castes were expected to perform their traditional occupations.[39] Food and work were all organised along caste lines, replicating social stratification within the prison walls.[40] Reports from Oudh and Madras reveal that authorities permitted segregation in eating, bathing, and labour to avoid "loss of caste."[41]

Prison labour was assigned according to hereditary occupations, and even the British feared that interference with caste norms might provoke unrest. This approach, later reflected in provincial jail manuals, legitimised caste prejudice as a matter of penal administration.[42] After independence, traces of these classifications persisted in early state prison rules, which continued to recognise caste distinctions in cooking, sanitation, and labour allocation.[43] The colonial decision to respect caste within prisons transformed social discrimination into bureaucratic policy that still continues to inform prison hierarchies long after equality was constitutionally guaranteed.

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[36] Anastasia Piliavsky, "The "Criminal Tribe" in India before the British," Comparative Studies in Society and History 57, no. 2 (2015): 325

[37] Hutton, J. H. Caste in India: Its Nature, Function and Origins. Bombay: Indian Branch, Oxford UP, 1963. Print.

[38] Carroll, Lucy. "Colonial Perceptions of Indian Society and the Emergence of Caste(s) Associations." The Journal of Asian Studies, vol. 37, no. 2, 1978, pp. 233–50. JSTOR, https://doi.org/10.2307/2054164. Marc Galanter, "Law and Caste in Modern India", Asian Survey (1963), Vol. 3, No. 11, pp. 544–59

[39] Committee on Prison Discipline to the Governor General of India in Council, 1838,

[40] David Arnold, "Labouring for the Raj: Convict Work Regimes in Colonial India, 1836–1939", in Christian G Vito and Alex Lichtenstein (eds), Global Convict Labour, Brill (2015),

[41] Ibid

[42] Uttar Pradesh Jail Manual 1941, Rules 825 and 719.

[43] Rajasthan Prison Rules 1951, Rules 37 and 67.

The same logic of inherited criminality and caste-linked moral hierarchy found its most extreme expression in the Criminal Tribes Act of 1871 (CTA).[44] The CTA, one of the most discriminatory pieces of colonial legislation, legally codified the idea of "criminality by birth."[45] The CTA empowered provincial governments to declare entire communities as "criminal tribes," placing them under compulsory registration, surveillance, and restrictions on movement.[46] The CTA extended to so-called "wandering tribes" and even to "eunuchs,"[47] who were subjected to humiliating controls over dress, residence, and association. Many communities categorised under the CTA were not only nomadic or tribal but also included several marginalised castes historically associated with certain occupations.[48] This conflation of caste and tribe in the colonial imagination of "criminality by birth" laid the groundwork for later social stereotypes that equated caste status with moral and legal deviance.[49]

The Criminal Tribes Act 1911 repealed the CTA and extended the application of the Criminal Tribes Act to the whole of British India and further tightened controls by authorising forced settlement, the separation of children from their families, and extensive police powers of surveillance and arrest without warrant.[50] The law relating to criminal tribes was then consolidated as the Criminal Tribes Act of 1924.[51] The Act notified around 150 tribes and castes in India as criminals. Several Indian States of pre-independent India had enacted their own local laws for the surveillance of criminal tribes.[52]

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[44] Wadekar, Disha, 'Constitution of Criminality: The Role of India's Constitution-Making Process in Legitimizing Notions of Hereditary Criminality' (20 Mar. 2025), in Meena Dhanda (ed.), Oxford Intersections: Racism by Context (Oxford, online edn, Oxford Academic, 20 Mar. 2025 -), https://doi.org/10.1093/9780198945246.003.0071, accessed 19 Nov. 2025.
[45] Ibid
[46] Kapadia, K. M. (1952). The Criminal Tribes of India. Sociological Bulletin, 1(2), 99-125. https://doi.org/10.1177/0038022919520203 (Original work published 1952)
[47] Hinchy J. 'Solving the 'Eunuch Problem.' In: Governing Gender and Sexuality in Colonial India: The Hijra, c.1850–1900. Cambridge University Press; 2019:25-114.
[48] Anand Yang, 'Dangerous Castes and Tribes: The Criminal Tribes Act and the Magahiya Doms of North East India', in Anand Yang ed., Crime and Criminality in British India, Arizona, 1985
[49] Nigam, S. (1990). Disciplining and policing the "criminals by birth", Part 1: The making of a colonial stereotype— The criminal tribes and castes of North India. The Indian Economic and Social History Review, 27(2), 131-164. https://doi.org/10.1177/001946469002700201 (Original work published 1990)
[50] The Criminal Tribes Enquiry Committee Report (1949-50), <https://ia802807.us.archive.org/11/items/dli.csl.944/944.pdf>
[51] Act No. 06 of 1924
[52] The Criminal Tribes Enquiry https://ia802807.us.archive.org/11/items/dli.csl.944/944.pdf, p. 71

As seen above, the CTA in all its manifestations imposed collective punishment, normalised surveillance, and entrenched hereditary criminality as a governing principle.[53] After independence, the 1949 Ayyangar Committee recognised that these communities were victims of structural oppression, not innate criminality.[54] The then existing version of CTA, 1924 was repealed in 1952,[55] and its subjects were "denotified," becoming the Denotified and Nomadic Tribes (DNTs) that continue to bear the enduring stigma of the colonial label of "born criminals."[56]

Although the Act was repealed, its ideology persisted. These social hierarchies are not confined to informal practice but have been formalised within the legal architecture of prison administration. Many State prison manuals/rules and the Model Prison Manual, 2016 (until recently),[57] continue to use expressions such as "menial," "degrading," "habitual criminal/offender" or "suitable caste," thereby codifying caste hierarchies through subordinate legislation framed under the Prisons Act, 1894. Such provisions transform social prejudice into regulatory practice. They legitimise the idea that certain kinds of work are inherently inferior and that particular communities are naturally suited to perform them.

A detailed discussion of these provisions and their textual formulations follows in the next section.

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[53] Rana, Subir. "Nomadism, ambulation and the 'Empire': Contextualising the criminal tribes act XXVII of 1871." Transcience: A Journal of Global Studies 2.2 (2011): 2191-1150; Safdar, Arafat. 2020. "Criminalizing the Natives : A Study of the Criminal Tribes Act, 1871." Electronic Theses and Dissertations (ETDs) 2008+. T, University of British Columbia. doi:http://dx.doi.org/10.14288/1.0390312.

[54] The Criminal Tribes Enquiry Committee Report (1949-50), <https://ia802807.us.archive.org/11/items/dli.csl.944/944.pdf>

[55] The Criminal Tribes Laws (Repeal) Act, 1952 No. XXIV of 1952 <https://www.indiacode.nic.in/repealedfileopen?rfilename=A1952-24.pdf>

[56] Bhukya, Bhangya, and Sujatha Surepally. "Unveiling the world of the nomadic tribes and denotified tribes: An introduction." Economic and Political Weekly (Engage) 56.36 (2021): 2-6.; Gandhi, Malli, and Kompalli HSS Sundar. Denotified tribes of India: Discrimination, development and change. Routledge, 2019.

[57] In view of the directions passed in Sukanya Shanta vs Union of India (2024 INSC 753), the Government of India by its communication dated 30 December 2024 has amended the Model Prison Manual 2016 and the Model Prisons and Correctional Services Act, 2023. The communication is available at <https://www.mha.gov.in/sites/default/files/PrisonReforms_31122024.pdf>

1.3.2 Stereotypes in Prison Manuals

The Preamble to the Indian Constitution read with Article 21 ensures that all persons have the right to live with dignity, which includes the right to dignity of labour.[58] Supplementing this, the Directive Principle of State Policy (DPSP) under Article 38 of the Constitution embodies the fundamental responsibility of the State to secure a social order for the promotion of welfare of the people and provides that:

> *"The State shall, in particular, strive to minimise the inequalities in income, and* ***endeavour to eliminate inequalities in status, facilities and opportunities,*** *not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."*

However, while the Constitution ensures the right to dignity of work, entrenched caste-based stereotypes have resulted in graded inequalities within occupations.[59] Consequently, sanitation work and work related to cleaning is viewed as undignified and '*menial'*. Thus, it is typically assigned to persons belonging to marginalised castes and tribes. This stereotype was also reflected in the Prisons Act, 1894, which allowed States to make their own Rules for employment within prisons.[60] The language of these manuals replicates the caste-driven model of work allocation and hierarchies, inadvertently amounting to state-sanctioned untouchability.[61]

Language holds the power not to produce and perpetuate historical inequities through the 'naturalisation' and 'normalisation' of everyday discrimination.[62] Thus, the repeated usage of caste-based and stereotyped terminology has resulted in the creation of a *linguistic category,* which is considered inherently inferior. These notions have shaped the

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[58] *P. Narasimha v. A.P. Dairy Development Co-operative Federation Limited,* Writ Petition No.11754 of 1997, dated 11 November 1997, Andhra Pradesh High Court.
[59] Dr B. R. Ambedkar, *Dr. Babasaheb Ambedkar: Writings and Speeches, Vol. 3* 111 (Vasant Moon ed., 1st ed. 1987).
[60] Prisons Act 1894, Section 59 (12).
[61] Disha Wadekar and Sukanya Shantha, *A Note on Caste-based Division of Labour and Discriminatory Classification against Denotified Tribes inside Indian Prisons,* (2024) https://ssrn.com/abstract=4890628 accessed 29 October 2025.
[62] Reforming Administrative Nomenclature in the Indian Judiciary: Embedding Dignity and Equality in Service Rules, Centre for Research and Planning, Supreme Court of India, 2025.

institutional ethos of prisons as well as social perceptions of labour.[63] The same was iterated in *Sukanya Shantha*[64] as well, wherein the Court identified the casteist language and provisions used in various state prison manuals. Following the *Sukanya Shantha*[65] judgement, this Report analyses the prison manuals of various States/UTs, where stereotyped terminology is used mostly in respect of sanitation and conservancy work. Some State Manuals, like that of Odisha and Rajasthan employ the use of the phrase '*work of a degrading character*' for works such as manual scavenging. The Odisha and Rajasthan Prison Rules use the term *'menial'* even for tasks like that of cooking and attending to patients. The relevant provisions of the Odisha Prison Rules, 2020 are reproduced below:

> *"443. No compulsion to do any work - (1) Prisoners sentenced to simple imprisonment shall not be compelled to do any other work, or to perform any* ***menial duties*** *for others, or to do any* ***work of a degrading character, such as a scavenger's work****.*[66]
>
> *783. Employment of Prisoners - (6) The total number of* ***menial servants*** *employed regularly* ***i.e. cooks, hospital attendant, barbers, water-carriers, and sweepers*** *shall not exceed ten per cent of the whole number of prisoners in jails.*[67]
>
> *715. Labour.— (4) Division I prisoners shall not be required to do* ***such menial duties as cleaning or sweeping their cells or wards, cleaning vessels and feeding utensils,*** *the Superintendent shall allow the employment of an ordinary prisoner for this purpose."*

Other prison legislations which use such disparaging terminology for tasks relating to sanitation and cleanliness are listed below:

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[63] *Ibid.*
[64] *Sukanya Shantha v Union of India* 2024 INSC 753.
[65] Ibid.
[66] Similar provision finds place in Rajasthan Prison Rules 2022, Rule 379.
[67] Similar provision finds place in Rajasthan Prison Rules 2022, Rule 681.

Kerala[68]

"764. (2) Simple imprisonment prisoners shall not be compelled to perform ***menial duties*** *for others, nor shall they be compelled to perform any duties of a degrading character.*

*420. Performance of menial offices.—****All menial offices*** *in the Jail shall as possible, be performed by convicts"*[69]

Andhra Pradesh[70]

"Rule 824. Women offenders should be employed for ***conservancy - Menial duties work*** *in women's institutions/annexes, provided they volunteer for such work. If women offenders are not available for this work, part-time paid female scavengers should be appointed. Under no circumstances should male scavengers be allowed to enter the areas where women offenders are kept."*

Uttar Pradesh[71]

"289. SI Convict (g) shall not be called upon to perform ***duties of a degrading or menial character*** *unless he belongs to a class or community accustomed to perform such duties; but may be required to carry water for his own use provided he belongs to the class of society the members of which are accustomed to perform such duties in their own homes."*

Mizoram, Tripura and Goa[72]

*"****No menial duties, or conservancy work,*** *connected with the women's enclosure shall be carried out by the women prisoners. Specific staff for this purpose shall be employed."*

Himachal Pradesh[73]

"26.69 The ***menial*** *during shall, whenever possible, be performed by the female*

[68] Kerala Prison Rules 1958, Rule 764.
[69] Kerala Prison Rules 1958, Rule 420.
[70] Andhra Pradesh Prison Rules 1979, Rule 824.
[71] The Uttar Pradesh Jail Manual 2022, Rule 289.
[72] Mizoram Prison Manual 2017, Rule 26.84; see also Tripura Sansodhanagar Rules 2021, Rule 630 (2); Goa Prisons Rules 2021, Rule 1521.
[73] Himachal Pradesh Prison Manual 2021, Rule 26.69.

prisoners and the refuse etc., placed outside the enclosure, to be removed by paid sweeper. If there are no females of suitable caste for conservancy work paid-sweepers shall be taken into the enclosure in charge of a wander and under the conditions laid down in paragraph 214."

Assam[74]

"880. ***Menial duties*** *- The menial duties connected with the female yard shall be carried out by female prisoners and all refuse etc, shall be placed at stated hours outside the yard to be removed by male convicts."*

53.(1) A convicted inmate sentenced to rigorous imprisonment shall, and a convicted inmate sentenced to simple imprisonment or an undertrial inmate, if and as long as he so desires, may be engaged in work, ***which shall not be of an afflictive, degrading or humiliating nature,*** *and which shall, so far as may be practicable, especially in the case of a convicted inmate sentenced to imprisonment for a relatively long term, be in the form of such vocational training as will maintain or increase his ability to earn a living after release."*[75]

1.3.3 Stereotyped Terminology in the MPM 2016 and Revisions in Language

It must be noted here that the usage of such language is not limited to State manuals. Even though the MPM 2016 provides that reformation is the ultimate objective of imprisonment and therefore, prisoners have a right to meaningful and gainful employment, and wages for the work done,[76] it classifies certain kinds of prison work as menial:

> *"26.84* ***No menial duties, or conservancy work,*** *connected with the women's enclosure shall be carried out by the women prisoners. Specific staff for this purpose shall be employed.*

[74] Rules for Superintendence and Management of Jails in the State of Assam, Assam Jail Manual 1987, Rule 880; see also Kerala Prison Rules 1958, Rule 825.
[75] Assam Prisons Act 2013, Section 53.
[76] Model Prisons Manual 2016, Rights of Prisoners.

No work except ***menial and other necessary work*** *shall be done on Sundays and other prison holiday*s."

The purpose of engagement of prisoners in labour is reformation and swift reintegration into society.[77] When work to be performed by the prisoners is referred to as *'menial'* or *'degrading'* in the prison legislations, it effectuates looking down upon the prisoners who render such services, adversely affecting their dignity, self-worth, and mental health.[78] . To treat sanitation and conservancy work as lower in value or status reinforces social biases and perpetuates a hierarchical view of labour. This was iterated in *P.D. Joseph v. State of Kerala*, where the High Court of Kerala noted that:[79]

> *"9…The categories such as Dhobi, Cook, Sweeper and so on are recruited to do washing, cooking and cleaning for the staff of the Camps and Camp Offices which are Government buildings functioning as offices.* ***To classify such duties as 'Menial' or derogatory is not correct and goes against the principle of dignity of labour****…There is no slavery in doing the work of cleaning, cooking etc. as these are noble professions and the petitioner's thoughts are a result of a mischievous and confused mind."*

Following this understanding of dignity of labour, some States like Bihar, Delhi, Karnataka, Sikkim and West Bengal do not use the term *'menial'* or *'degrading'* in their prison manuals. The Delhi Prison Rules, 2018 treats sanitary and hygienic services as an 'essential' maintenance service, and even includes such services in skill development programs, as shown below:

Delhi[80]

"1059. The skill development programs should also include ***essential institutional***

[77] Model Prisons Manual 2016, Introduction.
[78] Sukanya Shantha, *'From Segregation to Labour, Manu's Caste Law Governs the Indian Prison System'* (The Wire, 10 December 2020) <https://thewire.in/caste/india-prisons-caste-labour-segregation>, accessed 22 October 2025.
[79] WP(C) NO. 21321 of 2018, dated 16 September 2021, Kerala High Court.
[80] Delhi Prison Rules 2018, Rules 1059 and 33.

maintenance services *like culinary, sanitary and hygienic services, prison hospital, other prison services, repairs and maintenance services.*

33. The prisoners who are involved in the work of sanitation and sweeping will be provided wages as to the semi-skilled/skilled prisoners."

Karnataka[81]

"860. Conservancy and sanitary arrangements to be paid attention."

Persons associated with 'essential' services of maintenance and cleanliness are integral to the smooth running of any institution and indeed the society. There is a need for social recognition of the fact that there is no undignified or degrading job in society. It is the societal stigma and the conditions of work that debase its dignity.

There is a need to adopt progressive language in the MPM 2016 and the State prison legislations to replace terminologies that perpetuate stigma and stereotypes in labour like *'menial'*, *'degrading'*, and *'humiliating'* with language like '*essential maintenance, sanitation,* and *conservancy services*'.

In a similar move to redesignate posts that reflect colonial mindsets, the Supreme Court on 11 April 2023 amended the Supreme Court Officers and Servants (Conditions of Service and Conduct) Rules, 1961 and changed the nomenclature of the posts of Jamadar (Farash) and Jamadar (Safaiwala) to Supervisor.[82] A positive language can help shift the narrative surrounding prison labour, and will encourage prisoners to see their work as valuable, contributing to the overall operation of prisons and correctional facilities.

1.4 Division of work in prisons

As discussed above, the prison system in India, including the prison manuals and Rules, are plagued by caste stereotypes and the colonial mindset. These biases have extended not just to the terminology used in the statutes, but the division of work within prisons as well.

[81] The Karnataka Prisons and Correctional Services Manual 2021, Rule 860.
[82] The Gazette of India, Supreme Court of India, 2468 GV2023, <https://main.sci.gov.in/pdf/Gazette/27042023_101812.pdf> accessed 28 January 2024.

Although an initial glance at the MPM 2016 would indicate that work is divided fairly and on a rotational basis, a closer look at the State Rules reveals a starkly different picture. For instance, Rule 15.22 of the MPM 2016, stipulates that while organising skill development programmes, factors such as mental and physical health, requirements of security, custody and discipline, age, length of sentence, inmates' skills and abilities, potential for acquiring skills, and urban and rural background of the inmate should be considered.[83]

The MPM 2016 further elaborates the criteria for division of work in prisons. The above provisions amply show that assignment of labour to prisoners should be done on the basis of skills, health, rural and urban background, security, age and length of sentence of the prisoner. With respect to the criterion of length of sentence, prisoners are assigned different kinds of works, as spelt out in MPM 2016:

> *"15.21 Prisoners sentenced to medium and long terms of imprisonment should be given training in multiple skills so that they are able to compete with the conditions in the labour market outside the prisons.*
>
> *15.23 Prisoners sentenced to less than one year of imprisonment should be employed in prison maintenance services, gardening, work-centres and work camps and paid suitable wages for their work.*
>
> *15.24 Prisoners sentenced to imprisonment for one year or more should be employed in production units in closed or open prisons.*
>
> *15.26* ***The skill development programmes should also include essential institutional maintenance services like culinary, sanitary and hygienic services****, prison hospital, other prison services, repairs and maintenance services. Prisoners may also be employed in the service of maintenance and construction of prison buildings, for which they will receive adequate remuneration or wages in accordance with the rules of the Public Works Department."*

[83] Model Prison Manual 2016, Rule 15.22.

Furthermore, in some States like Tamil Nadu,[84] Assam,[85] the medical officer certifies the nature of labour for which a convict is fit for. In light of this certification, the classification committee determines the nature of employment to be allotted to the convict. Further, if it is found that the initial allotment of work was not suited to the abilities of a prisoner, the classification committee considers the question of re-allotment of work.[86]

As per the information received from most of the prison departments, prisoners are allotted tasks based on their skills. In many prisons, sweeping and cleaning of toilets is done by outsourced staff, while in other prisons, it is done by the prisoners themselves on a voluntary basis. In Assam, sweeping or cleaning of toilets is done on rotational or work distribution basis.[87] As per the information received from the Jharkhand Prison Department, the criteria for choosing prisoners to perform any kind of labour is the educational and social background, special skills or preference shown by the prisoner.[88]

However, an analysis of the statutory architecture of prisons of various States in India, found that there is a retention of colonial provisions in many prison legislations where caste of the prisoner plays a major role in division of work, especially with respect to sanitary and conservancy work.[89]

The Supreme Court took cognizance of the casteist nature of these statutes in *Sukanya Shantha v. Union of India.*[90] The Court, in this matter, held that the provisions in prison manuals that perpetuate caste-based discrimination and labour divisions are unconstitutional as violative of Articles 14, 15, 17, 21, and 23 of the Constitution.[91] Some such provisions are reproduced herein below:

[84] Tamil Nadu Prison Rules 1983, Rule 437.
[85] Assam Prisons Act 2013, Rule 53(3).
[86] *Ibid.*
[87] *As per information received from Assam Prison Department.*
[88] *As per information received from Jharkhand Prison Department.*
[89] 2024 INSC 753.
[90] *Sukanya Shantha v Union of India* 2024 INSC 753.
[91] *Ibid.*

Assam[92]

"*880. Menial duties.-The menial duties connected with the female yard shall be carried out by female prisoners and all refuse, etc., shall be placed at stated hours outside the yard to be removed by male convicts. If there are no female prisoners of* ***suitable caste*** *for conservancy work, two or three specially selected male convict* ***mehtars*** *may be taken into the enclosure by a paid Head Warder, but shall be kept together and shall not be allowed to go out of the Head Warder's sight or to hold any communication with the females.*"

West Bengal[93]

"793. ***The barber should belong to the A class.*** *Sweepers should be chosen from the* ***Mether or Hari caste, also from the Chandal or other castes,*** if *by the custom of the district they perform similar work when free, or from any caste if the prisoner volunteers to do the work.*

1117. ***The cooks shall be of the A class*** *except at the Presidency Jail where well-behaved 'B' class prisoners may be employed as such. Any prisoner in a jail who is of* ***high caste*** *and objects that he cannot eat food cooked by the existing cooks, shall be appointed a cook and be made to cook for the full complement of men."*

Madhya Pradesh[94]

"36. While laterine parade is being carried out, the mehtars attached to each latrine shall be present. ***The Mehtars shall empty the small receptacles*** *into large iron drums and replace the receptacles after having cleaned them."*

Himachal Pradesh[95]

"26.69. The menial during shall, whenever possible, be performed by the female prisoners and the refuse etc., placed outside the enclosure, to be removed by paid

[92] Rules for Superintendence and Management of Jails in the State of Assam, Assam Jail Manual 1987, Rule 880.
[93] West Bengal Jail Code 1967, Rules 793 and 1117.
[94] Madhya Pradesh Prison Rules 1968, Rule 36.
[95] Himachal Pradesh Prison Manual 2021, Rule 26.69.

sweeper. If there are no females of ***suitable caste for conservancy work*** *paid-sweepers shall be taken into the enclosure in charge of a wander and under the conditions laid down in paragraph 214."*

The repetitive use of phrases like '*suitable caste*', '*good caste*', '*high caste*' or the name of a particular caste in the prison manuals depicts a pattern of systemic discrimination against prisoners belonging to marginalised groups.

The classification on the basis of caste is not only confined to allocation of prison labour, but also serves as the basis of extending privileges to the prisoners who are "higher" in the caste grid. For example, Rule 1117 of the West Bengal Jail Code, 1967 provides that prisoners belonging to so-called **'high caste' may be appointed a different cook** if they object to the food prepared by the existing cooks.[96]

Embodying the basic principle of equality, the MPM 2016 prohibits caste based discrimination, and any classification of prisoners on grounds of socioeconomic status, caste or class:

> *"2.12.4 There will be two shifts of workers in the kitchen. Management of kitchen or cooking of food* ***on caste or religious basis shall be prohibited*** *in prisons.*
>
> *24.01 The classification of undertrial prisoners should be done only on the basis of security, discipline and institutional programme.* ***No classification on the basis of social status should be attempted.***
>
> *26.04 Classification and Separation*
>
> *Note: (ii) No classification of prisoners shall be allowed on grounds of* ***socio economic status, caste or class.****"*

[96] West Bengal Jail Code 1967, Rule 1117.

Rule 2 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, 2015, known as the Nelson Mandela Rules, also provides:[97]

> *"Rule 2 (1) There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected.*
>
> *(2) In order for the principle of non-discrimination to be put into practice,* ***prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings.*** *Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory."*

It is pertinent to note that in *Manoj Yadav v. State,*[98] Rajasthan High Court took *suo moto* cognizance on the basis of a report based on the Commonwealth Human Rights Initiative's research paper which highlighted that inmates of Rajasthan prisons were assigned tasks like cleaning toilets based on their caste.[99] The High Court issued directives to overhaul the outdated prison manual to ensure that prisoners aren't given tasks based on their caste background. This prompted the State of Rajasthan to amend Rajasthan Prison Rules in 2021 as shown below. In a subsequent development, Rajasthan Prison Rules, 1951 were repealed by Rajasthan Prisons Rules, 2022.[100] The provisions before and after the amendment are shown below:

Rajasthan Prison Rules, 1951	**Rajasthan Prison (Amendment) Rules, 2021**	**Rajasthan Prison Rules, 2022**

[97] The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175, General Assembly, United Nations, adopted on 17 December 2015.
[98] *Manoj Yadav @ Rajesh Sharma @ Kuldeep Sharma @ AjaySharma @ Gopal Sharma v. State*, Rajasthan High Court, Criminal Writ Petition No. 466/2019, dated 5 March 2021.
[99] Ibid.
[100] Rajasthan Prisons Rules 2022, Rule 1009..

"Rule 37 of Part 6. Receptacles in Latrines.- Separate receptacles shall be provided in all latrines for solid and liquid excreta, and the use of them shall be fully explained to all prisoners by the members. ***The Mehtars shall put a layer of dry earth*** *at least 1 inch thick into each receptacle for solid excreta before it is used…"*		*"Rule 260. Classification and separation* *Note (iii) No classification of prisoners shall be allowed on grounds of socio-economic status, caste or class."*
"Rule 67 of Part 9. Selection of cooks, and cooking of food.- The cooks shall be of the non-habitual class. ***Any Brahmin or sufficiently high caste Hindu prisoner from this class is eligible for appointment as cook.*** *All prisoners who object on account of* ***high caste*** *to eat food prepared by the existing cooks shall be appointed a cook and be made to cook for the full complement of men…"*	*"Rule 67. Cooking of food-* ***No inmate shall be selected for cooking on the basis of his caste or religion.****"*	*"Rule 287. Cooking inside prisons.-* *(1) Management of kitchens or cooking food on* ***caste or religious basis*** *must be totally banned in prisons for women."*
"Rule 13 of Part 10. Sweepers shall be chosen from among those who, by the custom of the district in which they reside or ***on the account of their having adopted the profession, perform sweepers work, when free".***	*"Rule 13. No tradesman shall be chosen on the basis of his caste or religion."*	

*"Rule 27(d) of Section I of Part 15- **Any member of a criminal tribe** subject to the discretion of the Government shall be liable to be classed as habitual criminals."*	*Clause (d) of Rule 27 was deleted.*	

Changes in Rajasthan Prison Rules

These actions, however, were not able to create ripples outside the State of Rajasthan as the social prejudice and discrimination on the basis of caste in allocation of prison labour still persists in some State prison legislations. Despite the manifest spirit of the Constitution in Article 15(4), 17 and Article 46 to protect and uplift marginalised groups,Indian society is still grappling with the rampant caste-based prejudices based on caste identity.

Some prison manuals have also retained this hierarchical delegation of labour by factoring the previous habits and experience of the prisoner, without an explicit caveat against caste based discrimination. Some such provisions are listed below:

Gujarat[101]

"3(e) All menial and other duties of the prison shall be assigned at the discretion of the members of the Work Assigning Committee mentioned in rule 4 to the Prisoners, who are required to work:

*Provided that no such work shall be assigned or exacted from a Prisoner who is **not in the habit of performing such work when he was free,** No Prisoner shall be permitted to evade any work which he may consider to be onerous or disagreeable. Complaints of Prisoners, if any, in this respect, shall be referred to the Inspector General of Prisons, whose decision shall be final,*

*3(f) **Conservancy work** shall as far as possible be assigned to those Prisoners **whose***

[101] Gujarat Prisons (Employment of Prisoners) Rules 1973, Rule 3.

profession it was to perform such work when they were free. *It may be allotted if necessary to other prisoners who volunteer for it, subject to the following conditions…"*

Andhra Pradesh[102]

"*440.* ***Allowance for caste prejudice****- (1) The prison tasks* ***including conservancy work*** *shall be allotted at the discretion of the Superintendent with due regard to the capacity of the prisoner, his education, intelligence and aptitude, and so far as may be practicable with due* ***regard to his previous habits.****"*

Tamil Nadu[103]

"*438.* ***Allowance for social status****.- The prison tasks* ***including conservancy work*** *shall be allotted at the discretion of the Classification Committee with due regard to the capacity of the prisoner, his education, intelligence and aptitude and so far as may be practicable with due* ***regard to his previous habits****."*

In Karnataka, allotment of prison tasks is done on the basis of previous experience, education, knowledge, skills, age, health conditions and willingness to work.[104]

Rule 440 and 438 of the Andhra Pradesh and Tamil Nadu Prison Rules respectively allot prison tasks taking into consideration factors like capacity, education, intelligence, aptitude and previous habits of the prisoners.[105] Similarly, Rule 40.02 of the Punjab Prison Rules, 2022 also takes into account factors like fitness, previous experience and training in any industry, trade or family profession, aptitude and inclination and other rehabilitative prospects of the convicts who are sentenced to rigorous imprisonment.[106]

[102] Andhra Pradesh Prisons Rules 1979, Rule 440.
[103] Tamil Nadu Prison Rules 1983, Rule 438.
[104] As per information received from Karnataka Prison Department.
[105] Andhra Pradesh Prisons Rules 1979, Rule 440; Tamil Nadu Prison Rules 1983, Rule 438.
[106] Punjab Prison Rules 2022, Rule 40.02.

The specification of "*conservancy work"* in the prison tasks under the heading "*allowance of caste prejudice/allowance of social status"* leads to a negative construction of the criterion of "*previous habits"*, following the doctrine of *ejusdem generis*.

Various State municipalities' legislations define 'conservancy' as the removal and disposal of sewage, offensive matter and rubbish.[107] As per the statistics issued by the Ministry of Social Justice and Empowerment for the year 2002-2003, over 95% of the identified manual scavengers were persons belonging to the Scheduled Castes.[108] Thus, the phrasing of the aforementioned Rules replicates caste biases and encourages the allocation of conservancy work based on caste identities. Considering that institutional services in prisons can be carried out by prisoners without hard skills, it is discriminatory to require individuals of a particular caste to undertake certain tasks based on the previous occupation or habits. Such an approach amounts to segregation of labour based on caste stereotypes, an outcome which is sought to be prohibited by Articles 14 and 15 of the Constitution and by way of judicial precedent in the *Sukanya Shanta* judgment.

One such incidence where the state manual has allowed caste-based segregation is Rule 414 of the Assam Jail Manual 1987, which reinforces caste based discrimination in prisons. The aforesaid Rule reads as:

> "*414. Allowance for caste prejudice.- It will be open to the Superintendent of the Jail to allot conservance work to* ***high caste Hindus who volunteer for it****, subject to the following conditions:*
>
> *(i) Volunteers should be employed only if the Superintendent having regard to the requirements of the jail, deems it necessary to call for volunteers to be employed for conservancy work.*
>
> *(vi) Volunteers, to whom conservancy work is allotted,* ***will not necessarily live in a barrack with the rest of the conservancy staff****, but where the*

[107] Manipur Municipalities Act 1994, Section 2(6); Madhya Pradesh Municipalities Act 1961, Section 2(9); Orissa Municipal Act 1950, Section 3(5).
[108] *Safai Karamchari Andolan v. Union of India* [2014] INSC 212.

Superintendent directs. This is necessary to prevent the ***possible corruption by association of the genuine sweeper staff with high caste volunteers****."*

The above provision prescribes that "high caste" Hindus will do conservancy work only on a voluntary and necessity basis. The phrasing of the Rule promotes the casteist notions of 'pure' and 'impure' labour.[109] Moreover, the segregation of h "high caste*"* volunteers from other conservancy staff to prevent them from being defiled by association with the "sweeper staff" reinforces the stigma and traditional exclusion associated with sanitation work.[110]

Correctional institutions should be a place of social cohesion where prisoners unlearn any prevalent discriminatory caste practices. In an advisory dated 26 February 2024, the MHA also took note of caste based discrimination in prisons and advised the States:[111]

> *"It has come to the notice of this Ministry that the* ***Jail Manuals of some States provide for segregation of prisoners on the basis of their caste and religion and they are being assigned duties in the prisons accordingly****. It may be noted that the Constitution of India prohibits any kind of discrimination on the grounds of religion, race, caste, place of birth etc… All States and UTs are requested to take note of the above and ensure that their State Prison Manual/ Prison Act should not contain such discriminatory provisions. In case any such provision exists,* ***immediate steps must be taken to amend/remove the discriminatory provision from the Manual/Act****."*

The Supreme Court in the landmark judgment of *Sukanya Shantha v. Union of India*[112] held that the caste classification done in the prison manuals has no rational nexus with the object of the classification, which was the orderly running of prisons and reforming

[109] Sonal Sharma, *Rasoi ka Kaam/Bathroom ka Kaam*: Perspectives of Women Domestic Workers, (2016), 51(7) *Economic and Political Weekly,* 52.
[110] *Ibid.*
[111] V-17014/1 /2024-PR, MHA, Government of India <https://www.mha.gov.in/sites/default/files/AdvisoryWS_28022024.pdf> accessed 4 February 2024.
[112] 2024 INSC 753.

inmates. It further held that prison rules that reinforce caste based prejudices against denotified tribes are also violative of the Constitution.[113]

The Court therefore directed all the States, Union Territories, and the Union government to revise the prison manuals and laws, including the MPM 2016 and the Model Prisons and Correctional Services Act 2023, within 3 months. It was also held that references to "habitual offenders*"* must align with state legislations, and all caste references in prisoner registers must be removed. The Court also mandated regular inspections by DLSAs and the Board of Visitors to monitor the compliance of the judgment and report to NALSA for further review.[114]

Rotational allocation of services in prisons

Maintenance and hygiene services are institutional services and every convict and volunteering undertrial irrespective of the status, religion or caste should be encouraged to participate in the prison tasks related to cleanliness without any social prejudice. Assigning sanitary and hygiene services to those who have been doing the same outside the prison, curtails their chance of upskilling inside prisons and reduces the prospect of upward mobility when they are released.

In this regard, the MPM 2016 explicitly prohibits any kind of caste based classification and prescribes that young offenders may be employed on rotation basis. The relevant rule is reproduced below:

> *"27.33 Young offenders may be employed,* ***by rotation, as assistants in running the institution's essential services, like sanitation and hygiene****, kitchen and canteen, laundry and plumbing services. Such engagements should aim at imparting vocational training to the inmates in these areas of work."*

[113] *Ibid.*
[114] *Ibid.*

This has also been incorporated in Rule 621 of the Bihar Jail Manual, 2012. Similarly, Kerala Prisons and Correctional Services (Management) Act, 2010 provides for the prison administration to adopt measures to assign prison activities on a roster basis.

> *"12. The functions of prison shall be (v) to adopt measures— (c) to put the prisoners on activities in the prison like cooking, sanitary services, gardening etc. on* ***a roster basis.****"*

Allotting work on rotational or roster basis will give prisoners an opportunity to acquire diverse skills and come out of the shackles of caste and class identities. This will also lead to dignification of labour inside prisons, and create an equitable prison atmosphere conducive for reformation of prisoners. As discussed above, the Supreme Court in *Sukanya Shantha v. Union of India*[115] has also recognised that caste based division of labour without giving the prisoners any choice in the matter denies them the opportunity to rise above the constraints imposed by their social identity and thus amounts to '*forced labour*' under Article 23. Thus, as per the directives of the Supreme Court, it has now become imperative for States to affirm the constitutional fundamental of equality inside prisons and revisit their prison manuals.

[115] *Sukanya Shantha v Union of India* 2024 INSC 753.

1.5 Manual scavenging in prisons

Engagement or employment in manual removal of faeces has been prohibited in India since 1993 by virtue of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. In 2013, the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 further widened the existing law and now, hazardous cleaning of sewer or septic tank without protective gears and other cleaning devices also stands prohibited. Prisons, however, have mostly been neglected when it comes to waste management.

In many prisons, cleaning of drains, septic tanks and sewer systems is undertaken by civic bodies like City/Municipal Corporations or by the Public Works Department wherein pumps and machines are deployed for removal of waste.[116] Some prisons like that in Andhra Pradesh, Delhi, Central Prisons of Tamil Nadu, Central prison Viyyur of Kerala and other newly constructed prisons in India have also set up sewage treatment plants inside the prison premises.[117] Further, Tamil Nadu Prison Department submitted that cleanliness workers are appointed through employment exchange or other mode of recruitment for the purpose of cleaning the drains and sewers.[118]

However, as per the information received from prison departments, the dehumanising practice of manual scavenging still prevails inside many prisons due to lack of machines for removal of faeces and sewage. For instance, prisons in Manipur, Himachal Pradesh, Nagpur (Jail at *Dimapur, Kohima, Mokokchung, Mon and Zunheboto*) and Maharashtra (*Kolhapur Madhyawarti Karagrah, Thane Madhyavartiya Karagrah, Nashikroad Central Prison, Ahmadnagar Jila Karagrah, Yerwada Open District Jail and Visapur District Open Prison*), **prisoners clean the drains and sewers manually using hand gloves and other locally produced equipment as there is no alternative method to clean.** In the prisons of Arunachal Pradesh Prison Department, Nagaland and Mizoram, prisoners clean

[116] As per information received from prison departments.
[117] *Ibid.*
[118] As per information received from Tamil Nadu Prison Department.

the drains and sewers manually by using bleaching powder and disinfectant under the supervision of the jail.[119]

The Gujarat Prison Department further states that drainage, septic tanks and sewer systems are mostly connected to the main underground sewer. However, they are cleaned manually and mechanically by local municipalities as well as by the inmates who want to work voluntarily.[120] In Odisha, the sewage system and drain of the jails are cleaned manually by the sweepers engaged in jails and the septic tanks are cleaned by the local municipality using cesspool machines as and when required.[121]

It must also be noted here that Section 5 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 prohibits construction of insanitary latrines, and states that every insanitary latrine existing on the date of commencement of the Act, shall either be demolished or be converted into a sanitary latrine.[122] However, Madhya Pradesh Jail Manual, 1968[123] retains provisions like:

> *"33. Each enclosure shall, if possible, have a* ***separate dry latrine*** *on the approved plan and shall have a sufficient number of seats to allow a latrine parade to be carried out rapidly…Provision must be made for the* ***permanent supply of dry earth in every latrine****, and before the commencement of the rains, a sufficient quantity should be stored.*
>
> *36. While latrine parade is being carried out, the mehtars attached to each latrine shall be present.* ***The Mehtars shall empty the small receptacles into large iron drums and replace the receptacles after having cleaned them.***
>
> *39. A latrine on the* ***dry earth system*** *with a vessel for urine shall be provided in each sleeping barrack…"*

[119] As per information received from prison departments.
[120] As per information received from the Gujarat Prison Department.
[121] As per information received from the Odisha Prison Department.
[122] Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, s 5.
[123] Madhya Pradesh Prison Rules 1968,Rule 36.

The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 applies upon any person, agency or local authority. To effectuate the true objective of the Act, the prisons and correctional institutions should also harmonise the spirit of the Act, and prohibit manual removal and disposal of human waste inside the prisons.

In keeping with the objectives of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, certain states like Delhi have amended their prison rules. For instance, Section 33 of the Delhi Prison Rules, 2018 provides that prisoners be provided the requisite equipment for maintaining hygiene and cleanliness as provided in the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013. Provisions of similar tone may also be incorporated in the MPM 2016, MPA 2023 and other State prison laws to ensure that there are no dry/insanitary latrines in both the letter of the law and prison infrastructure, and no mechanical dealing of human waste by the prisoners/civil bodies inside the prisons. In addition, concerned judicial and executive authorities at various levels must also periodically inspect the prisons for adequate availability of machines, protective gears and other waste disposal mechanisms for the use of civic bodies or willing prisoners inside the prison, as the case may be.

1.6 Classification of prisoners

Prisons house a wide variety of prisoners, who are convicted for a varying nature of offences or are tried for the alleged commission of a variety of offences. These individuals come from diverse socioeconomic backgrounds; they include those who have special needs pertaining to age, health, gender, disability, addiction, etc. These factors not only help in categorising prisoners for security considerations but also place them in proper rehabilitation programmes suited to them. In this spirit, Chapter XVI 'Welfare of Prisoners' in the MPM 2016 provides that:

> *"17.02* ***The starting point of all welfare programmes shall be the initial classification of the prisoner and the study of individual inmates.*** *The welfare programme should include periodical review of progress and re-*

classification of prisoners, review of sentence and pre-mature release, planning for release, pre-release preparation and after-care…"

Prisoners are therefore classified according to the risk they pose and are housed accordingly.

At the time of admission, a prisoner is classified for the purpose of segregation according to his status like undertrial, detenue, convict, juvenile, woman, habitual, high risk, etc. The United Nations Standard Minimum Rules for the Treatment of Prisoners, also known as the Nelson Mandela Rules, and the Handbook on the Classification of Prisoners, United Nations Office on Drugs and Crime (UNODC) differentiate between 'classification' and 'separation' of prisoners. Classification is distinct from separation of prisoners in the sense that separation does not constitute a process for objective assessment of prisoners, but classification requires an individualised analysis of the risks and needs of each prisoner for the most appropriate placement and interventions.[124] Rule 11 of Nelson Mandela Rules stipulates that women and men, untried and convicted, civil prisoners and criminal offenders, young and adult prisoners shall be kept separately. Rule 93 further provides the purpose of classification as:

Rule 93(1) *"The purposes of classification shall be:*

(a) To separate from others those prisoners who, by reason of their criminal records or characters, are likely to exercise a bad influence;

(b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation."

The MPM 2016 recognises the need to provide for diversification of institutional resources to cater to the differential requirements of the prisoners in terms of custody and correction.[125] It classifies prisoners on the basis of level of security for effective surveillance, safe custody, prevention of escapes, security, discipline, institutional

[124] Handbook on the Classification of Prisoners, United Nations Office on Drugs and Crime (UNODC) (Publishing and Library Section, United Nations Office at Vienna, 2020) <https://www.unodc.org/documents/dohadeclaration/Prisons/HandBookPrisonerClassification/20-01921_Classification_of_Prisoners_Ebook.pdf> accessed 20 February 2024.
[125] Model Prison Manual 2016 Rule 2.03.

programme, age and gender of the inmate. It also proposes segregating between undertrials, convicts and detenues. However, the Manual prohibits the classification of prisoners on the basis of social status, caste and class:

> *"**24.01 -** The classification of undertrial prisoners should be done only on the basis of security, discipline and institutional programme. No classification on the basis of social status should be attempted. The entitlement of diet, clothing, bedding and interview will be the same as applicable to other categories of prison…"*
>
> *"**Note (ii) to Rule 26.04** - No classification of prisoners shall be allowed on grounds of socioeconomic status, caste or class."*

The enquiry body of the Mulla Committee Report, 1980-83 also discarded this practice. It recommended that classification of prisoners into A, B, C or I, II, III classes on the basis of their social, economic and educational backgrounds should be abolished.[126] Similarly, the R.K. Kapoor Committee noted the inadequate classification of prisoners and recommended that classification should broadly fall under two heads: (a) classification in respect of security and control, and (b) classification from the point of view of correction, reformation and rehabilitation.[127]

While States like Uttarakhand, Tripura, Goa,[128] Delhi, Himachal and Haryana do not classify prisoners on the basis of social status in their prison manuals, there are state legislations which consider social status and supposedly superior mode of living as the criteria to classify prisoners, and enable such prisoners to enjoy more privileges than others during the period of custody or imprisonment. Some of such provisions are tabulated hereunder:

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[126] All-India Committee on Jail Reform, 1980-83, Para 6.23, 12.17.9, All-India Committee on Jail Reform, 1980-83.

[127] Page 155-163, Report of The Group of Officers on Prison Administration, 1987, Page 155-163.

[128] Goa Prisons Rules 2021, Rule 1341 reads as "*The classification of undertrial prisoners should be done only on the basis of security, discipline and institutional program. No classification on the basis of social status should be attempted. The entitlement of diet, clothing, bedding and interview should be the same as applicable to other categories of prisoners."*

S.No.	Law	Classification of Prisoners	Relevant Provisions
1.	Andhra Pradesh Prison Rules, 1979	Special and Ordinary UTP	*Rule 730: Undertrial prisoners shall be of two classes, viz., special. and ordinary. The former class will consist of those who by* ***social status, education and habit of life have been accustomed to a superior mode of living.*** *Courts shall make the initial recommendations for classification in the special class to the District Magistrate, by whom the recommendations shall be approved or reviewed.*
2.	Uttar Pradesh Jail Manual, 2022	Superior and Ordinary convicted criminal prisoner	*256: Convicted criminal prisoners shall be divided into two classes:* *(1) Superior; and* *(2) Ordinary…* ***653.*** *A prisoner may write an application addressed to the State Government through the District Magistrate for admission to the superior class. Such application should, as far as possible* ***contain all the necessary particulars regarding his social status,*** *education, etc., as required by the rules.*
3.	Assam Jail Manual, 1987	A, B and C Convict	*209. All convicted prisoners shall be divided into three divisions, viz., A, B, and C* *I.—"A" DIVISION* *I. Convicted prisoners will be eligible for this division, irrespective of their nationality, if…* *(2) they* ***by social status, education and habit of life have been accustomed to a superior mode of living****;…*

4.	Gujarat (Bombay Jail Manual, 1955)	Class I and Class II UTP	*756. There shall be two classes of undertrial prisoners viz., I and II* ***based on social status, mode of living,*** *education etc.* *753.. For the purpose of grant of prison amenities and privileges, convicted prisoners shall be classified as Class I or Class II by the sentencing court* ***based on social status, mode of living etc****.* *759. judgment-debtors are divided into following two classes* ***according to their social status, education. and mode of living****.* *(1) Superior Class.* *(2) Ordinary Class*
5.	Karnataka Prison Manual, 1978	Class I (Class-A) and Class II(Class-B)	*418. Classification of convicted prisoners;* *i. Prisoners will be eligible for Class I(Class-A) if. b)They by* ***social status, education and habit of life have been accustomed to a superior mode of living;*** *and…* *284. Supply of the food and other articles from outside.* *(b)Food cooked outside the Prison shall be allowed only to such prisoners have been specially permitted by the Chief Superintendent or Superintendent of Prison to receive it having regard to their* ***status habits of life and social position after due inspection****;*

Table 1.1 - Provisions in Prison Manuals classifying prisoners on the basis of social status

The basic principles of the Nelson Mandela Rules are:[129]

> *"1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings…*
>
> *2. There shall be* ***no discrimination*** *on the grounds of race, colour, sex, language, religion, political or other opinion, national or* ***social origin, property, birth or other status****…"*

It has also been recognised in several judgments that a prisoner who is serving sentence, is like any other human being and is entitled to the basic human rights and dignity.[130] As per information received from prison departments, 38.3% of prisoners have an annual family income of less than Rs. 30,000 and 39% have annual family income between Rs. 30,000 and Rs. 1 lakh. Article 14 of the Indian Constitution mandates equal protection of law and equality before law to all those residing in India.[131] Despite this Constitutional mandate, the prison manuals mandate class classification among prisoners.

As per the prison manuals listed in Table 1.1, prisoners who are accustomed to a 'superior' mode of living have better living conditions in prisons as they are accorded privileges in terms of scale of diet, clothing, facilities for reading books and newspapers, more visitations and interviews, furniture and other amenities.

A prisoner who has committed the same offence as the other must be placed on the same footing for the purpose of amenities, irrespective of the economic or social status, unless there is a rational classification based on health, gender, age, academic needs or other legitimate grounds. By giving differential treatment to prisoners on the basis of their social status and standard of living in society, prison statutes perpetuate class and caste based discrimination.

[129] The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175, General Assembly, United Nations, adopted on 17 December 2015.
[130] Sukanya Shantha v Union of India, 2024 INSC 753.
[131] *Jagannath Prasad Sharma v. State of Uttar Pradesh*, AIR [1961] SC 1245.

1.7 Fair and Equitable Wages to Prisoners

When a prisoner engages in meaningful prison labour and becomes a contributory workforce in the prison industry, it has a reformatory impact upon the prisoner in the 'prison to society continuum' as it gives the prisoner an opportunity to earn wages inside the prison for oneself and for family's sustenance.[132] The MPM 2016 recognises a prisoner's right to meaningful and gainful employment and right to wages of the prisoners:[133]

> *"(i)* ***Right to meaningful and gainful employment***
>
> *Note 1: No prisoner shall be required to perform 'begar' and other similar forms of forced labour which is prohibited as a fundamental right against exploitation under Article 23 of the Constitution.*
>
> *Note 2: Undertrial prisoners volunteering to do work may be given suitable work wherever practicable. Such prisoners should be paid wages as per rules.*
>
> *(ii)* ***Right to get wages for the work done in prison****."*

The wages given to prisoners varies depending upon the need for skill and type of labour. There are three categories of workers in prisons: skilled, semiskilled and unskilled. [134]

Prison being a State subject, the quantum of prisoner's wage is fixed by the respective State Governments.[135] A portion of the wages earned by the prisoner is credited to the common wage account/savings fund of the prisoner, which is given to him upon his release; another part of the wage can be utilised by him in the prison, and the rest is given to his family.[136]

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[132] Baljeet Kaur, ''Prisoners' right to wages: A small boat carrying ashore the many goals of the system' (*The P39A Criminal Law Blog*, 20 April 2021) <https://p39ablog.com/2021/04/prisoners-right-to-wages-a-small-boat-carrying-ashore-the-many-goals-of-the-system/> accessed 19 November 2025.
[133] Perspective, Rights of Prisoners, Model Prison Manual 2016.
[134] All-India Committee on Jail Reform, 1980-83; see also *Gurdev Singh v. State of Himachal Pradesh*, AIR 1992 HP 76; As per Prison Statistics India, 2022, Karnataka follows 4 categories of wage system for convicts working in prisons - Highly Skilled, Skilled, Semi-Skilled and Unskilled prisoners.
[135] No.17014/3/2009-PR, MHA, Government of India, <https://www.mha.gov.in/sites/default/files/2022-09/PrisonAdmin17072009%5B1%5D.pdf> accessed on 12 August 2024.
[136] Chapter V, Handbook for Prisoners, Bureau of Police Research & Department, Ministry of Home Affairs, Government of India.

In many prisons, coupons are given to the prisoners instead of cash to make any purchase from the prison canteen.[137] The MPM also states that:

> *"15.48 The wages should be deposited in the prisoner's saving bank account on a fixed date every month and* ***the passbook shall be kept with prisoner concerned.***
>
> *(4) The wages of every prisoner shall be* ***deposited in a joint Bank account*** *opened in the name of the prisoner concerned and the Superintendent of the Jail. This account may be opened in any Nationalised Bank near the prison."*

In 1998, the Supreme Court in *State of Gujarat v. Hon'ble High Court of Gujarat*[138] allowed the government to deduct the expenditure incurred for food, clothes and other amenities for the prisoners with a proviso that the government cannot deduct any substantial portion from the wages on that account. It also recommended the State to make a law to set apart a portion of prisoner's wage as compensation to the victims of the offence, either directly or through a common fund. Hence, the MPM 2016 prescribes that a portion of the wages payable to the convicts should also be deducted towards the general maintenance in prison along with a portion towards the victim compensation fund as per State Government rules.[139]

It has often been reported that wages are not paid to the prisoners in a timely manner upon their release, especially in case of premature release of an undertrial.[140] Every working prisoner has a right to reasonable and equitable wages, which cannot be said to be secured if they are not disbursed timely to both the volunteering undertrials and convicts upon their release. **In Karnataka, JanDhan accounts are created for inmates and wages are transferred directly to their accounts.**[141] A savings bank account of the prisoner may act

[137] Karnataka Prison Manual 2021, Rule 365.
[138] 1998 SC 3164.
[139] Model Prison Manual 2016, Rule 15.47.
[140] MG Chetan, 'Prisoners to get wages after 18-month delay', The New India Express (Bengaluru, 3 April 2018) <https://www.newindianexpress.com/cities/bengaluru/2018/Apr/03/prisoners-to-get-wages-after-18-month-delay-1796211.html> accessed 23 April 2024.
[141]National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs 2023)

as a cushion for them to restart their lives after release and contribute to their families. Prisoners should also be given the passbook of the account, which should be updated from time to time to keep a track of the transactions from the account. Similar steps can be undertaken by other prison departments to ensure smooth and timely payment of wages to the released prisoner.

1.7.1 Reasonable Wages

Payment of wages to prisoners serves as an incentive for the prisoners to remain motivated to work while being in prison. At the same time, it enhances the productivity and employability of the prisoner, helping in a smoother transition into society.[142] It is imperative that wages so paid to the prisoner are fair and reasonable. Chapter 15 of the MPM 2016 states that:

> *"15.45 Wages should be fair and equitable and not merely nominal and paltry.* ***These rates should be standardised keeping in view the minimum wages*** *given as notified by the government from time to time.*
>
> *15.46 With a view to keep the wage system in prisons in harmony with that in the free community, the wages should be* ***reviewed every three years*** *and revised whenever necessary."*

The rate of wage varies from State to State based on the skill set of the prisoner. The Prison Statistics India 2022 gives an exhaustive account of the wages paid per day of work to the convicts in all the States.[143] **As per the NCRB report, an average of Rs. 127.08**, **Rs. 113.91 and Rs. 102.05 wages are paid per day to**

<https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2022&keyword=> accessed 23 March 2024.

[142] Baljeet Kaur, 'Prisoners' right to wages: A small boat carrying ashore the many goals of the system' (P39ABlog, 25 April 2021) <https://p39ablog.com/2021/04/prisoners-right-to-wages-a-small-boat-carrying-ashore-the-many-goals-of-the-system/>.

[143] National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs 2023) <https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2022&keyword=> accessed 23 March 2024.

skilled, **semi-skilled and unskilled convicts respectively**, with Karnataka paying the highest wage to unskilled prisoners (Rs. 524 per day).[144]

The following graph shows the wages per day paid for 'unskilled work' to convicts in all the States in the year 2022:

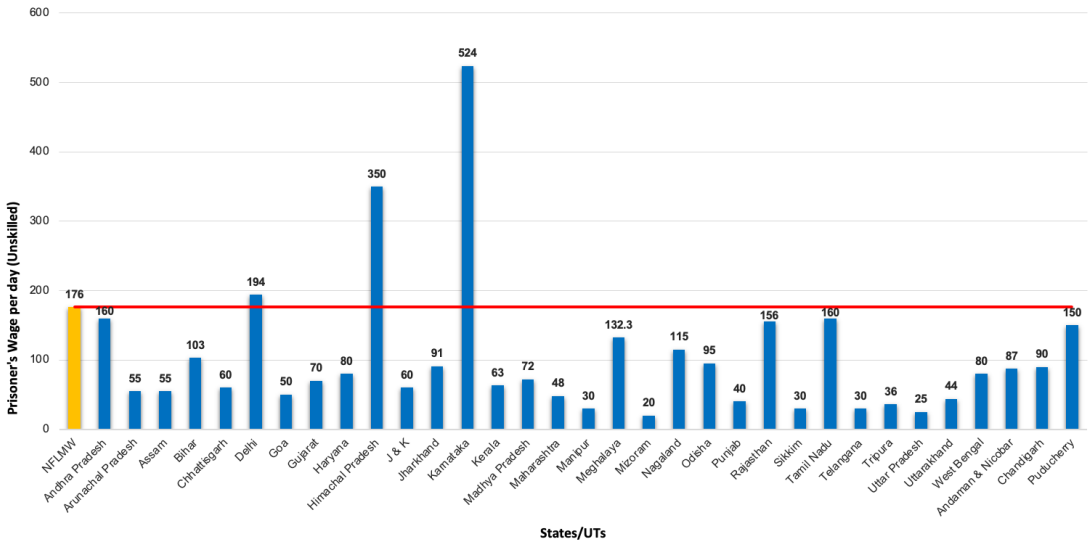

Figure 1.5 - Prisoner's wage per day (unskilled) w.r.t. NFLMW (yellow bar)[145]

The above figure shows that there is a wide disparity between the wage amount fixed in the States. **An unskilled prisoner in Telangana and Uttar Pradesh gets Rs. 30 and Rs. 25 per day respectively for the same work for which a prisoner in Karnataka gets Rs. 524 per day.**[146] In 2023, Allahabad High Court took serious note of the existing prison wage structure in Uttar Pradesh and observed:[147]

> *"4. Repeatedly, orders have been passed giving opportunity after opportunity to the State respondents to take an informed decision with*

[144] *Ibid.*
[145] *Ibid. Note:* As per the updated information received from prison departments as on 31 December 2023, the prisoner's wage per day given for unskilled work in Delhi is Rs. 271, Himachal Pradesh - Rs. 375, Tamil Nadu - Rs. 240, Uttar Pradesh - Rs.50 and in Bihar, it is Rs. 194.
[146] *Ibid.*
[147] *Bachchey Lal v. State of UP,* Criminal Writ-PIL No. - 2357 of 1997, dated 04 July 2023, Allahabad High Court.

> *respect to revision of wages to be paid to the convicts serving out their sentence.* ***At present, a paltry sum of Rs. 40, Rs. 30 and Rs. 25 is being paid to such convicts. It is informed, the same has not been revised for more than 10 years.****"*

As per information received from the Uttar Pradesh Prison Department as on 31 December 2023, the prisoner's wage has now been fixed at a meagre sum of Rs. 50 per day. This concern has also been raised by the Parliamentary Standing Committee on Home Affairs in its 245th Report titled '*Prison – Conditions, Infrastructure and Reform*s':[148]

> "*However, from the presentations it has been found that* ***the wages/earnings which they (prisoners) are getting are very less.*** *Hence, the Committee is of the view that it is essential to ensure that the wages paid to prisoners are fair and equitable and that prisoners are not exploited for their labour. Therefore, the* ***Committee recommends that the wages of the prisoners needs to be increased*** *as this will help to improve the socio-economic conditions of prisoners and reduce recidivism rates."*

In 1991, as per the recommendations of the National Commission on Rural Labour, the Central Government fixed a uniform and non-binding National Floor Level Minimum Wage (NFLMW) (*denoted by yellow bar in Figure 1.5*) to address the disparity in minimum wages across States.[149] Statutory backing has now been given to a National Minimum Wage by the virtue of Section 9(2) of the Code of Wages, 2019. The provision lays down that the minimum rates of wages fixed by the appropriate Government shall not be less than the floor wage fixed by the Central Government in clause (1), and if the minimum rates of wages so fixed is more than the floor wage, then, the appropriate Government shall not reduce such minimum rates of wages fixed by it earlier.

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[148] Prison – Conditions, Infrastructure and Reforms, Department-Related Parliamentary Standing Committee on Home Affairs, Report No. 245, 2023 <https://Sansad.In/GetFile/rsnew/Committee_site/Committee_File/ReportFile/15/188/245_2023_9_12.pdf?source=rajyasabha> accessed 10 February 2024.

[149] Government of India, Ministry of Labour & Employment, Report of the Expert Committe on Determining the Methodology for Fixing the National Minimum Wage <https://labour.gov.in/sites/default/files/commitee_on_determination_of_methodology.pdf> access on 1 September 2024.

Figure 1.5 compares the prisoner's wage with the NFLMW, which is fixed at Rs.176 per day with effect from 01.06.2017 (*denoted by red line in Figure 1.5*).[150] As per the Prison Statistics Report of 2022, 3 out of 34 prison departments have fixed prisoner's wages above the NFLMW.[151] As per the information received from prison departments as on 31 December 2024, Bihar and Tamil Nadu[152] have now fixed prisoner's wage for unskilled work at Rs. 194 and Rs. 240 per day respectively and hence, cross the benchmark of NFLMW. In Tamil Nadu, this rate was fixed based on a meeting of the Wage Fixation Committee in which it was suggested that the minimum wages to be fixed for unskilled prisoners should be not less than the NFLMW fixed for the year 2023.[153] The NFLMW may serve as a benchmark for concerned authorities in fixation of wages for prisoners.

Rule 15.46 of the MPM 2016 provides that the scheme of prisoner wage should be reviewed every 3 years and revised whenever necessary. However, in many States like Chhattisgarh, Gujarat, Kerala, Madhya Pradesh, Manipur, Mizoram, the wage structure has not been revised in the last 3 years till 2022.[154] The huge disparity in prisoner's wage necessitates the need to rationalise the wage structure in prisons in India, so that fair and reasonable wage apropos the type of labour and skill is paid to the working prisoner.

The Mulla Committee Report on Jail Reforms emphasised the need to rationalise the wage structure in prisons and allied institutions in every State and UT.[155] Based on the recommendations of the Mulla Committee, NHRC circulated the Indian Prisons Bill, 1996, Clause 11.21 of which states that:[156]

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[150] Government of India, Ministry of Labour and Employment, Unstarred Question No. 735, Final Report on Floor Wages and its Implementation, 08.02.2024 <https://sansad.in/getFile/annex/263/AU735.pdf?source=pqars> accessed on 4 August 2024.
[151] National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs 2023) <https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyearwise2022/1701613297PSI2022ason01122023.pdf> accessed 23 March 2024.
[152] As per information received from Tamil Nadu Prison Department vide GOMs No. 418 III, Prison Home Department dated 04.08.2023, Government of Tamil Nadu.
[153] *Ibid.*
[154] National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs 2023) <https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2022&keyword=> accessed 23 March 2024.
[155] All-India Committee on Jail Reform, 1980-83, Para 11.33.45 to 11.33.51.
[156] *State of Gujarat v. Hon'ble High Court of Gujarat*[1998] INSC 380.

"For obvious reasons, prisoners cannot be given the same rates of wages as are given in the private sector or in a public undertaking. Linking rates of wages of prisoners with commercial wage rates presents many practical difficulties. We are of the view that prisoners should be paid fair, adequate and equitable wages in proportion to the skills required for the product or job or service and the satisfactory performance of the prescribed tasks. ***While fixing such fair, adequate and equitable wage rate, the minimum wage rate for agriculture, industry, etc., as may be prevalent in each State and Union Territory should be taken into account.*** *Units of work prescribed for such minimum wage should also be taken into consideration. The average per capita cost of food and clothing on an inmate should be deducted from the minimum wage and the remainder should be paid to the prisoner. We consider that this would be a fair and equitable basis for fixing wage rates in prisons."*

Furthermore, the Orissa High Court in *Krushna Prasad Sahoo v. State of Odisha*[157] also observed that there must be some consistency in the increase in prisoner's wages vis-à-vis the increase in minimum wages for employment outside prisons. The increase in the minimum wage takes into account inflation and other economic factors; it is, therefore, logical that the wage fixation bodies for prisons also consider the same. The Court observed that:

"*The Court finds that the* ***rate of wages offered to prisoners, when compared to the best practices elsewhere in the country, is abysmally low.*** *The Court was shown copy of a recent circular dated 25th May 2021 issued under the Minimum Wages Act by the Labour Commissioner of Odisha fixing the minimum wages for unskilled category @ Rs. 311/- per day; for semiskilled @ 351/-, for skilled @ Rs. 401/- and for highly skilled @ Rs. 461/- per day. In comparison, the 'revised' wages paid to prisoners for their labour in terms of a recent circular dated 18th June, 2021 of the Home*

[157] W.P.(C) Nos. 6610 of 2006 and 3368 of 2014, dated 23 December 2021, Orissa High Court.

Department is Rs. 50 per day for 'unskilled', Rs. 60 per day for semi-skilled and Rs. 70 per day for skilled work. This is a pittance."

Rule 1055 of the Goa Prison Manual mandates the prisoner's wage to be equivalent to minimum wage in the State.

"*1055: Prisoners may also be employed in the service of maintenance and construction of prison buildings, for which they shall receive adequate remuneration or wages in accordance with the existing rules and which* ***shall not be less than the wages provided under the Minimum Wages Act.****"*

Under the Minimum Wage Act, 1948 (now subsumed under the Code of Wages 2019), a minimum wage is prescribed for each industry in all the States. In light of the above discussion, a comparative analysis in terms of ratio of the lowest minimum wage (MW) fixed for the scheduled employments in the State/UT to the daily wages fixed for convicts (PW) in all the States and UTs has been done below:

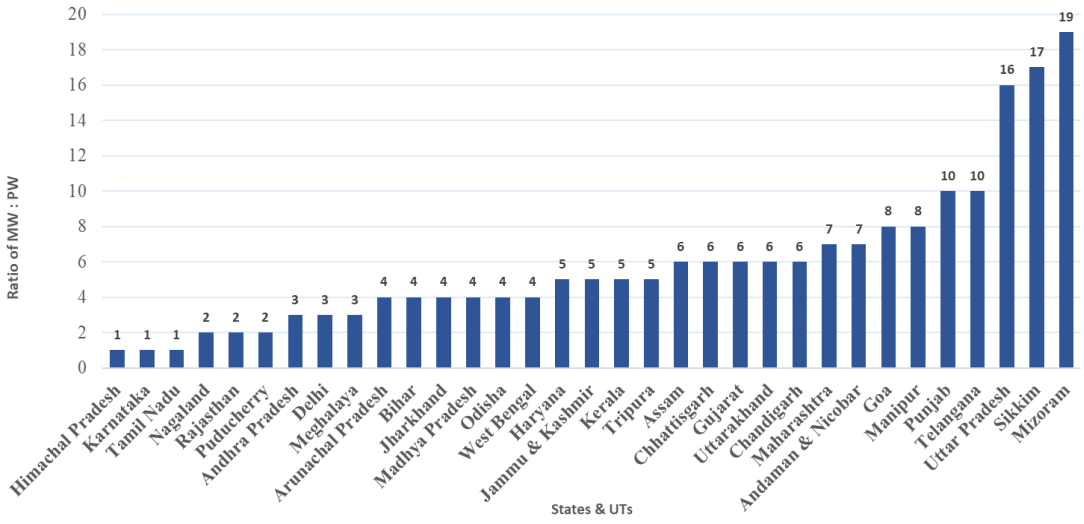

Figure 1.6 : Ratio of Minimum wage (MW) to Prisoner's wage (PW)[158]

[158] Annexure B : Comparison of Prisoner's Daily Wage (PW) with the Lowest Minimum Wage in the State (MW).

The above bar graph shows that while prisoner's wage per day is at par with minimum wage in Himachal Pradesh, Karnataka and Tamil Nadu, in States of Uttar Pradesh, Sikkim and Mizoram, the lowest minimum wage fixed for any employment is 16, 17 and even 19 times more than the wages paid to prisoners for unskilled labour respectively in the States. The Supreme Court, in *State of Gujarat v. Hon'ble High Court of Gujarat*,[159] observed that the right to life and dignity of the prisoners includes within its ambit payment of adequate wages for the work done in prisons. Justice K.T.Thomas from a dissenting viewpoint observed that:

> *21."We are, therefore, of the view that where a person provides labour or service to another for* ***remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23****."*

Paying reasonable and timely wages to working prisoners is an intrinsic part of the dignity of the prisoner. States must undertake efforts to revise prisoners' wages to ensure that the prisoners are given reasonable compensation for the work done in prisons.

1.8 Women prisoners

Out of the 5,73,220 prisoners in India in 2022, 23,772 were female prisoners which accounts for 4.1% of the total prison population. As per the Prison Statistics India 2022, since 2018, there has been an increase of 19% in the female prisoners lodged in Indian jails.[160] The female prisoners are either lodged in dedicated women jails or in a separate women ward/enclosure attached to the male prisons. As per the Prison Statistics Report 2023 of NCRB, only 19.9% of female prisoners are lodged in 35 women jails across 16 States and remaining 80.1% of women prisoners were lodged in other types of jails.[161] In

[159] 1998 INSC 380.
[160] National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs 2023) <https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2022&keyword=> accessed 23 March 2024.
[161] National Crime Records Bureau, Prison Statistics India 2023 (Ministry of Home Affairs) <https://www.ncrb.gov.in/uploads/files/PSI-2023.pdf> accessed 19 November 2025.

2022, 20 States and Union Territories, housing 5,845 women prisoners do not have any dedicated prisons for women.[162]

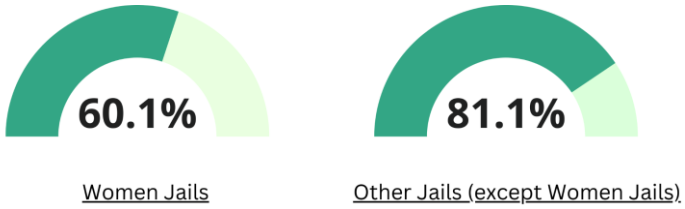

Figure 1.7 - Occupancy Rate of women inmates in women jails and other jails[163]

While the overall occupancy rate of women inmates in other jails except women jails is 81.1%, there is overcrowding in five jails in India as shown in the following graph.

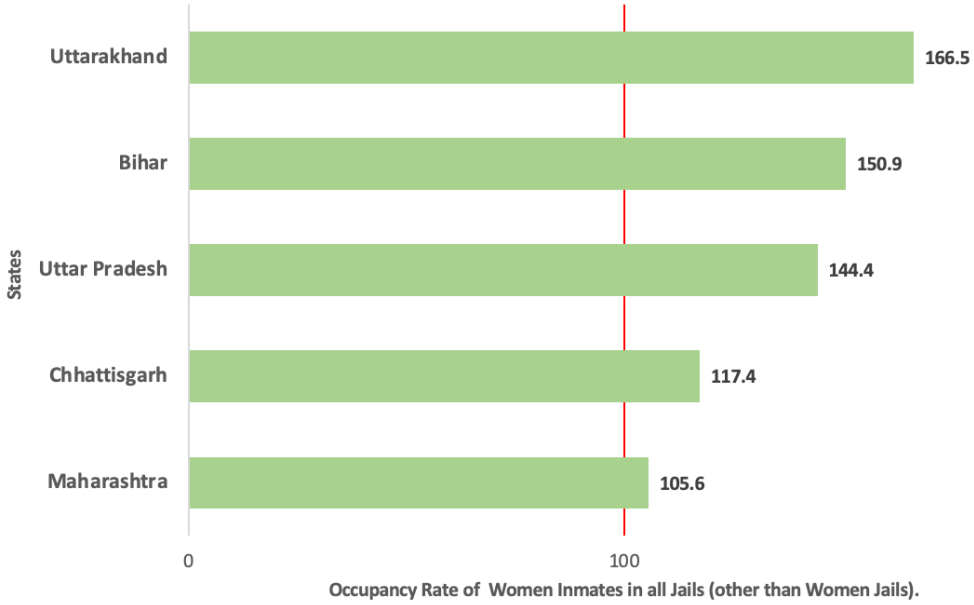

Figure 1.8 - Occupancy rate of Women Inmates in other jails

Overcrowding has a negative impact upon the mental and physical health of the prisoner irrespective of gender. Hence, women who have special gender-specific needs confront different kinds of issues due to overcrowding. From dignity in search methods, specific

[162]National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs 2023) <https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2022&keyword=> accessed 23 March 2024.
[163] *Ibid*. This also includes 18 transgender prisoners.

dietary and medical requirements, menstrual healthcare, special focus on pregnant women and women prisoners with children, female prisoners must be dealt with more sensitivity.[164]

1.8.1 Menstrual Health in Prisons

UNICEF defined menstrual health as encompassing menstrual health and broader systemic factors that link menstruation with health, well-being, gender equality, education, equity, empowerment, and rights.**[165]** This definition was further expanded on by the United Nations Population Fund (UNFPA) in its report, wherein it stated that menstrual health is not the mere absence of disease or infirmity, but the complete state of physical, social and mental wellbeing.**[166]** These definitions highlight that it is imperative to ensure menstrual health and hygiene, including its social and psychological dimensions in order to truly achieve menstrual health.**[167]**

The constitutional imperative of right to health and dignity mandates the State to cater to the gender-specific needs of every person like reproductive and menstrual needs of women.[168] Menstrual health in this sense refers to equal access to menstrual healthcare and hygiene along with proper education to eradicate any stigma around it.[169] Out of the 23,772 women prisoners in India, 80.2% of them were between 18-50 years old in 2022,[170] and thus likely to have an active menstrual cycle. While there are numerous awareness

[164] Diksha Pandey, *Female Prisoners in India: The Consequences of Triple Marginalisation* (Social & Political Research Foundation, Issue Brief, 2021), https://sprf.in/wp-content/uploads/2021/02/Female-Prisoners.pdf, accessed 1 November 2025.
[165] United Nations Children's Fund, Guidance on Menstrual Health and Hygiene UNICEF (2019).
[166] United Nations Population Fund, Menstrual Health and Hygiene Management for Persons with Disability UNFPA (2022). https://india.unfpa.org/sites/default/files/pub-pdf/final_mhhm_-_for_persons_with_disability.pdf
[167] White Paper on Menstrual Leave, Centre for Research and Planning, Supreme Court, 2025.
[168] *Suchita Srivasta v. Chandigarh Administration* [2009] 14 SCR 989.
[169] The term 'menstrual equity' was coined by Jennifer Weiss-Wolf in 2015, as cited in Menstrual Equity A Legislative Toolkit, American Civil Liberties Union National Prison Project, December 2019.
[170] National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs 2023) <https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2022&keyword=> accessed 23 March 2024.

drives and initiatives to do away with the taboo around menstruation, more emphasis needs to be laid on the condition of menstruating women prisoners in jails.

To ensure that menstruating prisoners are not deprived of dignity in maintaining basic menstrual hygiene inside prisons, minimum standards of sanitary supplies and waste disposal must be maintained in prisons. Rule 26.67 of the MPM 2016 provides that sterilised sanitary pads should be issued to the women prisoners 'as per the requirements'.[171]

As per the information received from the prison departments, in Chhattisgarh, Karnataka, Gujarat, Assam, Arunachal Pradesh, Haryana, Tamil Nadu, Delhi, Uttarakhand, Jharkhand, Kerala and Puducherry, sanitary napkins are provided based on the 'requirement' of the prisoner in consonance with the MPM. As per the Chandigarh Prison Department, sanitary napkins are provided to women as per the demand raised by the Jail Medical Officer, which is based on the demand given by women prisoners. However, there are prisons in India which prescribe a fixed number of sanitary napkins or packets to the women prisoners, which varies with each prison. For instance, prisons in Sikkim andGoa provide 2 to 4 sanitary packets a month. Andhra Pradesh and West Bengal provide 8 to 18 sanitary napkins per month to the menstruating prisoners. A few prison manuals like Maharashtra also mention the use of cloth during menstruation. For instance, Rule 5 (v) of the Maharashtra Prison Manual, 1979 states that:

> *"Every woman prisoner shall be supplied* ***suitable clothes*** *for sanitary and hygienic purposes during menstruation period. Any woman prisoner who desires to do so shall be* ***permitted to buy sanitary napkins at her own cost****."*

[171]Model Prison Manual 2016, Rule 26.67.

The Maharashtra State Commission for Women, on the other hand, installed sanitary pad vending and disposable machines in nine jails in Maharashtra.[172] Similarly, Bihar also reported having vending machines installed for the dispensation of sanitary napkins.[173] The following photograph is from the inauguration of sanitary pad dispenser at Aurangabad's Harsul Prison:

Figure 1.9- Inauguration of Sanitary pad dispenser in Aurangabad's Harsul Prison[174]

It is also noteworthy that as an eco-friendly and affordable alternative to traditional sanitary pads, Kerala Prison Department has promoted the use of menstrual cups amongst the women prison inmates.[175]

The specific requirements of menstrual products, such as size of napkin and quantity varies from woman to woman. Women going through postpartum menstruation, which lasts around 6 to 8 weeks, may need extra sanitary supplies along with proper care and medication.[176] Therefore, setting a maximum limit on sanitary supplies to women prisoners may lead to women inmates resorting to unhealthy practices like using cloth, rags or

[172] Maharashtra State Commission for Women <https://mscw.org.in/u2.php> accessed 12 May 2024.
[173] As per information received from Bihar Prison Department.
[174] Ibid.
[175] As per information received from Kerala Prison Department.
[176] Diorella M. Lopez-Gonzalez and Anil K. Kopparapu, 'Postpartum Care of the New Mother', National Library of Medicine, 2022 <https://www.ncbi.nlm.nih.gov/books/NBK565875/> accessed 12 May 2024.

purchasing sanitary napkins at their own cost. As per the Union Ministry of Women and Child Development's *'Recommendations on Ensuring Menstrual Hygiene in Prisons'*,[177]

> *"4.* ***During admission, a menstrual kit*** *including sanitary pads/a choice of preferred products, panties/underwear (of varying sizes for different body types: S, M, L, XL) must be immediately provided for new entrants as women prisoners may not have contact with family, to enable supply of these basic amenities…*
>
> *6.* ***There is to be no limit on the quantum of products one can access to ensure menstrual equity****. Sterilised sanitary pads should be issued to women prisoners as per their requirements. The quantity of menstrual pads (Disposable Sanitary Pads) must be medically accepted as a minimum standard of change. Every menstruator should have access to at least 4-6 pads per day of their cycle (varying cycle lengths), making it a healthy practice to change pad/cloth once in 4-6 hours…*
>
> *75.* ***Contraception should be available in prison****, taking into account that contraceptive pills are not only used to prevent pregnancy, but also to treat other gender specific conditions, such as painful menstruation."*

Therefore, while there should be a minimum number of sanitary napkins provided to each menstruating prisoner per month in compliance with the minimum standard as shown above, setting a maximum limit in the prison manuals may leave scope for discretion of prison authorities and cause inconvenience to the prisoner in maintaining a healthy menstrual cycle.

Adequate menstrual supplies should be given to the women prisoners including hot water, pain-relieving medication and medical consultation as per requirement. Installing sanitary napkin dispensers in women ward enclosures and women jails is also a forward move towards upgradation of prison infrastructure in ensuring access to safe and dignified means

[177] *Women In Prisons*, Ministry of Women and Child Development Government of India, June 2018.

of maintaining menstrual health of women prisoners. However, it is essential that such dispensers make organic sanitary pads available free of cost to the prisoner and are replenished on a regular basis. At the time of inspection of women jails and wards, the respective legal services authority of the district should also interact with women prisoners and ensure that they are supplied with sufficient sanitary products.

a. Menstrual Waste Management

Menstrual waste management is a core component of maintaining menstrual hygiene. How sanitary waste is disposed of has a significant impact upon the environment and human health. As per the Guidelines for Management of Sanitary Waste by the Central Pollution Control Board (CPCB), method of waste disposal depends on factors like amount and type of materials, environmental considerations and available budgets.[178]

Information received from the prison departments in India reveals that menstrual waste is disposed of using various methods in prisons. The Agra District Jail faced the issue of disposal of sanitary waste by throwing it in dustbins or toilets and therefore, it installed the country's first sanitary napkin incinerator in 2018 in prison in collaboration with an NGO.[179] In around 50% of prisons, incinerators are used to destroy menstrual waste. Incinerators are machines which use combustion in a controlled environment to convert waste into ash that can be more easily disposed of.[180] In other jails, the garbage collection vehicle of Municipal Council is employed for the disposal of menstrual waste. Some prisons also tie up with private organisations for sanitary waste disposal. For instance, the Colvale Central Jail at Goa has signed an agreement with Biotic Waste Solutions Pvt. Ltd.

[178] Guidelines for Management of Sanitary Waste, May 2018, Central Pollution Control Board, Ministry of Environment, Forest & Climate Change, Government of India <https://cpcb.nic.in/uploads/MSW/Final_Sanitary_Waste_Guidelines_15.05.2018.pdf> accessed 12 May 2024.
[179] 'Sanitary napkin incinerator installed in Agra district jail for women inmates', *Times of India*, (Agra, 5 June 2018) <https://timesofindia.indiatimes.com/city/agra/-sanitary-napkin-incinerator-installed-in-agra-district-jail-for-women-inmates/articleshow/64454216.cms> accessed 12 May 2024.
[180] Menstrual Waste Management, WASH Matters, September 2019, <https://www.wateraid.org/in/sites/g/files/jkxoof336/files/menstrual-waste-management.pdf> accessed 29 May 2024.

for lifting and disposal of sanitary napkins.[181] In a few jails, menstrual waste is also disposed of as biomedical waste.[182]

As per the information received from prison departments, it was also found that jails, particularly the North-Eastern States like Sikkim, Tripura and Manipur, use onsite waste disposal methods like the pit system in which the waste is buried in earth. Prisons in West Bengal also resort to manual pit systems through waste boxes which are locally disposed of by the female sweepers.[183]

As per the guidelines of CPCB, pit burning is less recommended for disposal of sanitary waste.[184] It provides that burning in an open heap should be totally avoided. However, if burning is the only viable option, a deep pit should be used to burn it.

In October 2022, Assam Legal Services Authority in collaboration with the prison department of Assam and other NGOs launched a pilot project 'Nirmal' at Central Jail, Guwahati, wherein it installed vending machines and incinerators of sanitary napkins at women cells of these jails.[185]

Awareness campaigns informing women prisoners about proper segregation and disposal of sanitary waste are crucial for ensuring its successful disposal. Disposal by external or internal incinerators and collection by the local municipality should be the preferred waste disposal mechanisms in prisons.

[181] As per information received from the respective prison department.
[182] *Ibid.*
[183] *Ibid.*
[184] Guidelines for Management of Sanitary Waste, May 2018, Central Pollution Control Board, Ministry of Environment, Forest & Climate Change, Government of India, <https://cpcb.nic.in/uploads/MSW/Final_Sanitary_Waste_Guidelines_15.05.2018.pdf> accessed 12 May 2024.
[185] Supreme Court of India, Indian Judiciary Annual Report, 2022-2023.

b. Menstrual Education

While sustained efforts have been undertaken to destigmatise menstruation, the notion of impurity around menstruating women persists in India.[186]

The need to challenge this taboo was articulated by the Supreme Court in *Indian Young Lawyers Association v. The State of Kerala,*[187] where the Court observed:

> *"The stigma around menstruation has been built up around traditional beliefs in the impurity of menstruating women. They have no place in a constitutional order. These beliefs have been used to shackle women, to deny them equal entitlements and subject them to the dictates of a patriarchal order. The menstrual status of a woman cannot be a valid constitutional basis to deny her the dignity of being and the autonomy of personhood."*

Sensitising women inmates and educating them regarding maintenance of menstrual hygiene plays a key role in securing their right to health and dignity..

As per the data received from the prison departments, local medical officers and gynaecologists visit the jails regularly, and educate the prisoners on maintaining personal hygiene. In Assam, NGOs like Commonwealth Human Rights Initiative (CHRI) under the Prison Reforms Programme and 'Kriti Trust', a Delhi based NGO, have taken the initiative to visit prisons to conduct menstrual health and hygiene awareness programmes among the women prisoners.[188]

In Bihar, health camps of obstetrics and gynaecology are conducted regularly, sensitising female prisoners about menstrual health.[189] In Meghalaya, prison authorities, with the assistance of the District Social Welfare Department, provide general awareness relating

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[186] Irina Cohen, 'Menstruation and Religion: Developing a Critical Menstrual Studies Approach' in Chris Bobel, Inga T Winkler, Breanne Fahs *et al* (eds), *The Palgrave Handbook of Critical Menstruation Studies* (Palgrave Macmillan 2020) https://www.ncbi.nlm.nih.gov/books/NBK565592/
[187] (2019) 11 SCC 1
[188] As per data received from prison departments.
[189] *Ibid.*

to the health of female prisoners to all inmates and staff.[190] These initiatives should be regularly undertaken to educate female inmates of menstrual hygiene practices, while promoting overall menstrual well-being within the prison environment. Additionally, use of menstrual cups and biodegradable sanitary products should also be promoted in prisons as part of menstrual education.

In a bid to combat the stigma around menstrual health and, simultaneously, increase the opportunity of earning livelihood for women prisoners after release, many prisons in India like Tihar Jail, Ernakulam District Jail in Kerala, Sabarmati Central Prison in Ahmedabad, Bhondsi Jail in Haryana have taken up the initiative to set up a sanitary pad production unit inside the prison.[191] Other prisons can also tie up with NGOs and Corporate Social Responsibility (CSR) programmes to train women prisoners to produce affordable and organic menstrual products, which can not only be available free of cost to women inmates, but also be marketed outside jails.

1.8.2 Reproductive Rights of Female Prisoners

Reproductive rights of women encompass not just prenatal and postnatal care of the expectant mother, but also the right to procreate and contracept as per the consent of the woman within the legal parameters. A majority of women prisoners in India fall in the reproductive age group.[192] As of 2023, there are 910 pregnant women prisoners housed in Indian prisons.[193]

Dealing with a question of medically-assisted procreation as ground for parole, the Delhi High Court in *Kundan Singh v. State Govt. of NCT Delhi* held that the fundamental right to have a child, cannot be deemed to be surrendered in favour of the State. The Court in this case observed:[194]

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[190] *Ibid.*
[191] *Ibid.*
[192] National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs 2023) <https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2022&keyword=> accessed 23 March 2024.
[193] As per data received from prison departments.
[194] W.P.(CRL) 2700/2023, dated 22 December 2023.

> *"36. The right to procreation is not absolute and necessitates a contextual examination. By taking into account factors such as the prisoner's parental status and age, a fair and just approach can be adopted to preserve the delicate equilibrium between individual rights and broader societal considerations.* ***It is essential to recognize that the right to procreate is inherently linked to the notion that every individual has the right to extend their lineage.*** *However, this right is not without its nuances, and its exercise is subject to various considerations. If the inmate already has children, this dynamic aspect of the right may be considered fulfilled."*

Similarly, while the personal liberty of a prisoner is surrendered to the State, the right to adequate healthcare under right to life of pregnant women prisoners is not obliterated. Rule 26.26 of the MPM 2016 provides that on readmission after bail, parole and furlough, every woman prisoner shall be examined by a female Medical Officer. In case of a possibility of a prisoner being pregnant, she shall be sent to the District Hospital for detailed examination and report. It further provides that:

> "*26.27 When a woman prisoner is found, or suspected, to be pregnant at the time of admission or later, the lady Medical Officer shall report the fact to the Superintendent. Arrangements shall be made* ***at the earliest to get her medically examined*** *at the female wing of the District Government Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy and the probable date of delivery. After ascertaining all necessary particulars, a detailed report shall be sent to the Inspector General of prisons."*

In February 2024, the Supreme Court took *suo motu* cognizance of the issue of women prisoners getting pregnant while being inside the prison. However, later it was found that most of them were already expecting at the time of admission in prison.[195] Pregnancy is deeply intertwined with the right to dignity and privacy of a woman.[196] There is a need to

[195] *In Re: Inhuman Conditions In 1382 Prisons*, IA 36553/2024, dated 16 February 2024; Court in its own motion *In Re: Overcrowding in Prisons*, WPA 7252/2018, dated 20 February 2024.
[196] AIR 2017 SC 4161

properly screen the women prisoners for early pregnancy at the time of admission and maintain an updated database of the same in correctional homes. Particularly on return from prison leaves like parole, women prisoners should be medically examined for timely identification of pregnancy-related issues.

The physical and mental health of a pregnant woman is crucial for safe delivery and health of the newborn. It is, therefore, necessary that upon identification of pregnant women inmates, the prison administration is sensitive towards catering to the special dietary and medical needs of the pregnant women. The MPM 2016 recognises the need for specialised health care of pregnant women, children and lactating mothers as:

> *"26.29 Adequate and timely food including supplemental nutrients, a healthy environment and opportunities for regular exercise shall be provided to pregnant women, babies, children and breast-feeding mothers."*

The Ministry of Home Affairs in its report titled '*Women in Prisons, India*' recommended that a personalised programme should be drawn up for pregnant prisoners by a qualified health practitioner. It also recommended surprise inspections to check whether the prescribed diet is being provided to the inmates or not.[197] The Ministry recommended the introduction of fortified food and nutrient supplements in the prison diet to improve the health of inmates. Besides, regular gynaecological examinations of the women inmates should also be carried out to ensure that the pregnancies are continuing in a safe and healthy manner.

In *R.D. Upadhyay v. State of Andhra Pradesh*,[198] the Supreme Court held that before sending a pregnant woman to jail, it must be ensured that the concerned jail has basic facilities for child delivery as well as for providing prenatal and postnatal care for both the mother and the child. It acknowledged that overcrowded barracks may have a harmful impact upon the development of the child.Therefore, women should be given separate

[197] Women in Prisons, India, Ministry of Women and Child Development, June 2018, Para 5.6.4, 4.5.4.
[198] 2006 INSC 225

accommodation in jail with proper cot and bed to ensure that the atmosphere in jail is congenial for healthy delivery and upbringing of children. However, in 2018, the National Commission for Women (NCW) inspected 20 Central Jails in India and found that no beds were provided for inmates in Central Jail, Motihari, Bihar, forcing them to sleep on the floor. Pregnant female inmates faced immense difficulty due to uncomfortable sleeping arrangements and wards infested with mosquitoes.[199]

The Supreme Court directed each State Government/Union Territory to set up a committee consisting of several government functionaries including the Principal District Judge, District Magistrate, Superintendent/Senior Superintendent of police, Secretary DLSA and Jail Superintendent*)*. It further issued notice in an application to include the seniormost female judicial officer in the District, and Women Jail Superintendent, wherever possible as part of this committee to give a fair assessment of the available security measures, hygiene measures, health care infrastructure, welfare of women prisoners and facilities for children lodged with their mothers in jails in each district.[200]

a. Temporary Release of Pregnant Prisoners

The legislature has employed a liberal approach in matters of liberty of women. This is reflected in the proviso appended to Section 437(1) CrPC:[201]

> *"Provided that the Court may direct that a person referred to in clause (i) or clause (ii)* ***be released on bail*** *if such person is under the age of sixteen years or* ***is a woman*** *or is sick or infirm;"*

While the legislative intent is to take a liberal approach for grant of bail to women, pregnancy is a compelling ground for grant of bail, at least for the purpose of delivery. The maxim '*partus sequitur ventrem'* which means that the fate of the child is decided by the

[199] A Report on Improving the Condition of Women Inmates In Prisons, 2018, National Commission for Women <http://ncw.nic.in/sites/default/files/JAIL%20REPORT_NCW_English_0.pdf> accessed 28 May 2024.
[200] *In Re: Inhuman Conditions In 1382 Prisons,* IA 36553/2024, Order dated 16 February 2024.
[201] Corresponds to Bharatiya Nagarik Suraksha Sanhita 2023, Section 480.

fate of the mother should not be followed in case of a pregnant prisoner. The atmosphere in which a mother bears a child has a significant impact upon the growth of the newborn.

Despite provisions of adequate dietary and medical supplies in women enclosures/prison, a prison cannot be conducive for childbirth. Given the restrictive prison infrastructure, it would affect the health of the mother and the newborn. Besides, delivery inside the prison may act as a penalty upon the child for being born to a mother in custody, as it carries a life-long stigma of being born in the prison. In *R. D. Upadhyay v. State of Andhra Pradesh,* the Supreme Court observed that pregnant women in jails should be able to give birth outside the prison facility (except in extreme cases), to ensure that the newborn is given proper care.[202] This was later incorporated in Rule 26.20 of the MPM 2016 and many State prison manuals:

> *"*26.20: *As far as possible (provided the prisoner has a suitable option)* ***arrangements for temporary release (or suspension of sentence in the case of a casual offender) will be made to enable a prisoner to deliver child in a hospital outside the prison****. Only when there is high security risk in the case of any particular woman prisoner, the facility to deliver child outside the prison shall be denied."*

For this purpose, MPM mandates a duty upon the Superintendent to communicate a list of pregnant inmates to the Duty Counsels and the District/State/Supreme Court LSA on a continuous basis for providing legal aid and assistance to them.[203] Such information should also be punctually supplied by the Superintendent to the trial court to enable it to reconsider the temporary release or suspension of sentence of the woman prisoner on the ground of pregnancy in appropriate cases. The UN General Assembly in its Resolution adopted on 21 December 2010 also emphasises the use of non-custodial measures for pregnant women.[204] Besides consideration for temporary release, proactive judicial efforts should

[202] 2006 INSC 225.
[203] Model Prison Manual,] 2016, Rule 8.48.
[204] United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, A/RES/65/229, General Assembly, United Nations, adopted on 21 December 2010.

also be made to expedite the trial of women undertrials whose children are with them in the prison.

b. Right to Terminate the Pregnancy Inside the Prison

The right of a woman to make reproductive choices to procreate or abstain from procreation is part of the right to life under Article 21 of the Indian Constitution. A woman, therefore, has the right to terminate her pregnancy to safeguard her health and bodily integrity, and more importantly, to hold the steering of her own life. A woman in custody is on the same footing as any free woman when it comes to her choice of motherhood. However, social stigma, lack of information, and hesitance inside the prison may lead expectant women to resort to unsafe abortion methods, which may result in major health complications. Access to safe methods of abortion within the statutory norms along with adequate reproductive education must be given to the women prison inmates.

There have been several instances of delay by prison administration and lack of sensitivity in termination of pregnancy that has led to deprivation of dignified life to the pregnant prisoner inside the jail. In 2013, in *Hallo Bi @ Halima v. State of Madhya Pradesh*,[205] an undertrial woman prisoner who got pregnant due to forced prostitution had given a requisition to abort with the jail authorities, who forwarded the same to the concerned CJM. The application was rejected by the CJM. Aggrieved by this rejection, she had to move the High Court, which finally acceded to her request of terminating the pregnancy.

Pregnancy is a time-sensitive matter. In 2016, the Bombay High Court also faced a similar factual situation of procedural delay in granting permission for abortion.[206] This PIL addressed a misconception perceived in the process of obtaining permission under the MTP Act. In this case, a 4 months pregnant undertrial prisoner requested a Sessions Judge to permit terminating her pregnancy due to health reasons. While the Medical Officer approved the termination, he informed the judge that a proposal has to be sent to a District

[205] 2013 Cri LJ 2868 (MP).
[206] *High Court on its own Motion v. State of Maharashtra* [2017] Cri LJ 218 (Bom).

Level Committee under the MTP Rules, 2003 which may take time, therefore, the judge forwarded the requisition to the High Court and also to a hospital. However, the hospital did not take any action for a month, due to which the judge requested the High Court for urgent directions, which is the present case. The High Court observed and directed that:

> *"21. If a pregnant prisoner wants to terminate her pregnancy, then provision of section 3(2)(b)(i) or (ii) are applicable.* ***She being a prisoner should not be treated differently than any other pregnant women.*** *We, with all responsibility state that Section 3 of Medical Termination of Pregnancy Act bestows a very precious right to a pregnant woman to say no to motherhood…*
>
> *25. In view of the above, directions are given as under:*
>
> *1. (i). Upon admission into a jail/prison, every woman prisoner of child bearing age shall undergo a Urine Pregnancy Test (UPT) within 5 days of being admitted to jail.*
>
> *(ii) Every woman prisoner of child bearing age shall undergo a second UPT approximately 30 days after admission into jail/prison in case the UPT under 1(i) is not positive.*
>
> *2. In case, the UPT is positive,* ***the Medical Officer shall inform the prisoner that she can get the pregnancy terminated*** *if her case falls under Section 3 or 5 of the Medical Termination of Pregnancy Act.*
>
> *3. If the prisoner indicates she wants to terminate the pregnancy, her statement should be recorded by the Jail Authority or Medical Officer to that effect and the record of the statement be maintained. A copy of that statement be forwarded with the prisoner when she is referred to the hospital.*
>
> *4. If the prisoner indicates that she wants to terminate the pregnancy, the Medical Officer and Jail Superintendent shall ensure that woman prisoner is sent on urgent basis to the nearest Government Hospital to help her*

terminate the pregnancy. ***It is made clear that they shall not wait for any order of the Court if the case falls under Section 3 or 5 of the Act****…"*

At present, the MPM 2016 and the State jail manuals do not explicitly cater to the right to reproductive choice of a woman prisoner. This gap should be filled by reading the prison statutes with the MTP Act and Rules. There is also a need for regular sensitisation and training of prison staff and judges to minimise procedural hurdles which may cause delay in ensuring that the right to procreate or abort is honoured with dignity even in the prison premises.

1.8.3 Equitable opportunity to reform

While women are becoming an equal part of the workforce in society, prison manuals are yet to break free from the stereotyped division of work among women prisoners, limiting them to tasks such as cooking and sifting grains. Despite being a guiding document, the MPM 2016 is silent on the equity of opportunity of prison labour for women prisoners. It merely states that women shall be allotted two-third of labour allotted to men. Many state prison manuals (as discussed below) also reflect the gender bias by assigning women prisoners tasks that are predominantly domestic in nature, thereby, restricting opportunities for the skill development and rehabilitation of women inmates. For instance, the Rule 676 of the Puducherry Prison Rules, 2021 provides that:

"676. Tasks to be imposed on female and adult convicts.— Female prisoners shall ***ordinarily be employed in cooking or in the preparation of articles of food*** *such as pounding, husking or sifting grain and the like, but, shall not be employed in grinding grain except as a punishment. The tasks to be imposed on females or adult convicts respectively shall not in any case exceed two thirds of the maximum task for hard and medium labour, prescribed in respect of adult male convicts."*

Similarly, Rule 63 of the Madhya Pradesh Jail Manual, 1987 provides that:

"Under ordinary circumstances breaking stones, chopping wood, pounding aloe for the fibre, watering trees, gardening and repairing roads in the jail

compound will afford suitable labour for male convicts. ***Female convicts may be employed in cleaning and grinding grain, etc.*** *A fixed task shall be allotted and enforced in all measurable work."*

Similar provisions find place in the prison legislations of States like Assam, Andhra Pradesh, Karnataka, Kerala and Tamil Nadu.[207] In *Vasantha R. v. Union of India*, the Madras High Court back in 2000 observed that:[208]

> *"86...Woman is no longer content merely to sit at home expecting the man to earn the bread for the family and await him for his return, Both are quite often equal partners in sharing the financial burden of running the home.* ***This social change must necessarily have its impact upon traditional perspectives concerning woman's role and that must call for change in our laws*** *and such laws should be to advance the constitutional guarantees and such laws and provisions shall not be affront to the rights guaranteed by Articles 14, 15, 16 and 19 of the Constitution as the Constitution mandates equality. No rule should operate as a deterrent to such change, but such a rule should advance or promote equality. Perhaps the* ***time has come where all posts should be thrown open to men and women equally-except those which due to physical reasons women cannot take up.****"*

Traditionally, Indian society, particularly in rural areas is structured in a way where most women are predominantly limited to the family household. In a circumstance as such, a woman being sent to prison often results in permanent dissociation from her family, thus limiting her chances of healthy functioning in the society due to financial and social decapitation. This structure is visible in prisons in the country, which are primarily constructed and operated around a male prisoner, where women only form 4.1% of the

[207] Assam Jail Manual 1987, Rule 420; Andhra Pradesh Prison Rules 1979, Rule 450; The Karnataka Prisons and Correctional Services Manual 2021, Rule 371; Kerala Prisons Rules 1958, Rule 403; Tamil Nadu Prison Manual 1982, Rule 450.
[208] (2001) IILLJ 843 Mad.

population.[209] Their population being so miniscule, prisons have not made strides in changing their structures to accommodate and rehabilitate them.

Many prisons today are encouraging women to learn computer skills to increase their employability after their release.[210] Similarly, female inmates in Assam are imparted training in tailoring, ornament making, pottery painting, handloom, weaving, embroidery work, beauty parlour course etc. in collaboration withState Institute of Rural Development, Assam, for which they are paid sufficient wages during their term in the prison.[211]

In 2018 at Luksar District Jail in Noida, few women prisoners who were teachers at the time of their arrest came forward to educate children inside the prison.[212] However, one of the women undertrials in that prison who has an MBA degree and was employed in a company at the time of her arrest struggles in utilising her time inside the prison due to lack of opportunities.[213] The MPM 2016 and some of the State jail manuals should be updated to give better opportunities to women prisoners. The Rajasthan Prison Rules, 2022[214] and Model Jail Rules for Superintendence and Management of Jails in Odisha, 2020[215] explicitly provide for equal access to work for both female and male prisoners:

> *"Equal access to work - The work and treatment programmes for female inmates shall be devised giving due consideration to their special needs and* ***such inmates shall be granted equal access to work, vocational training and education as male Prisoners****."*

[209] National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs 2023) <https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2022&keyword=> accessed 23 March 2024.
[210] As per information received from Assam Prison Department.
[211] *Ibid.*
[212] Vaibhav Jha, 'Books bring hope to women prisoners, kids at Greater Noida's Luksar jail', *Hindustan Times* (Greater Noida, 2 April 2018) <https://www.hindustantimes.com/noida/books-bring-hope-to-women-prisoners-kids-at-g-noida-jail/story-DJnpBTwSpDAUV1KazCp67K.html> accessed 20 March 2024.
[213] *Ibid.*
[214] The Rajasthan Prison Rules 2022, Rule 258.
[215] Odisha Model Jail Rules for Superintendence and Management of Jails in Odisha 2020, Rule 318.

Similarly, Rule 322 of the Uttar Pradesh Jail Manual, 2022[216] also provides for opportunity to women prisoners to enhance their skills beyond domestic industries:

> "*Female convicts shall ordinarily be employed on repair of clothing, cleaning grain, cooking food etc. and shall, whenever possible, be given instruction in needle work, knitting and other domestic industries or* ***any other programme with their consent so as to enhance their skills.*** *They shall not be employed on grinding grain or similar irksome labour."*

Drawing inspiration from the international prison regime, Rule 26 of the European Union Prison Rules expressly addresses the need to widen the scope of work for women prisoners. It provides that:[217]

> "*26.4 In conformity with Rule 13 there shall be no discrimination on the basis of gender in the type of work provided."*

The commentary of the recommendations on Rule 26.4 of the European Union Prison Rules further elaborates that:[218]

> "*Rule 26.4 indicates in general terms, that* ***women have access to employment of all kinds and are not limited to forms of work traditionally regarded as the province of women.*** *Work should have a broadly developmental function for all prisoners: the requirement that it should if possible enable them to increase their earning capacity serves the same function."*

It is time that the spirit of equality and dignified life to women prisoners as enshrined in the Constitution of India and the international frameworks like the Nelson Mandela Rules are incorporated in the prison regime of all the States. The MPM 2016 also needs to be updated in this regard to ensure that prison inmates regardless of gender have adequate

[216] Uttar Pradesh Jail Manual 2022, Rule 322.
[217] Council of Europe, European Union Prison Rules <https://rm.coe.int/09000016809c9086> accessed 20 March 2024.
[218] *Ibid.*

access to meaningful work opportunities inside the prisons. Parity in work types will support them in acquiring new skills and also help in maintaining the professional continuity of such women inmates who were working before their admission in prisons. Empowered women prisoners will go a long way in rekindling their family ties, which has a significant impact on their mental health. Enhancement of skills is part of the broader after-care system in prisons, as it prepares the prisoners for their re-entry and sustenance in the community after release.[219]

1.9 Prisoners with Disability

The fundamental rights enshrined in Part III of the Constitution extend to prisoners, a recognition that even individuals behind bars must have their right to life and dignity protected.[220]

As of 31 December 2023, Indian prisons housed 5.30 lakh inmates, of whom 9,095 (1.7%) were recorded as having mental illness. This included 3,722 convicts (40.9%), 5,293 undertrials (58.2%), and 66 detenues.[221] The Prison Statistics India (PSI) Report from the National Crime Records Bureau does not include any figures on prisoners with disabilities, or specify the types of disabilities they live with.[222] There is a huge data gap on persons with disabilities in the Indian justice system.[223]

In comparison, the United States Survey of Prison Inmates reported that in 2016, almost two in five (38%) state and federal prisoners had at least one disability, and the overall

[219] National Human Rights Commission, 'From Cell to Society: A Study on the Social Reintegration of Released Prisoners in Kerala and Tamil Nadu' (2019) <https://nhrc.nic.in/assets/uploads/training_projects/Dr.Santhosh%20Research%20Report.pdf > accessed 21 May 2024.
[220] Sunil Batra (II) v Delhi Administration 1979 INSC 27.
[221] Times of India, '1.7% of jail inmates in 2023 faced mental health issues: NCRB report' (New Delhi, 18 November 2024) <https://timesofindia.indiatimes.com/india/1-7-of-jail-inmates-in-2023-faced-mental-health-issues-ncrb-report/articleshow/124770805.cms>.
[222] Shruti Tripathi, Shreya Tripathi and Satendra Singh, 'Prison systems must embrace disability rights as a human rights imperative' (Indian Journal of Medical Ethics, Oct-Dec 2024) 9(4) NS 301 <https://ijme.in/wp-content/uploads/2024/05/Prison-systemsi_301.pdf>.
[223] Pacta, 'Access to Justice for Persons with Disabilities: A Data-Informed Report' (Pacta, 2025) <https://www.pacta.in/research-reports/access-to-justice-for-persons-with-disabilities%3A-a-data-informed-report>.

disability prevalence among incarcerated individuals stood at 66 percent. Women with disabilities showed an even higher representation at 79.5 percent.[224] Cognitive disabilities were the most common, affecting around two in ten prisoners and three in ten jail inmates. Globally, the World Health Organization notes that about 16 percent of the world's population, or one in six people, experience a disability, making this group the largest minority.[225]

India's prison statistics do not include disability-specific information, which means prisoners with disabilities remain largely invisible in official records.[226] This gap stands in clear violation of India's commitments under the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and the standards recommended by bodies such as the World Health Organization and the UN Committee on the Rights of Persons with Disabilities.[227]

The Supreme Court, and many disability rights advocates have repeatedly highlighted this issue. Without reliable data, it becomes impossible to design meaningful policies, allocate resources effectively, or meet constitutional and international responsibilities.[228]

a. Jurisprudence on Infrastructure in Prisons for Persons with Disability

It is appropriate to refer to cases to understand the plight of disabled prisoners in India. In *L Muruganatam v. State of Tamil Nadu*,[229] the two-judge bench of the Supreme Court, dealt with the treatment of a prisoner diagnosed with Becker Muscular Dystrophy, a severe locomotor disability. During his incarceration, the authorities failed to provide the necessary medical care, suitable food, and accessible facilities as required by law. The prisoner sought legal intervention to address these shortcomings. In response, the Court

[224] L Bixby, S Bevan and C Boen, 'The Links Between Disability, Incarceration, And Social Exclusion' (2022) 41(10) Health Aff (Millwood) 1460 <https://doi.org/10.1377/hlthaff.2022.00495>.
[225] World Health Organization, Global report on health equity for persons with disabilities (2022) <https://ifa.ngo/wp-content/uploads/2022/12/Global_Report-Health_Equity-Disability.pdf>.
[226] S Jayavardhini and Golla Madhu, 'Protecting The Unseen Prisoner: Disability Rights In India's New Criminal Justice Era' (2025) 3(4) Indian Journal of Law and Social Sciences Studies 455 <https://ijlsss.com/protecting-the-unseen-prisoner-disability-rights-in-indias-new-criminal-justice-era/>.
[227] Shruti Tripathi, Shreya Tripathi and Satendra Singh, 'Prison systems must embrace disability rights as a human rights imperative' (Indian Journal of Medical Ethics, Oct-Dec 2024) 9(4) NS 301 <https://ijme.in/wp-content/uploads/2024/05/Prison-systemsi_301.pdf>.
[228] *L Muruganantham v State of Tamil Nad*u, 2025 SCC OnLine SC 1444.
[229] 2025 SCC OnLine SC 1444.

issued detailed guidelines to ensure better accessibility, appropriate care, and equal treatment for prisoners with disabilities in Indian jails. This judgment reinforced the State's duty to uphold the constitutional and moral rights of incarcerated persons with disabilities.

Invisible disabilities caught legal attention with the case *Veena Sethi v State of Bihar*,[230] where the Supreme Court ordered the release of sixteen prisoners with mental illness who had been held for decades. The Court stressed the need for adequate mental health institutions and criticised the continued imprisonment of people with mental illness, noting that prisons are not appropriate places for their care and treatment.[231]

In the case *Rama Murthy v State of Karnataka*,[232] a Court-ordered inquiry highlighted lack of proper medical care for inmates with mental illness in prisons. Later, in the case *Charanjit Singh v State*[233], it was revealed the situation of Charanjit, a prisoner with mental illness whose trial had been halted because of his condition. In this case, National Human Rights Commission proposed comprehensive recommendations, however they lack implementation.[234]

The administration and management of prisons fall under the jurisdiction of the respective State Governments, as outlined in Entry 4 of List II of the Seventh Schedule of the Constitution. Consequently, it is the responsibility of individual State Governments to enact appropriate legislative frameworks governing prisons and inmates, guided by documents such as the Model Prisons Act of 2023 and the Model Prisons Manual of 2016.

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[230] AIR 1983 SC 339.
[231] Shruti Tripathi, Shreya Tripathi and Satendra Singh, 'Prison systems must embrace disability rights as a human rights imperative' (Indian Journal of Medical Ethics, Oct-Dec 2024) 9(4) NS 301 <https://ijme.in/wp-content/uploads/2024/05/Prison-systemsi_301.pdf>.
[232] AIR 1997 SC 1739.
[233] Criminal Writ Petition No 729 of 2002 and Criminal Writ Petition No 1278 of 2004, Delhi High Court.
[234] Shruti Tripathi, Shreya Tripathi and Satendra Singh, 'Prison systems must embrace disability rights as a human rights imperative' (Indian Journal of Medical Ethics, Oct-Dec 2024) 9(4) NS 301 <https://ijme.in/wp-content/uploads/2024/05/Prison-systemsi_301.pdf>.

Section 5 of the Model Prisons Act of 2023[235] underscores the importance of prison architecture and institutional pattern, and provides that prisons may be designed in such a manner to facilitate segregation and separate lodging of various categories of prisoners, and for attending to special needs of prisoners such as persons with disabilities.[236]

The Rights of Persons with Disabilities Act, 2016 (RPDA) expanded the recognised disabilities to 21 and requires laws and policies, including those governing prisons, to align with this rights-based approach.

b. Reasonable Accomodation

Refusing reasonable accommodations amounts to discrimination. The Supreme Court reiterated this in *Vikash Kumar v Union Public Service Commission*,[237] explaining that reasonable accommodation is central to inclusive equality.

> "*As the Committee on the Rights of Persons with Disabilities noted in General Comment 6, reasonable accommodation is a component of the principle of inclusive equality. It is a substantive equality facilitator. The establishment of this linkage between reasonable accommodation and nondiscrimination thus creates an obligation of immediate effect. Under this rights-based and disabled-centric conceptualization of reasonable accommodation, a failure to provide reasonable accommodation constitutes discrimination.*"

Article 2 of the UNCRPD introduces the concept of 'reasonable accommodation', which means that the authorities must make necessary adjustments to procedures and physical spaces in detention facilities so that prisoners with disabilities can exercise their rights on an equal basis with others.[238] This obligation is also reflected in the revised Nelson Mandela Rules (Rule 5.2), which are the United Nations Standard Minimum Rules for the

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[235] Model Prisons and Correctional Services Act 2023, available at <https://www.mha.gov.in/sites/default/files/advisory_10112023.pdf>.
[236] Model Prisons and Correctional Services Act 2023, s 5(3).
[237] AIR 2021 SC 2447.
[238] United Nations, 'Convention on the Rights of Persons with Disabilities' (2022) <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>.

Treatment of Prisoners. Together, the UNCRPD and the RPDA expand the understanding of equality by recognising the need to accommodate individual differences as an essential part of respecting human dignity.[239]

Many state-level prison manuals lack specific provisions addressing the needs of prisoners with disabilities, there are notable exceptions. For example, Uttarakhand revised its Jail Manual in 2023 to include a dedicated chapter on "differently-abled prisoners". The Uttarakhand Jail Manual (Rules) 2023[240] defines disability to encompass blindness, low vision, hearing impairment, locomotor disability, and other specified disabilities prescribed by the government.[241] It mandates that prison authorities ensure adequate facilities for prisoners with disabilities, protect them from abuse and cruel treatment and provide equal opportunities for education, training, and skill development.[242] Further, it stipulates that education and training for prisoners with visual or hearing impairments be provided in appropriate languages and modes of communication.[243] Qualified professionals proficient in sign language and Braille are to be employed to facilitate communication and skill development.[244] Additionally, vocational training programs tailored to the needs of prisoners with disabilities are mandated for those with developmental, intellectual, multiple disabilities, and autism.[245]

States and Union Territories can also rely on international standards such as the Nelson Mandela Rules,[246] while enacting their respective Prison Manuals. These rules advocate for reasonable accommodations to ensure equitable access to prison life for prisoners with

[239] Shruti Tripathi, Shreya Tripathi and Satendra Singh, 'Prison systems must embrace disability rights as a human rights imperative' (Indian Journal of Medical Ethics, Oct-Dec 2024) 9(4) NS 301 <https://ijme.in/wp-content/uploads/2024/05/Prison-systemsi_301.pdf>.
[240] The Uttarakhand Jail Manual (Rules) 2023, available at <https://prison.uk.gov.in/files/english_Jail_manual,_2023.pdf>.
[241] ibid Rule 689.
[242] ibid Rule 691.
[243] ibid Rule 692(ii).
[244] ibid Rule 692(iii).
[245] ibid Rule 692(vii).
[246] The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), <https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf>.

disabilities. They also prohibit the solitary confinement of prisoners with disabilities when such measures would exacerbate their conditions.[247]

c. Guidelines

The two-judge bench of the Supreme Court comprising Justice J B Pardiwala and Justice R Mahadevan,[248] passed detailed directions to ensure that prisoners with disabilities are treated with dignity and receive equal protection of their rights. These directions were issued in line with Articles 14 and 21 of the Constitution, the Rights of Persons with Disabilities Act, 2016, and India's commitments under the UN Convention on the Rights of Persons with Disabilities. The key directions include:

1. Prison authorities must identify prisoners with disabilities at the time of admission. Every inmate should have the opportunity to declare their disability and state their specific needs.

   1.1 All essential information, including prison rules and regulations, must be provided in formats that are accessible and easy to understand, such as Braille, large print, sign language, or simplified text.

2. Prison infrastructure must be upgraded to ensure accessibility. This includes wheelchair-friendly spaces, accessible toilets, ramps, and sensory-safe environments.

3. All prisons must set aside dedicated spaces for physiotherapy, psychotherapy, and other therapeutic services needed by prisoners.

4. A State-level accessibility audit of all prisons in Tamil Nadu must be completed within six months by a committee comprising officials from the Social Welfare Department, the Department for the Welfare of Differently Abled Persons, and certified access auditors.

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[247] Supreme Court of India, Handbook Concerning Persons with Disabilities (2024) Centre for Research and Planning, Supreme Court of India <https://cdnbbsr.s3waas.gov.in/s3e58aea67b01fa747687f038dfde066f6/uploads/2024/09/20240930824409118.pdf>.

[248] *L Muruganatam v. State of Tamil Nadu*, 2025 SCC OnLine SC 1444.

4.1 These audits must be conducted regularly and updated in line with the Harmonised Guidelines and Standards for Universal Accessibility (2021).

5. Prison authorities must fully comply with Sections 40 and 45 of the RPwD Act, Rule 15 of the 2017 Rules, and the 2021 Harmonised Guidelines in all aspects of prison services and infrastructure.

6. Prisoners with disabilities must receive healthcare on par with services available outside prisons. This includes physiotherapy, speech therapy, psychiatric services, and assistive devices such as wheelchairs, crutches, and hearing aids.

7. Prison medical officers must be trained and sensitised to properly understand and address disabling conditions. Regular awareness programmes must also be conducted in all prisons.

8. Every inmate with a disability must be provided a nutritious and medically appropriate diet suited to their specific health needs.

9. Life-saving treatments and therapies, including physiotherapy and psychotherapy, must be available either within the prison or through linkage with government health facilities.

10. All prison staff must undergo comprehensive training on the rights of persons with disabilities. This training should cover:

    - principles of equality and non-discrimination,
    - handling disability-related needs with sensitivity,
    - appropriate language and conduct, as recommended in the UN Handbook on Prisoners with Special Needs.

11. The State Prison Manual must be reviewed and amended within six months to align with the RPwD Act and the UNCRPD.

11.1 The amended manual must include a specific section prohibiting discrimination and ensuring reasonable accommodation for prisoners with disabilities.

11.2 The updated manual must be displayed prominently in every prison.

12. The State must hold regular consultations with disability-sector organisations to frame inclusive policies and identify real-world accommodation needs.

13. A monitoring committee must be set up to conduct periodic inspections and submit compliance reports every three months.

14. The State must maintain detailed and regularly updated data on prisoners with disabilities, including their accessibility needs, accommodations provided, and medical requirements.

14.1 This is to ensure compliance with Article 31 of the UNCRPD and the provisions of the RPwD Act.

14.2 The collected data should be available in the public domain, subject to privacy safeguards.

15. The Director General of Prisons must submit a detailed compliance report within three months to the State Human Rights Commission, outlining the steps taken to meet these directions.

Part II: REFORMATION AND AFTER-CARE

Proponents of rehabilitation advocate that punishment must be tailored so as to reform and educate the offender from within so that he returns to mainstream society as a productive and law-abiding member.[249] They also recognise the importance of addressing the underlying factors that contribute to criminal behaviour. Back in 1969, Justice V.R. Krishna Iyer in *Sivaprasad v. State of Kerala*[250] observed that:

> *"17. ...Between the eye-for-an-eye attitude and the rehabilitatory objective, modern penal thought leans in favour of the latter; for,* ***'if you punish a man retributively, you must injure him. If you are to reform him, you must improve him. And men are not improved by injuries'.*** *If crime is pathological--and it is--sentences must be therapeutic."*

In this sense, prisons no longer serve as a place for administering punishment to deter and instil fear, but rather as correctional institutions. In the 5th National Conference of Heads of Prisons of States/UTs on Prison Reforms organised by BPRD in September 2016, the members adopted the following resolution for effective prison administration system:[251]

> *"**The nomenclature of the Prison Department may be changed to "Prison and Correctional Administration**", which should have integrated prison, correctional and probation services."*

[249] David Cohen, "Theories of Punishment" [2005] Cambridge University Press.
[250] Criminal Appeal No. 192 of 1969 and Criminal Revision No. 16 of 1969, Kerala High Court, dated 11 November 1969.
[251] No.16011/02/2016-PR dated 04.05.2017, MHA, Government of India <https://www.mha.gov.in/MHA1/PrisonReforms/NewPDF/ResolutionsAdvisory_08052017.pdf> accessed 22 April 2024.

Fostering the correctional objective of prisons, MPM 2016 incorporates the phrases 'correctional administration' and 'correctional personnel' and defines them.[252] Moreover, it also imposes on every prisoner a duty "to preserve and promote congenial correctional environment in the prison".[253] In compliance with the resolution, most of the prison departments have changed their nomenclature from *'prison'* to '*prison and correctional administration*'. Some States/UTs such as Chhattisgarh, Delhi, Haryana, Jharkhand, Nagaland, Punjab, Rajasthan, and Uttarakhand which have not changed the nomenclature of the prison departments should also reiterate their commitment to reform prisoners.[254]

It is noteworthy that the **State of Tripura has renamed prisons as "Sansodhanagar"** and has formulated the Tripura Sansodhanagar Rules, 2021 on the lines of the MPM 2016.[255] The Rules have also substituted 'prison department' as 'Sansodhanagar Department'. 'Sansodhonagar', in Bengali language, means a 'correctional facility'. The change in the nomenclature of prisons is a major step in destigmatising the societal subconscious in perceiving an offender not as a condemned person devoid of any rights but as an individual in need of correctional treatment. It is with this spirit that Part II of the Report analyses the measures for improving the mental health of the prisoners, evolution of an effective after-care system, and the need for open and semi-open jails in India.

2.1 Mental health of the Prisoners

Mental health has complex layers of emotional, social and psychological well-being. A person entering a prison as a convict carries a huge baggage of adverse emotions. Overcrowded prisons further deteriorate the mental health of the prisoner. Incarceration, therefore, extends beyond physical confinement.[256]

[252] Model Prison Manual 2016, Rules 1.7 and 1.8.
[253] Model Prison Manual 2016, Perspective, Duties of prisoners.
[254] As per the official websites of respective prison departments.
[255] Tripura Sansodhanagar Rules 2021, Rule 1A(25).
[256] Shreehari Paliath, *'The Brewing Mental Health Crisis in Indian Prisons'* (IndiaSpend, 2 August 2025) https://www.indiaspend.com/governance/the-brewing-mental-health-crisis-in-indian-prisons-963116 accessed 1 November 2025.

As per the data received from the prison departments, around 16,503 prisoners are suffering from mental illnesses.[257] The Prison Statistics Report by NCRB shows that **out of the 159 unnatural deaths in Indian prisons in 2022, 74.8% (119) of such deaths have been caused pre-dominantly by suicide.**[258] This suggests that the measures to ensure the mental health of prisoners in institutional custody is deficient.

Reform cannot happen in a hostile environment; it needs a therapeutic approach. With reform and rehabilitation being the core goal of the criminal justice system, improving the mental health of the prisoners is integral to the successful reintegration of the convict in society.

It is the State's responsibility to ensure that the basic right of mental health of the prisoner is not violated. This responsibility begins from the moment a prisoner enters the prison. At the time of entry to prison, a comprehensive health screening is conducted of the prisoner, which is discussed below.

2.1.1 Mental Health Screening at the Time of Admission

Rule 5.65 of the MPM, 2016 lays down that at the time of admission, the medical officer will examine the prisoner and record the findings in the following proforma for health screening on admission:

[257] Annexure D : Number of Prisoners with Mental Illness.
[258] National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs 2023) <https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2022&keyword=> accessed 23 March 2024.

APPENDIX-1

PROFORMA FOR HEALTH SCREENING OF PRISONERS ON ADMISSION TO PRISON

Case No.:

Name……Age…….

Sex……Thump impression ……Father's / Husband Name……..Date & Time of admission in the Prison……Identification remarks ……

Previous History of illness

Are you suffering from any diseases ?	Yes / No
If so, the name of the disease	…….
Are you now taking medicines for the same	Yes / No
Are you suffering from cough that has lasted for 3 weeks or more	Yes / No

History of drug abuse, if any

……..

Any information that the prisoner may volunteer

Physical Examination

Height…….cms., Weight……Kg., Last Menstruation period…….

1.	Pallor	:	Yes / No
2.	Lymph mode enlargement	:	Yes / No
3.	Clubbing	:	Yes / No
4.	Cyanosis	:	Yes / No
5.	Ieterus	:	Yes / No
6.	Injury, if any	:	……

7. Blood test for Hepatitis / STD including HIF (with the informed consent of the prisoner whenever required by law)
8. Any other……

System – Examination

1. Nervous system
2. Cardio Vasoular system
3. Respiratory system
4. Eye, ENT
5. Castric Intenstimil system abdomen
6. Teath Gum
7. Urins / Conital System
8. Mental and Psychological status

The Medical examination and Investigations were conducted with consent of the prisoner after explaining to him / her that it was necessary for diagnosis and treatment of the disease from which / he / she may be suffering.

Date of commencement of medical investigation

Date of completion of medical investigation

MEDICAL OFFICER

This proforma records the previous history of illness of the entrant and the findings of the physical and systemic examination of the prisoner. From the perusal of the proforma, it appears that it is limited to the examination of the physical health and does not take into account the mental health of the prisoner at the time of admission. Therefore, to understand and analyse the process of mental health screening, if any, in prisons, following question was circulated to the prison departments in all the States and UTs:

> ***"Is there any procedure of mental health screening of new inmates at the time of their admission?"***

Most of the prison departments responded in affirmative that the initial health screening of the newly admitted prisoners includes mental health screening.[259] For instance, the

[259] As per information received from respective prison departments.

Directorate of Prisons and Correctional Services, Odisha submitted that mental health screening of new inmates is done by the mental healthcare professionals like clinical psychologist and psychiatric social worker in most of its jails at the time of admission.[260] In West Bengal, the mental health screening is done as per the NIMHANS guidelines.[261] In Delhi, each inmate at intake is screened for mental and substance use disorder with the help of a mental health screening questionnaire by counsellors/medical staff. If the preliminary screening identifies signs and symptoms of mental health disorder, a mental health professional is consulted.[262] As per Karnataka, Telangana and Sikkim Prison Departments, mental health screening is done as per the proforma provided by NHRC.[263] The proforma of health screening as provided by NHRC is similar to that provided in MPM 2016.

In contrast, in States/UTs like Gujarat, Puducherry, Jharkhand, Madhya Pradesh, Chhattisgarh, the mental health of the new inmates is behaviourally examined by the jail medical officer at the time of their admission.[264] Further, the Andhra Pradesh Prison Department submitted that at the time of admission, all the prisoners are produced before the medical officer for screening as per NHRC guidelines[265] and information is then gathered about mental health history, previous diagnoses, and current symptoms. In order to assess the mental well-being of the prisoners, they are asked questions regarding their mental health and during incarceration, the jail authorities also monitor the inmate's behaviour to identify any signs of distress or issues of mental health.[266] As per the Department of Prison and Correctional Administration, Chandigarh, in addition to mental health screening by medical officers, consultation by clinical psychiatrist and psychiatric social worker is also done.[267]

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[260] *Ibid.*
[261] *Ibid.*
[262] *Ibid.*
[263] Annexure C : NHRC Proforma for Health Screening of Prisoners on Admission to Jail
[264] As per information received from prison departments.
[265] National Human Rights Commission, 'Advisory to Mitigate Deliberate Self Harm and Suicide Attempts by Prisoners' D No R-14/6/2022-PRPP (RU-4) (19 June 2023) <https://nhrc.nic.in/sites/default/files/NHRC%20Advisory%20on%20DSH%20and%20Suicide%20attempts%20by%20prisoners_2023.pdf> accessed 21 May 2024.
[266] As per information received from prison departments.
[267] As per information received from the Punjab Prison Department.

Moreover, Kerala, Jammu & Kashmir and Manipur Prison Departments submitted that a health screening is conducted for every prisoner at the time of admission, but there is no standard procedure of mental health screening for the newly admitted prisoners.[268] As per the information received from the Mumbai Central Prison, Maharashtra, any prisoner found exhibiting irregular behaviour is referred to a visiting psychiatrist/hospital for further treatment and management.

Persons suffering from conditions like depression, schizophrenia or having suicidal tendencies may not show any physical symptoms. They need a proper assessment by a trained professional to evaluate their mental state. For this purpose, there is a need for a dedicated proforma with a set of questions to assess the mental health of a newly admitted prisoner. The Madras High Court in *Mrs. S v. Superintendent of Prison Thoothukudi District* recommended that:[269]

> *"10. It is time that State revises the protocol regarding medical examination of the arrestees.* ***The proforma for health screening of prisoners must contain a specific column as regards the mental well being of the arrestee.*** *That column cannot be filled up after posing a formal question to the arrestee. The duty doctor must observe independently and gather inputs from the arrestee's next friend or relative."*

A matter related to the establishment of adequate mental healthcare facilities in prisons across the country is also *sub-judice* in the Supreme Court in *Kush Kalra v. Union of India.*[270] One of the pleas in this case is to include the mental health of the arrested person in the medical examination report of the prisoner at the time of admission in the prison.[271]

During the Covid 19 pandemic, health concerns related to the unpredictability of course of infection, availability of proper medical treatment, loss of family connections escalated among the people who were away from society, behind bars. To address the mental health concerns of the prisoners and the prison staff during Covid 19, the National Institute of

[268] As per information received from the prison departments.
[269] Madras High Court, WP(MD) No. 20261 of 2021, dated 16 November 2021.
[270] WP(C) No. 701/2022, dated 2 September 2022.
[271] Submissions in *Kush Kalra v. Union of India,* WP(C) No. 701/2022.

Mental Health & Neuro Sciences, Bengaluru (NIMHANS) came up with two handbooks for the management of mental health issues of the prison staff and prisoners. The handbook concerning prisoners titled '*Dealing with Mental Health Issues in Prisoners during COVID-19'* contains a mental health screening questionnaire as shown below:[272]

[272] P.R. Hegde and others, 'Dealing with Mental Health Issues in Prisoners during COVID-19: A Handbook: National Institute of Mental Health & Neuro Sciences, Bengaluru, India', (2021) <https://nimhans.co.in/wp-content/uploads/2021/09/Dealing-with-Mental-Health-Issues-in-Prisoners-during-COVID-19-1.pdf> accessed 18 April 2024.

a. NIMHANS Mental Health Screening Questionnaire

1. Are you suffering from any mental illness? Yes/No
   (If yes, please name or describe the condition)

2. Are you now taking any medicines for the same? Yes/No
   (If yes, please provide details)

3. Have you ever consulted a psychiatrist/got hospitalised for mental illness? Yes/No
   (If yes, please provide details)

4. Did you ever try to end your life? Yes/No
   (If yes, please provide details about the most recent attempt)

5. Did you ever try to injure yourself on purpose? Yes/No
   (for example cutting yourself, inflicting burns)
   (If yes, please provide details about the recent self-injurious behaviour)

6. Have you ever felt sad / depressed / unusually tired most of the days for at least 2 weeks?
   (If yes, please provide details) Yes/No

7. Have you ever felt useless, worthless, sinful, or guilty often for at least two weeks?
   (If yes, please provide details) Yes/No

8. Have you ever felt so irritable that you found yourself shouting at people or fighting
   (physical/verbal) with people or getting into an argument easily? Yes/No
   (If yes, please provide details)

9. Do people around you say that you are very short-tempered/ moody/ impulsive? Yes/No
   (If yes, please provide details with examples)

10. Are people around you worth trusting? Do they try to harm you or do things intentionally to harm you? Yes/No
    (If yes, please provide details)

11. Do people around you keep a constant watch on you or follow you or about talk you?
    (If yes, please provide details) Yes/No

12. Are you suffering from epilepsy? Yes/No
    (If yes, please provide details about the illness and medicine in taking)

(Please read the following questions aloud, so that the respondent understands the questions. Ask for clarification, explanation, and details for each 'yes' response. Document each response as well as the details)

In 2021, the MHA released an advisory requesting the prison authorities to make use of the guidance provided in these handbooks and explore and evaluate appropriate strategies for promoting mental wellbeing of inmates and prison staff.[273] Comprehensive mental health

[273] Ministry of Home Affairs, 'Advisory on Addressing Mental Health Issues of Inmates and Staff in Prisons and Correctional Facilities during COVID-19' No 17013/19/2021-PR (21 June 2021)

assessment of prisoners by mental healthcare professionals like clinical psychologists and psychiatrists at the time of admission will allow for the early detection of any kind of mental health issue. This will enable timely intervention and may even reduce the number of suicides and incidents of self-harm in prisons. In 2023, NHRC issued an advisory in this regard which provides that:[274]

> *"The newly admitted prisoners should be interviewed by a trained medical officer* ***along with a qualified psychologist*** *for identification of inmates who appears to be psychologically abnormal and who could be prone to suicidal tendencies, the key to identifying potentially suicidal behaviour in inmates is through careful inquiry/interview and assessment during initial screening of the inmates.* ***The pre-entry/initial health screening report of the prisoner must be filled up in detail and signed by both medical officer and psychologist after filling all the mandatory information.*** *Initial health assessment must be followed by regular follow up assessment as well."*

At present, the proforma used by most of the prison departments (as also annexed in the MPM 2016) provides for the signature only of the medical officer and not of the psychologist. It is necessary that all the States update the health screening proforma in light of the NHRC advisory of 2023 to include specific questions related to mental health, and endorsement of the report by a psychologist in addition to that of the medical officer.

As per the information received from prison authorities, in most of the States, mental health screening is done by the medical officer. In this regard, Section 31(2) of Mental Healthcare Act, 2017 provides that such medical officers should be given training to provide basic and emergency mental healthcare. The provision reads as:

<https://www.mha.gov.in/sites/default/files/2022-09/Advisorymentalhealthissuesprisoners_24062021_0%5B1%5D.pdf>
accessed 21 May 2024.

[274] National Human Rights Commission, 'Advisory to Mitigate Deliberate Self Harm and Suicide Attempts by Prisoners' D No R-14/6/2022-PRPP (RU-4) (19 June 2023)
<https://nhrc.nic.in/sites/default/files/NHRC%20Advisory%20on%20DSH%20and%20Suicide%20attempts%20by%20prisoners_2023.pdf>
accessed 21 May 2024.

> *"The appropriate Government shall, at the minimum,* ***train*** *all medical officers in public healthcare establishments and* ***all medical officers in the prisons or jails to provide basic and emergency mental healthcare.****"*

However, as per the information received from the prison departments, except in Odisha, Telangana, Karnataka, Manipur and in a few jails in Nagaland, no training is provided to the medical officers as mandated by Section 31(2) of the Mental Healthcare Act, 2017.[275]

Right to mental health is an intrinsic part of the right to a dignified life as encompassed in Article 21 of the Constitution. There is a need for adequate personnel appointed for this specific purpose so that prison authorities are able to cater to the mental health needs of the prisoners.

In Punjab, medical officers inside prisons are appointed on deputation basis and are rotated as per the orders of Civil Surgeon.[276] However, when it comes to the mental health personnel, there is inconsistency in their deployment. As per the Chandigarh Prison Department, a psychiatrist, clinical psychologist and social worker are appointed in the jail on contractual basis for the mental healthcare of inmates.[277]

Mental health experts like psychologists and clinical psychiatrists must be regularly deputed in all the prisons in India so they may identify vulnerable prisoners and provide individualised care and medication to them. In addition, the prison staff also must be imparted basic training in administering psychological first-aid following the guidelines issued by NHRC to develop skills to provide initial help to prisoners suffering from any mental illness or disorders.

Deteriorated mental health causes hindrance in the rehabilitation of the prisoner. Mental health screening at the time of admission to prison is the first step towards saving and curing lives inside the prison. Mental healthcare of prisoners involves understanding the needs and course of treatment for the prisoners.[278] For instance, prisoners sentenced to

[275] As per information received from the prison departments.
[276] As per information received from the Punjab Prison Department.
[277] As per information received from the Chandigarh Prison Department.
[278] India Justice Report, *India Justice Report: Ranking States on the Capacity of Police, Judiciary, Prisons and Legal Aid* (Tata Trusts 2025)

death need adequate counselling, family interviews, speedy trial of their case and a destigmatised prison environment to prevent them from having any suicidal tendencies.[279] Similarly, prisoners with substance abuse addiction need specialised psychological first-aid to de-addict them.

The factors that impact the mental health of a convict who has been sentenced to death and prisoners suffering from substance abuse addiction as well as measures of improvement are discussed hereunder.

2.1.2 Prisoners Sentenced to Death

Death sentence is the harshest form of punishment awarded to a person who is convicted in a case of the rarest of the rare category.[280] In India, between 2006 and 2022, only 7 executions were carried out, representing a mere 0.3% of the 2,172 death sentences handed down during this period.[281] It is also significant to note that while the chance of execution of death sentence in India is bleak in light of the statistical backdrop, **the number of persons sentenced to death who are lodged in various prisons in India has witnessed an increase of 35.3% over a period of five years** (2018 to 2022).[282]

Unlike other convicts, persons who are sentenced to death face a unique psychological challenge of isolation and uncertainty in a long-drawn legal process. Courts in India impose the death penalty in exceptional cases which shock the collective conscience of the society. Once a death sentence is awarded by a Court of Session, such a convict suffers a long period of incarceration waiting for the final decision on the death sentence (as discussed below). Over the years, an international consensus has emerged that execution after

<https://indiajusticereport.org/files/IJR%204_Full%20Report_English_Low.pdf> accessed 19 November 2025.

[279] NLU Delhi, *Death Penalty India Report Summary* (2016), https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/5b4ced7b1ae6cfe4db494040/1531768280079/Death+Penalty+India+Report_Summary.pdf

[280] *Bachan Singh v. State of Punjab*[1983] 1 SCR 145A.

[281] Calculated of the period 2006 to 2022 as per the Prison Statistics India, NCRB, MHA, Government of India. For the period 2001 to 2005, the complete prison statistics reports of NCRB are not available on the official website.

[282] National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs 2023 <https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2022&keyword=> accessed 23 March 2024.

avoidable delay under the harsh conditions of death row constitutes cruel and excessive punishment.[283] It is therefore also crucial to discuss the treatment meted upon the prisoners sentenced to death, inside the prison.

The judicial and executive process in case of a person sentenced to death is briefly represented below:

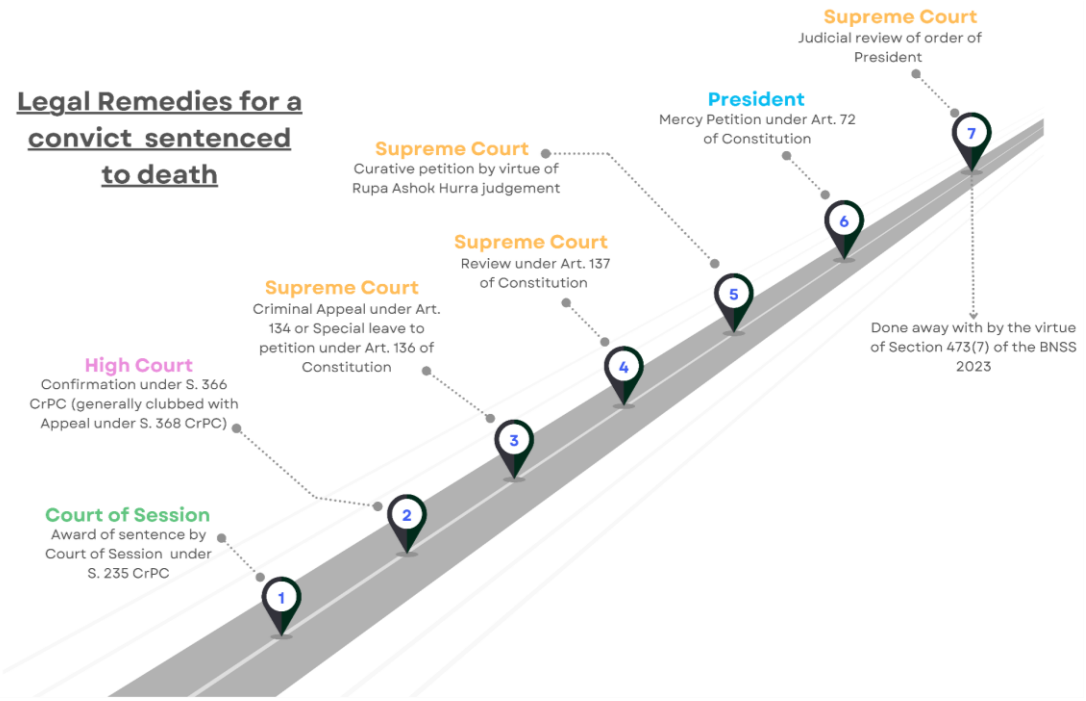

Figure 2.1 - Process in case of death penalty

For the purpose of an in-depth analysis of the time taken in the case trajectory of a convict sentenced to death from the point of sentencing by the Court of Session till the disposal of the mercy petition, the timeline of of five sample cases in which the plea for commutation on the basis of inordinate delay has been taken up by the Supreme Court during the period of 2019 to 2024, has been tracked. This will provide a brief understanding of the stage in which maximum delay is caused, and reasons thereof.

[283] *Noel Riley v. Attorney-general of Jamaica* [1983] 1 AC 719.

	Time taken in		
Name of Convict	**Judicial process before mercy petition after death sentence is awarded by Court of Session**	**Decision of mercy petition**	**Final outcome**
Balwant Singh Rajoana[284]	3 years	12+ years	Pending
Saibanna Ningappa Natikar[285]	2 years	7 years 8 months	Commuted to life imprisonment
Renuka Bai alias Rinku alias Ratan[286]	5 years	7 years 10 months	Commuted to life imprisonment
B.A. Umesh[287]	4 years 4 months	2.26 years	Commuted to life imprisonment
Jagdish[288]	3 years	5 years	Commuted to life imprisonment
Dharam Pal[289]	2 years	13 years 5 months	Commuted to life imprisonment
Ajay Kumar Pal[290]	3 years	3 years 10 months	Commuted to life imprisonment

Table 2.1 - Time taken in Judicial and Executive processes in death sentence cases

From the analysis of the above cases, it appears that while the time taken in the appellate and other stages in the High Court and Supreme Court ranged from around 2 to 5 years at the most, the time taken by the executive in deciding the mercy petition ranged from 2 to

[284] *Balwant Singh v. Union of India* [2023] INSC 482.
[285] *Saibanna v. Union of India* [2023] KHC 29226 DB.
[286] *State of Maharashtra v. Renuka* SLP (Crl.) No.12674/2022, dated 13 April 2023.
[287] *B.A. Umesh v. Union of India* [2022] INSC 1173.
[288] *Jagdish v. State of Madhya Pradesh [*2019] INSC 246.
[289] *Union of India v. Dharam Pal* [2019] INSC 563.
[290] *Ajay Kumar Pal v. Union of India* [2014] INSC 867.

more than even 13 years. These cases collectively reveal systemic issues of delay in the process of mercy petitions. The prolonged delay in deciding the mercy petition exacerbates the psychological and legal uncertainties faced by the convict. The fastest mercy petitions were decided in 3 days of the convicts Mukesh Singh and Vinay Sharma each in the *Nirbhaya Gangrape Case* in 2020,[291] and 6 days in 1996 in *Ravji's case*.[292]

It is significant to note that even after the Court orders the punishment of the death sentence, the convict so sentenced is entitled to the right to a dignified life just like any convicted prisoner, till the final execution of the sentence. In *Devender Pal Singh Bhullar v. State of NCT of Delhi,*[293] the Supreme Court also acknowledged the delay in deciding mercy petitions:

> "*Before parting with the judgment, we consider it necessary to take cognizance of a rather disturbing phenomena. The statistics produced by the learned Additional Solicitor General show that between 1950 and 2009, over 300 mercy petitions were filed of which 214 were accepted by the President and the sentence of death was commuted into life imprisonment. 69 petitions were rejected by the President. The result of one petition is obscure.* ***However, about 18 petitions filed between 1999 and 2011 remained pending for a period ranging from 1 year to 13 years.*** *A chart showing the details of such petitions is annexed with the judgment as Schedule 'A'. The particulars contained in Schedule 'A' give an impression that the Government and the President's Secretariat have not dealt with these petitions with requisite seriousness. We hope and trust that in future such petitions will be disposed of without unreasonable delay."*

[291] *Mukesh Kumar v. Union of India* [2020] INSC 103; *Vinay Sharma v. Union of India* [2020] INSC 184.
[292] 'Kasab's execution second fastest in the country?' *NDTV*, (21 November 2012) <https://www.ndtvprofit.com/business/kasabs-execution-second-fastest-in-the-country-313607> accessed 14 April 2024.
[293] 2013 INSC 249.

Such delay has often been attributed to change in government,[294] reshuffling of the cabinet,[295] delay in correspondence between departments and State Government,[296] receipt of incomplete summaries,[297] pending appeals of co-accused, and even national interest.[298] In one of the cases, the mercy petition of the convict was addressed to the Union Government because of which the Union Government sent it back as it was required to be looked into by the Governor of the State.[299]

When a convict under the sentence of death is imprisoned for an inexplicably long period of time under the constant fear of the end of one's life, it causes cumulative mental agony not only to the convict but also to the family of the prisoner, as well as the victim.

The Law Commission of India in its 262nd Report has also taken into account the immense physical and psychological suffering borne by death row prisoners due to oppressive incarceration conditions and long delay in trial, appeals, and executive clemency processes.[300] As per a clinical inquiry on 82 death row prisoners of five States, undertaken to study and aid death row prisoners by Project 39-A, an initiative of the National Law University, Delhi, it was found that 62.2% of them were diagnosed with at least one mental illness.[301]

On the judicial side, *Shatrughan Chauhan v. Union of India*[302] is a landmark case in which the Supreme Court laid down guidelines to safeguard the interest of death row convicts, and unify the implementation of laws dealing with mercy petitions and execution of convicts. One of the guidelines laid down in the judgment is:

> *"...regular mental health evaluation of all death row convicts should be done to see whether the death-row prisoners have not lost their mental*

[294] *Shatrughan Chauhan v. Union of India* [2014] INSC 46.
[295] *Ibid.*
[296] *Mahendra Nath Das v. Union of India* [2013] INSC 294, 1 May 2013.
[297] *Union of India v. Dharam Pal* [2019] INSC 563, 24 April 2019.
[298] *Balwant Singh v. Union of India* [2023] INSC 482.
[299] *Saibanna v. Union of India* [2023] KHC 29226 DB.
[300] Law Commission of India, The Death Penalty (Law Comm No. 262, 2015).
[301] 'Deathworthy A Mental Health Perspective of Death Penalty', Project 39A, October 2021, National Law University, Delhi
[302] 2014 INSC 46.

balance on account of prolonged anxiety and suffering experienced on death row."

The Supreme Court also attempted to establish guidelines for what constitutes inordinate delay in such cases. In *Vatheeswaran v. State of Tamil Nadu*,[303] the Court held that a delay exceeding two years in the execution of a death sentence should be considered sufficient for a convict to invoke Article 21 of the Constitution, and demand the quashing of the sentence. However, in *Sher Singh v. State of Punjab*,[304] the Supreme Court expounded on this position. While it acknowledged that prolonged delay in the execution of a death sentence is a critical factor in determining whether the sentence should be carried out or not, it rejected the rigid definition of inordinate delay proposed in *Vatheeswaran* judgment. The Court observed that imposing a strict two-year limit may enable prisoners to frustrate the cause of justice by engaging in frivolous legal proceedings. This stance was further reinforced in *Triveniben v. State of Gujarat*[305] in which the Court stated that if there is significant delay in execution, the prisoner is entitled to request a judicial review to determine whether it is just and fair to proceed with the execution.

a. Expediting the Clemency Process

Deciding mercy petitions is essentially an executive prerogative. As per the guidelines/instructions of the MHA on *"Procedure Regarding Petitions for Mercy in Death Sentence Cases",* the processing of mercy petitions must be expedited at every stage. In *State of Maharashtra v. Renuka Shinde,* the Supreme Court directed that:[306]

"all the States/appropriate authorities before whom the mercy petitions are to be filed and/or who are required to decide the mercy petitions against the death sentence, ***such mercy petitions are decided at the earliest so that the benefit of delay in not deciding the mercy petitions is not accrued to***

[303] 1983 SCR (2) 348.
[304] 1983 SCR (2) 582.
[305] 1989 INSC 45.
[306] SLP (Crl.) No.12674/2022, dated 13 April 2023.

> ***the accused*** *and the accused are not benefited by such an inordinate delay and the accused may not take the disadvantage of such inordinate delay."*

To expedite and ensure clarity in the clemency process, the Parliament has also introduced a new part E - *"Mercy petition in death sentence cases"* in Chapter XXXIV of the Bharatiya Nagarik Suraksha (Second) Sanhita, 2023. The relevant portion of Section 472 of this chapter is reproduced below:

> *"...(4) The Central Government* ***shall****, on receipt of the mercy petition seek the comments of the State Government and consider the petition along with the records of the case and* ***make recommendations to the President in this behalf, as expeditiously as possible, within a period of sixty days*** *from the date of receipt of comments of the State Government and records from Superintendent of the Jail.*
>
> *(5) The President may, consider, decide and dispose of the mercy petition and, in case there are more than one convict in a case,* ***the petitions shall be decided by the President together in the interests of justice.***
>
> *(7)* ***No appeal shall lie in any Court against the order of the President or of the Governor*** *made under article 72 or article 161 of the Constitution and it shall be final, and any question as to the arriving of the decision by the President or the Governor shall not be inquired into in any Court."*

By introducing a time period of 60 days for the Central Government to communicate the petitions to the President, the new law reflects positive changes. In *Epuru Sudhakar v. Government of Andhra Pradesh*,[307] the Supreme Court held that rejection of mercy plea by the President is subject to limited judicial review. However, Clause (7) of Section 472 of the BNSS, 2023 does away with the scope of reviewing the order of the President or Governor under Articles 72 or 161 of the Constitution respectively.

[307] 2006 INSC 695.

b. Use of Technology in Communication

The entire process of mercy petition from filing to communication of final order involves multi-departmental correspondences, file notings, and decision-making within the bureaucratic machinery. Digitising the mercy procedure may curb unnecessary procedural delay involved and bring transparency in the process.

At present, the Rashtrapati Bhavan website provides for a database of rejected, commuted, and pending mercy petitions. However, as of 29 May 2024, it shows only two rejected mercy petitions.[308] There is a need to regularly update this database, particularly the number of petitions that are pending and the stage at which it is pending.

In the United States, applications for clemency can be submitted online via the Office of the Pardon Attorney's website.[309] Moreover, in Kenya, an online system called **'Power of Mercy Petitions Management Information System'** (ePOMPMIS) has been launched by the ICT Authority of the Government of Kenya in collaboration with the Power of Mercy Advisory Committee (*figure 2.2* below). This system seeks to enhance transparency, accountability, participation, collaboration and feedback on the process of dealing with mercy petitions.[310]

[308] Mercy Petition, Rashtrapati Bhavan <https://rashtrapatibhavan.gov.in/mercy-petition> accessed 24 June 2024.
[309] Office of the Pardon Attorney, U.S. Department of Justice <https://www.justice.gov/pardon/help-me-choose> accessed 24 June 2024.
[310] Sally Namuye, 'Government digitizes power of mercy petition process', *KBC* (21 September 2023) <https://www.kbc.co.ke/government-digitizes-power-of-mercy-petition-process/> accessed 24 June 2024; E-Petition, Power of Mercy Advisory Committee, Executive Office of the President <https://powerofmercy.go.ke/e-petition> accessed 24 June 2024.

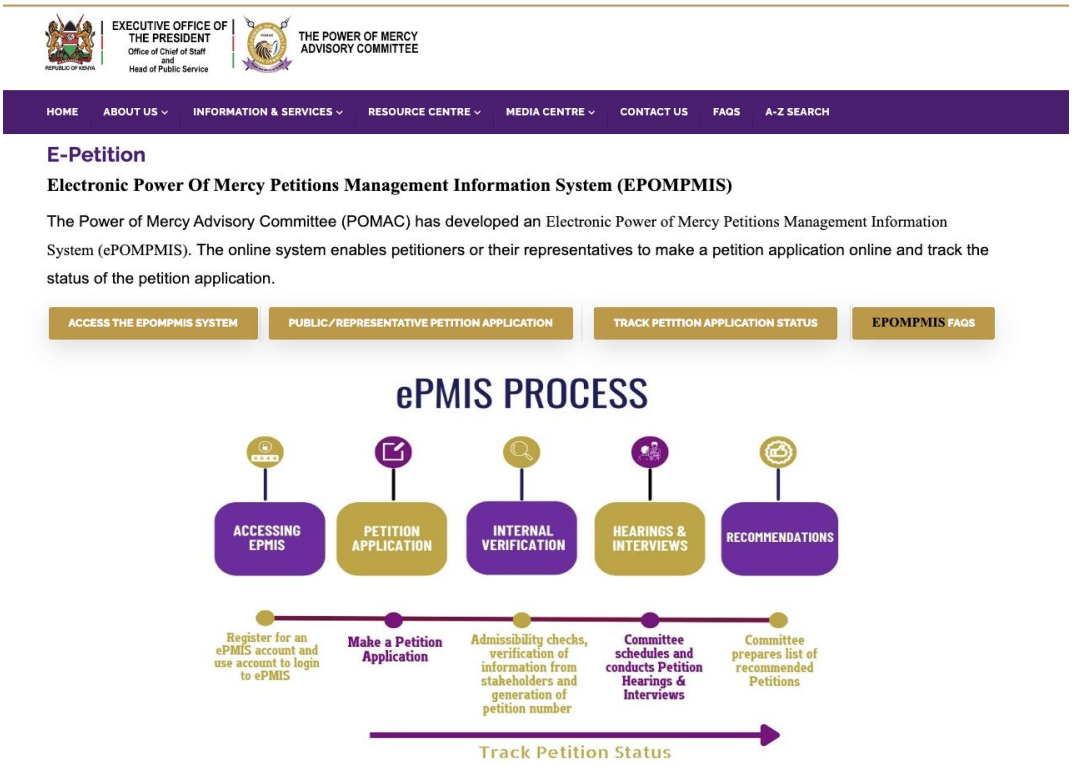

Figure 2.2 - Electronic Power of Mercy Petitions Management Information System in Kenya[311]

A key feature of this digitised system in Kenya is that the petitioner can easily track the status of the mercy petition.

The right to a speedy trial is implicit in the right of life and personal dignity of every person. It cannot be obstructed after the exhaustion of judicial remedies and therefore, must extend even at the stage of deciding mercy petitions in death sentence cases. With the digitisation of the justice system, it is time that the executive also explores the advantage of technology in facilitating faster coordination among government departments, and relieving the death row convicts of the limbo and lengthy incarceration, by expediting the mercy process.

c. Segregation of Prisoners Sentenced to Death

The reconsideration of decisions in the form of appeals, reviews, etc. leaves enough scope for rectification of errors, and procedural infirmities. The higher principle of proof 'beyond

[311] E-Petition, Power of Mercy Advisory Committee, Executive Office of the President <https://powerofmercy.go.ke/e-petition> accessed 24 June 2024.

reasonable doubt' has to, therefore, pass muster at many levels to ensure that no innocent person is punished. Thus, persons who are sentenced to death are not in the executable stage until all the available legal remedies are exhausted. In several instances, the Supreme Court has acquitted convicts whose death sentence has been confirmed by the High Court.[312] However, while analysing the prison manuals, it was found that States like Andhra Pradesh, Tamil Nadu and West Bengal use the term *'condemned'* for prisoners who have been sentenced to death at the very first instance, by the Trial Court. Even the cell in which such prisoners are placed is often called the 'condemned cell'. Provisions where such language has been used have been identified as below:

West Bengal[313]

> 70(1) "*For removal of doubt , it is hereby declared that for the purpose if Act, a prisoner sentenced to death by a component court shall be called* ***condemned prisoner****."*

Andhra Pradesh, Tamil Nadu[314]

> *"Confinement in* ***condemned cell*** *- (1) The prisoner shall then be removed to one of the condemned cell…"*

A death sentence order is not final until the convict has exhausted all the legal options. If a convict under the sentence of death is called a '*condemned prisoner'* immediately after the Trial Court imposes the death penalty, he can never be 'un-condemned' upon his acquittal. Such a prisoner has the right to live with dignity within the custodial confines like a normal convicted prisoner. However, equating such debasing terms with the prisoner is violative of Article 21 of the Constitution.

Besides degrading semantics, one of the major issues flagged in the present prison regimen is the solitary confinement of prisoners who are sentenced to death, even before being on the death row. For the purpose of custodial management and reformation, prisoners are classified on the basis of gender, age, stage of trial (undertrial/detenue/convict), gravity of

[312] *Rajesh v. State of Madhya Pradesh* [2023] INSC 839.
[313] The West Bengal Correctional Services Act 1992.
[314] Andhra Pradesh Prison Rules 1979, Rule 773(1); See also Tamil Nadu Prison Rules 1983, Rule 897.

offence, and other security requirements and accordingly, are segregated at the time of admission.

Prisoners who are sentenced to death are also kept in separate enclosures. However, the death sentence does not warrant any solitary segregation of such a prisoner before the exhaustion of all the legal remedies. With regard to prisoner '*under the sentence of death*', Clause (2) of Section 30 of the Prisons Act, 1894 provides that:

> *"Section 30(2) - Every such prisoner shall be* ***confined in a cell apart from all other prisoners****, and shall be placed by day and by night under the charge of a guard."*

Reading down this clause, the Supreme Court settled in *Sunil Batra v. Delhi Administration*[315] that solitary confinement of a prisoner who is not under a finally executable death sentence is violative of Article 14 and 21. It liberally construed 'shall' as 'shall be liable to' and held that:

> *"2…solitary confinement, even if mollified and modified marginally, is not sanctioned by Sec. 30 for prisoners 'under sentence of death'. But it is legal under that Section to separate such sentencees from the rest of the prison community during hours when prisoners are generally locked in.*
>
> *5…****To be 'under sentence of death' means 'to be under a finally executable death sentence'.****"*

Moreover, Rule 45.1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners also mandates that solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorisation by a competent authority. It shall not be imposed by virtue of a prisoner's sentence.[316]

[315] *Sunil Batra v. Delhi Administration* [1978] INSC 147.
[316] The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175, General Assembly, United Nations, adopted on 17 December 2015

d. What Amounts to Solitary Confinement?

In *Sunil Batra's* case, the petitioner Sunil Batra who was sentenced to death, was confined in a room with enough light coming from a back ventilator and the gate of iron bars in the front, but beyond the view and voice of all others, except the jail guards and formal visitors. The petitioner was able to come into the verandah at certain times of the day where he could communicate with other similarly kept prisoners, whom he could see and talk to through the iron bars. The Supreme Court held that it was a kind of quasi solitary confinement.[317]

The explanation appended to Para 510 of the then Punjab Jail Manual, 1927 defined solitary confinement as below, which has also been endorsed by the Indian courts.

> *"Solitary confinement means such confinement with or without labour as* ***entirely secludes the prisoner both from sight of, and communication with, other prisoners.****"*

Therefore, wherever a prisoner whose death sentence has not become conclusive and indefeasible, is placed in cellular isolation which is sound proof and sight proof, it amounts to an additional and separate punishment of solitary confinement. Even quasi-solitary confinement cannot be inflicted upon such a prisoner who is in custody awaiting the disposal of a judicial/executive process.

Unlawful solitary confinement coupled with inordinate delay has also been held to be a ground for commuting the punishment of the convict.[318] Rule 12.08 of the MPM, 2016 dealing with prisoners sentenced to death, provides that:[319]

> *"Every convict shall* ***(whether or not the sentence of death has been confirmed by the High Court)****, from the date of his admission to a prison, be confined in a cell in a special yard,* ***apart from all other prisoners as***

[317] *Sunil Batra v. Delhi Administration* [1978] INSC 147.
[318] *Ajay Kumar Pal v. Union of India* [2014] INSC 867.
[319] Model Prison Manual 2016, Rule 12.08.

required by section 30 of the Prisons Act*…No prisoners except convicts under sentence of death shall be kept in the special yard."*

Similarly, many State prison manuals like Himachal Pradesh, Rajasthan, Madhya Pradesh, Odisha, Mizoram and Tripura also employ the use of phrases like *'apart from all other prisoners'*,[320] and *'away from all other prisoners'*.[321] The Supreme Court in *Sunil Batra's* case interpreted *"apart from all other prisoners"* used in Section 30(2) of the Prisons's Act as a phrase of flexible import. It construed that the phrase warrants separation without isolation and observed that:

"All that it connotes is that in a cell where there are a plurality of inmates the death sentence will have to be kept separated from the rest in the same cell but not too close to the others. And this separation can be effectively achieved because the condemned prisoner will be placed under the charge of a guard by day and by night."

However, despite judicial precedents directing the compliance of the spirit of Sunil Batra's judgment, prisoners sentenced to death are often still kept in solitary confinement immediately upon their admission. The same has also been noted in the following judgments.

In 2017, the Delhi High Court in *Sonu Sardar v. Union of India*[322] commuted the death sentence of the petitioner because, among other reasons, he was illegally confined in a separate room and a separate verandah in prison (though he ate food with other convicts) for around three years, which was held to be the first cousin of solitary confinement. In 2018, the Punjab & Haryana High Court in *State of Haryana v. Arun*[323] expressed concern over the implementation of the intent of the *Sunil Batra* judgment. The Court abolished the practice adopted by the prison authorities in Haryana of segregating a prisoner sentenced

[320] Prison Manual 2021 for The Superintendence and Management of The Jails in Himachal Pradesh, Rule 12.16; See also Rajasthan Prisons Rules 2022, Rule 732; MP Jail Rules 1968, Rule 466; Odisha Prisons Rules 2020, Rule 892(2); the Mizoram Prison Manual 2017, Rules 12.08 and 12.09; Tripura Sansodhanagar Rules 2021, Rule 344.
[321] The Sikkim Prisons Act 2007, Rule 27(2).
[322] W.P.(Crl.) 441/2015, dated 28 June 2017.
[323] Murder Reference No. 03 of 2017, CRA-D-98-DB-2017, CRA-D-104-DB-2017, CRA-D-187-DB-2017 and CRM-A-993-MA-2018, dated 6 December 2018.

to death, immediately after the pronouncement of sentence by the Trial Court and confirmation by the High Court, as unconstitutional.

It is important to note that many States have incorporated changes in their prison legislation in light of *Sunil Batra's* judgment so there may be a clear letter of law with respect to prisoners sentenced to death. Some of the relevant provisions are reproduced hereinunder:

Uttarakhand, Delhi[324]

"(i) Every prisoner sentenced to death means to be under a finally executable death sentence where all legal remedies are exhausted shall, from the date of his admission to a prison, be confined in a cell in a special yard, apart from all other prisoners. However, the Prison should ensure to follow the various guidelines of the Supreme Court in this regard.

(a) The prisoner sentenced to death can remain in company of other prisoners till all legal remedies are exhausted and ***shall avail all rights and facilities like education, legal, sports, canteen, interviews, labour, remission etc. that are available to other prisoners.***

(ii) Prisoner sentenced to death shall be kept in a cell apart from other prisoners under day and night surveillance. But even here, unless special circumstances exist, ***he must be within the sight and sound of other prisoners*** *and be able to take food in their company."*

Haryana[325]

"381(2) - Every prisoner sentenced to death, whose appeal against conviction and sentence is pending or who has not exhausted all the remedies available to him under any law such as mercy petition, review petition, or a curative petition, shall be confined with other prisoners.

(3) A prisoner under sentence to death ***shall be kept in prison like other prisoners sentenced to rigorous imprisonment*** *till the expiry of every stage of appeal or*

[324] The Uttarakhand Jail Manual 2023, Rule 389; see also Delhi Prison Rules 2018, Rules 795 and 796.
[325] Haryana Prison Rules 2022.

petition."

Kerala[326]

"42.(2) Every such prisoner shall be ***treated as a normal convicted prisoner*** *until his final executable sentence is passed and such a prisoner shall not be entitled to any leave or escort visit."*

Goa[327]

"786.(1) Every prisoner means to be under a finally executable death sentence where all legal remedies are exhausted shall, from the date of his admission to a prison, be confined in a cell in a special yard, apart from all other prisoners as required by Section 30 of Prisons Act, 1894.

(2) ***The prisoner sentenced to death can remain in company of other prisoners till all legal remedies are exhausted*** *and shall avail all rights and facilities like education, legal, sports, canteen, interviews, labour, remission etc. that are available to other prisoners."*

Meghalaya[328]

"3. i. The Superintendent should ensure that the various directions issued by the Supreme Court in this regard are strictly followed.

ii. The prisoner sentenced to death can remain in the company of other prisoners till all legal remedies are exhausted and shall be entitled to all rights and facilities like education, legal aid, recreation, interviews, etc., that are available to other prisoners.

vi. Every prisoner sentenced to death shall be confined in a cell in a special yard under constant surveillance, apart from the other prisoners, when all legal remedies are exhausted. ***However, unless special circumstances exist, he must be able to see and hear other prisoners and have meals along with them.****"*

[326] The Kerala Prisons and Correctional Services (Management) Act 2010.
[327] Goa Prisons Rules 2021.
[328] Meghalaya Prisons Manual 2022, Chapter XXIV.

The Prison Rules in Delhi, Meghalaya and Uttarakhand also explicitly provide that the prisoners sentenced to death are entitled to recreational facilities, interviews and education like any other prisoner.[329]

As stated above, the data on executions carried out depicts that the actual executions form only a fraction of the total death sentences awarded. It is necessary that before all the legal remedies are exhausted and unless circumstances do not otherwise require, prisoners who are sentenced to death should be given a correctional treatment like any other prisoner to protect their mental and physical well-being.

While segregation of death sentencees is a practice often rooted in security concerns, it is essential to strike a balance between maintaining prison order and having a constitutional conscience. The rule of law in India requires that the prison manuals are tuned with the directions of the Supreme Court to ensure that the death sentenced convicts are not deprived of the worth of being an individual.

2.1.3 De-addiction Initiatives

As per the Prison Statistics India Report by NCRB, Indian jails housed 80,569 prisoners under liquor and narcotics related acts like the NDPS Act, Excise Act, Prohibition Act in the year 2022.[330] The Report further shows that in 2022, 58,130 prisoners were experiencing various forms of addiction to illicit drugs, alcohol and other substances. Punjab alone had 20,162 such inmates, which accounts for around 21% of total prisoners with substance abuse addiction.[331] However, these numbers have come down for the year 2023, with around 55,502 prisoners classified as persons with alcohol/drug dependence.[332] Drug addiction within prisons often leads to smuggling of drugs inside prisons. Despite the restrictive environment of correctional institutions, smuggling of addictive substances poses a serious concern and inhibits the rehabilitation efforts of the welfare personnel. As per a study of Punjab prisons, the issue of drug smuggling and consumption was observed

[329] Delhi Prison Rules 2018 Rule 795; Meghalaya Prisons Manual 2022, Chapter XXIV, Rule 3.
[330] National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs 2023) <https://ncrb.gov.in> accessed 23 March 2024.
[331] *Ibid.*
[332] Annexure E : Prisoners with Substance Abuse Addiction in 2023.

in 15 out of 24 functional jails in Punjab.[333] An inquiry into the death of a prisoner in Tihar jail revealed that drugs and other contraband are regularly thrown into the premises from across the compound wall and sold to other inmates.[334]

A report prepared by a Patiala range Deputy Inspector General of Police confirmed that 40% of the total drugs smuggled inside jails are supplied through various prison officials .[335] Recently, a police guard was also allegedly caught sneaking drugs inside the Arthur Road Jail in Mumbai.[336] To maintain a drug-free environment in prisons, the Parliamentary Standing Committee on Home Affairs, Rajya Sabha in its 245th Report on Prison - Conditions, Infrastructure and Reforms recommended that:[337]

> *"4.10.11 The Committee notes that key reforms that can be considered for addressing the drug problem in prisons are* ***- Strengthen security protocols at entry points to prevent drugs from being smuggled into prisons****; use advanced technologies such as body scanners, drug-sniffing dogs, and CCTV surveillance to detect contraband; implement thorough visitor screening procedures to ensure that visitors do not bring drugs into the prison; restrict physical contact during visits to prevent the transfer of drugs; train prison staff to recognize signs of drug use or trafficking among inmates and visitors; educate staff about the dangers of drugs and the importance of maintaining a drug-free environment; conduct regular and random searches of cells, common areas, and inmates to deter drug smuggling.*

[333] Inside Punjab Prisons, A study on prison conditions, Part-A, Commonwealth Human Rights Initiative <https://pulsa.punjab.gov.in/sites/default/files/Final_Punjab%20Report_Part%20A_Print_0.pdf> accessed 18 March 2024.
[334] Prawesh Lama, 'Drugs smuggled in over boundary wall, sold in Tihar jail' *Hindustan Times* (New Delhi 23 October 2020) <https://www.hindustantimes.com/india-news/drugs-smuggled-in-over-boundary-wall-sold-in-tihar-jail/story-By9daHsCMg3TnwfWCMNX5O.html> accessed 18 June 2024.
[335] Pravesh Sharma, 'Insider role in 40% cases of drug supply in jails: Report' *Times of India* (Patiala, 27 August 2012) <https://timesofindia.indiatimes.com/india/insider-role-in-40-cases-of-drug-supply-in-jails-report/articleshow/15794203.cms> accessed 18 June 2024.
[336] S Ahmed Ali, 'Guard caught smuggling drugs into jail in Mumbai' *Times of India* (Mumbai, 9 October 2023), <https://timesofindia.indiatimes.com/city/mumbai/guard-caught-smuggling-drugs-into-jail-in-mumbai/articleshow/104268903.cms> accessed 18 June 2024.
[337] Law Commission of India, *Prison – Conditions, Infrastructure And Reforms*, (Law Com No 245, 2023) paras 4.10.11 and 4.10.12.

4.10.12 The Committee recommends that ***surveillance technology should be used in prison on drug detection at each and every entry point of the prison.*** *By making all the staff, inmates, visitors, delivery items to be searched before entry into the prison, entry of contraband item in prison can be controlled to an extant. In addition, technology should also be used to address the challenges of smuggling of drugs in prisons as prison staff cannot fully contain this menace and they need the assistance of technological intervention to address this issue. The Committee also recommends that a multilayered approach such as physical search, use of X-ray scanners, other devices that can detect drugs, and rehabilitation programmes for prisoners afflicted with drug addiction should also be put in place as it can significantly reduce the entry of drugs within correctional facilities/jails. The States/UTs may consider planning programmes like* ***Opioid Substitute Therapy (OST) as in the case of Assam to deaddict and wean away such prisoners, in the jails****."*

Tightening surveillance and security on the drop areas and entry and exit points of the prison is a preventive step in disrupting the influx of addictive substances inside prisons. However, the most important purpose of any curative facility is reform and rehabilitation of the prisoner. As per a preliminary enquiry of the DLSA, Madurai, out of 600 remand prisoners, 100 remand prisoners suffered from drug abuse addiction.[338] Early identification of symptoms of addiction at the time of arrest by the police, and at the time of admission in prison by the prison administration can ensure that appropriate medical and therapeutic intervention is made at the earliest possible stage of detention. The Uttarakhand High Court in *Shveta Mashiwal v. State of Uttarakhand*[339] issued specific directives to address the issue of drug addiction:

"12. ***Every prisoner entering the prison shall be tested for addiction*** *and shall be de-addicted if he is found to be addicted.*

[338] *Aseervatham v. The Home Secretary*, W.P.(MD) No.10131 of 2019 and W.M.P.(MD)No.7870 of 2019, dated 30 July 2021.
[339] Writ Petition (PIL) Nos. 160 of 2017 and 78 of 2018, dated 13 August 2018.

> *13. All the prisoners who are arrested in crimes before their production in a court by an arresting agency shall be examined by the doctor and doctor shall record their history or symptoms, if any of drug abuse.* ***Wherever an arrested person shows signs of addiction, the police should take him to a doctor or a hospital to determine, if he is an addict****, and if so, take measures to treat him."*

These directions emphasise the need for a systematic evaluation and documentation of the physical and mental health of the arrestee affected by any substance abuse addiction and history of addiction. This will help in customising the programme for community-based counselling, medical treatment, peer support and addiction rehabilitation, tailored to the needs of the inmates for proper recovery.

Both the undertrial or convict if proven to be a drug/alcohol addict should be given adequate counselling and medical treatment to get rid of the plague of substance related addictive disorders, so that the prisoner can start over afresh after release from the prison. For this purpose, dedicated facilities called de-addiction centres are set up inside the prison premises. The Central Government Scheme of National Action Plan for Drug Demand Reduction (NAPDDR) run by the Ministry of Social Justice and Empowerment includes establishing and assisting counselling/de-addiction centres (DAC) or facilities in prisons as part of the scope for treatment and rehabilitation of such prisoners with a substance abuse addiction.[340] Under this Scheme, counsellors have been appointed in 15 jails in Haryana in 2023.[341]

As per the information received from prison departments in India, many States have taken up various de-addiction initiatives to help inmates overcome their addiction and facilitate their rehabilitation. Prisons in States like Tamil Nadu, Karnataka, Chhattisgarh, Delhi, Haryana, Jammu & Kashmir, Karnataka, Punjab have established DACs within their prison

[340] Scheme of National Action Plan for Drug Demand Reduction (NAPDDR), Ministry of Social Justice And Empowerment, Government of India <https://grants-msje.gov.in/revised-napddr-action-plan> accessed 20 June 2024.
[341] As per information received from Haryana Prison Department.

systems, which provide specialised treatment, counselling, and rehabilitation services to inmates struggling with addiction.

As per information received from the Tamil Nadu prison department, the norms prescribed in the Scheme of NAPDDR to set up 30 bedded integrated rehabilitation centres for prisoners suffering from substance abuse addiction are followed in all the nine Central Prisons and five bedded DACs in five Special Prisons for women in India. As per the Delhi Prison Department, 240 bedded Central Jail Hospital in CJ-3 and 48 bedded hospital in CJ-13 with de-addiction centres are functioning in Delhi prisons for inmates with substance use disorder. The 120-bedded DAC at Tihar Jail has treated more than 12,000 inmates from 2019 to 2021.[342] Moreover, in States like Assam, Maharashtra and Meghalaya, Opioid Substitute Therapy (OST) is also administered to addicted prisoners in conformity with the SOP of NACO. OST is a long-term treatment which involves providing controlled doses of substitute medications to help manage withdrawal symptoms, gradually reducing dependence on opioids. In this regard, the Delhi High Court in *Om Prakash Singh v. Govt. of NCT of Delhi*[343] also observed that:

> *"All inmates, who are reported to be drug addicts, are identified on the very first day of their admission and sent to DAC where they are initially treated for withdrawal symptoms and after de-toxification process is over, they are sent to specially earmarked Rehabilitation ward, being run in collaboration with NGOs for further counseling and rehabilitation."*

In the United States, court-monitored treatment is given to drug offenders. Such courts are called Drug Courts. The Drug Court Model generally involves screening and assessment of risks, needs, and responsiveness, judicial interaction, treatment and rehabilitation services.[344] Successful completion of the treatment programme may even

[342] Abhay Singh, 'Delhi: From narcotic high to Covid-19 low, Tihar de-addiction Centre to rescue', *Times of India* (New Delhi 14 February 2022) <https://timesofindia.indiatimes.com/city/delhi/from-narcotic-high-to-covid-19-low-tihar-de-addiction-centre-to-rescue/articleshow/89551884.cms> accessed 21 June 2024.
[343] CONT.CAS(C) 1124/2016, dated 2 December 2019.
[344] Overview of drug courts, National Institute of Justice, U.S. Department of Justice, <https://nij.ojp.gov/topics/articles/overview-drug-courts#:~:text=Drug%20courts%20are%20specialized%20court,Drug%20Court%20Resource%20Center's%20database%20> accessed 23 June 2024.

lead to dismissal of criminal charges. Back in 2012, in *Gurjit Singh v. State of Punjab*,[345] Justice Paramjit Singh of the Punjab and Haryana High Court observed the need for courts to monitor the treatment programmes and rehabilitation of prisoners with a substance abuse addiction:

> *"I am of the opinion, in NDPS cases of drug addicts, which are affected by the Narcotic Drugs and Psychotropic Substances, criminal justice system should work in tandem with the treatment system.* ***The Special Courts with jurisdiction over the NDPS cases should try to identify addicts and drug-using offenders, other than the smugglers and drug peddlers. In cases of drug addicts State should be directed to provide treatment as alternative to*** *prisons, separate youth-detention facilities in jails and probation homes. The Courts can make extensive use of comprehensive supervision, drug testing, treatment services and may seek reports about the reformation of addicts and take up cases for immediate sanctions against the persistent defaulters and incentives to the ones who are on the path of reforms."*

The NDPS Act, 1985 also has a unique provision - Section 64A which encourages the addicted prison inmates to volunteer for treatment at a DAC by providing them immunity from prosecution. The provision reads as:

> *"64A.* ***Immunity from prosecution to addicts volunteering for treatment-*** *Any addict, who is charged with an offence punishable under section 27 or with offences involving small quantity of narcotic drugs or psychotropic substances,* ***who voluntarily seeks to undergo medical treatment for de-addiction*** *from a hospital or an institution maintained or recognised by the Government or a local authority and undergoes such treatment* ***shall not be liable to prosecution*** *under section 27 or under any other section for offences involving small quantity of narcotic drugs or psychotropic substances:*

[345] CRM M-18657 of 2012 (O&M), dated 26 July 2012.

Provided that the said immunity from prosecution may be withdrawn if the addict does not undergo the complete treatment for de-addiction."

For the enforcement of this reformative provision, the Punjab Government has provided immunity to around 270 prisoners with a substance abuse addiction caught with small quantities of drugs by sending them to de-addiction centres instead of prisons.[346] This not only enables them to live a healthy life but also reduces overcrowding in prison cells. Punjab and Uttarakhand Prison Department also suggested that prisoners with an addiction of small quantities of drugs should be sent to rehabilitation or DACs rather than jails to reduce the increasing number of NDPS cases.[347]

Rehabilitation centres outside prisons are equipped with trained professionals who specialise in addiction treatment. In contrast, prisons often lack the resources and expertise necessary to address the intricate challenges posed by addiction.[348] As per the information received from Tamil Nadu prisons, the existing prison staff (medical and para-medical, executive and ministerial, psychologists, counsellors) is utilised for the functioning of the DAC, except the services of the Project Coordinator-cum-Vocational Counsellor, psychiatrist, therapists, etc. who are outsourced from reputed institutions.

To curb the menace of drug addiction and depression among jail inmates in Haryana, Haryana Jail Reforms Committee had recommended the creation of two posts of Psychiatrist-cum-Counsellor in every Central Jail and one in each District Jail in September 2010. However, as per a report of the CAG on Social, General and Economic Sectors (Non-PSUs) for the year 2017, Government of Haryana, posts of Psychiatric Counsellor were not filled up in any of the jail hospitals in the State. It further found that:[349]

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[346] Ravinder Vasudeva, 'Rehab, not jail, for 274 addicts in Punjab as they get a shot at reform' *Hindustan Times* (Chandigarh, 16 January 2024) <https://www.hindustantimes.com/cities/chandigarh-news/rehab-not-jail-for-274-addicts-in-punjab-as-they-get-a-shot-at-reform-101705347275680.html> accessed 24 June 2024.

[347] As per information received from Punjab and Uttarakhand Prison Departments.

[348] As per information received from Uttarakhand Prison Department.

[349] Comptroller and Auditor General of India, 'Report No 5 of 2017: Social, General and Economic Sectors—Government of Haryana' https://cag.gov.in/en/audit-report/details/43861 accessed 25 June 2024.

> *"The implementation committee of HJRC recommended that as per prevailing practice Health Department should continue deputing Psychiatrist-cum Counsellors every week in every Jail but this practice was also not being followed. The DGP stated during the exit conference that* ***de-addiction centres were set up at Central Jail Hisar and District Jail Rohtak but no regular staff had been provided.*** *As regards post of Psychiatrist-cum Counsellor, it was stated (August 2017) that no such posts were sanctioned in the Department."*

It may be noted that Punjab has 2 De-Addiction Centers and 17 Outpatient Opioid Assisted Treatment (OOAT) clinics functional in its various prisons, the most in the country.[350] Many States like Gujarat, Odisha, Rajasthan, Goa, Sikkim, West Bengal, Kerala do not have any DACs, instead they refer such prisoners with a substance abuse addiction to Government hospitals for medical and de-addiction treatment.[351] They also organise awareness drives, de-addiction camps, counseling sessions, yoga and meditation programmes. In Mumbai Central Jail, Maharashtra, an Opioid Satellite Therapy Center has been started through Mumbai AIDS Control Society where addicted prisoners are given OST medication in jail.[352]

States where there are a considerable number of prisoners with a substance abuse addiction must take concerted efforts to prioritise the establishment of de-addiction centres with adequate personnel and proper medication. Often the prisoners with a substance abuse addiction/dependence in custody succumb to death due to withdrawal symptoms. It is necessary that the DACs maintain proper case history, details of counselling provided to the patients, extent of patient participation in the de-addiction programme, progress and feedback and discharge counselling forms, to prevent custodial deaths due to withdrawal syndrome and also to set due accountability. In an audit report by the CAG of the

[350] As per information received from Punjab Prison Department.
[351] As per information received from prison departments.
[352] As per information received from Maharashtra Prison Department.

Government of NCT of Delhi, such treatment information of prisoners with a substance abuse addiction was not found on record.[353]

Treating addiction as a medical issue rather than a criminal one acknowledges the complex nature of substance abuse. Many individuals turn to drugs as a coping mechanism for underlying mental health issues or environmental stressors. By sending them to rehabilitation centres, the root cause of their addiction can be addressed, offering a chance for comprehensive recovery.[354]

Furthermore, prisoners with a substance abuse addiction who have been able to overcome the addiction inside prison must be given adequate after-care and opportunity to earn their livelihood to begin a new life. Therefore, there is a need to create a dedicated aftercare support system for released prisoners with a substance abuse addiction who have been receiving treatment in prisons. Existing de-addiction and rehabilitation centres outside prisons can also be utilised to provide continued care and monitoring of such inmates post-release, so that they do not fall back into the trap of drug addiction. NGOs and members of civil society should be encouraged to participate in the rehabilitation of prisoners with a substance abuse addiction. The prison administration should be sensitised to employ a humanitarian and personalised approach with prisoners dealing with addiction disorders and work for their welfare to foster a more curative approach.

2.2 Need for effective after-care of prisoners

The idea of after-care was acknowledged back in 1919-20 in the Report of the Indian Jails Committee.[355] Convicts, particularly those who have been awarded long-term imprisonments may tend to lose personal and professional ties they had before entering the prison gates. After-care is a restorative service which equips the prisoner to regain the lost

[353] Comptroller and Auditor General of India, 'Report No 2 of 2015: Social, General and Economic Sectors (Non-PSUs)—Government of NCT of Delhi, for the year ended 31 March 2014' para 2.2.5.5 https://cag.gov.in/ag/new-delhi/en/audit-report/details/12464 accessed 25 June 2024.
[354] United Nations, *United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)*, (UN Doc. A/45/110) <https://www.ojp.gov/pdffiles1/Digitization/147416NCJRS.pdf> accessed 17 November 2025.
[355] Indian Jail Committee Report, 1919-20.

continuity and start a new life as a law-abiding citizen. It may include counselling sessions to maintain family relationships, basic financial help to earn a living or training to acquire monetised skills. After-care service has also been defined in several prison manuals as shown below:

1. *The Odisha Model Jail Manual, 2020 & Rajasthan Prison Rules, 2022 - "After-Care Services" is the activity aimed at **financial rehabilitation** of released prisoners as normal and good citizens.*[356]
2. *The Karnataka Prisons and Correction Services Manual, 2021 - "After-Care Service" is a service or activity aimed at **rehabilitation** of the released prisoner for enabling him to lead a life of a dutiful citizen.*[357]
3. *The Kerala Prisons and Correctional Services (Management) Act, 2010 - "After-care service" is a service or activity aimed for the **financial and social rehabilitation** of released prisoners for enabling them to lead a life as that of a good citizen.*[358]

The first definition as given in Odisha and Rajasthan prison legislations is apparently a narrow one as it only talks about rehabilitation in terms of financial upliftment of the released prisoners. While financial aid may give a kickstart to a prisoner, it is not the end-all of after-care.

In 1955, an Advisory Committee on After-care programmes was appointed by the Central Social Welfare Board under the chairmanship of Shri M.S. Gore which published its report in 1974.[359] The report among other things studied the nature of problems of adult prisoners and juveniles after release from correctional institutions, and the need for effective after-care programmes. It defines after-care as:

1. "*The term 'aftercare' is a broader one and need not be limited to the specific programmes and services organized for the rehabilitation of*

[356] Odisha Model Jail Manual 2020, Clause 3(1)(d); Rajasthan Prison Rules 2022, Rule 3(c).
[357] The Karnataka Prisons and Correctional Services Manual 2021, Definition clause iii.
[358] Kerala Prisons and Correctional Services (Management) Act 2010, Definition clause v.
[359] Central Social Welfare Board, Report of the Advisory Committee, After-Care Programme, (1974) <https://nvli.in/report-advisory-committee-after-care-programmes> accessed 27 April 2024.

individuals discharged from correctional institutions...Thus, any service which has the following characteristics could be said to be an 'after-care' service:

2. *That it is intended for a person or persons who have undergone a certain period of care and training within an institution.*
3. *That this person or group of persons has been found to be in special need by reason of a social, physical or mental handicap.*
4. *That it is intended to complete the process of rehabilitation of an individual and to prevent the possibility of his relapse into a life of dependence or custodial care.* ***This would involve the strengthening of his moral and emotional fibre and the removal of any stigma that may be attached to his previous institutionalization.****"*

The Mulla Committee Report on Jail Reforms, 1980-83 also states that:

> *"Aftercare services should include* ***all kinds of help*** *which could result in proper readjustment of the released prisoners in the society."*[360]

Prisoners come from heterogenous backgrounds. They may be persons with substance abuse addiction, repeat offenders, first-time offenders, young individuals, women, or those who are marginalised or underprivileged. Thus, any attempt to limit the definition of an after-care service with respect to prisoners will only curtail its scope to cater to the peculiar needs of prisoners after release. The definition of after-care service may either be general like that in the definition clause of the Karnataka Prisons and Correction Services Manual, 2021 or holistic enough to encompass various psychological, financial and social facets of reintegration.

Chapter XXII of the MPM 2016 has a dedicated Chapter on after-care and rehabilitation discussing at length the scope of after-care assistance, its process and planning in the prison setting. Rule 22.07 of the Chapter states that after-care service may be rendered in

[360] Mulla Committee Report, 1980-83, Para 22.13.9.

following three phases: While the individual is under institutionalised care and treatment, immediately after release from the institution, and during the post-release period.

The after-care process begins with identifying the extent of need of after-care assistance with respect to each prisoner. There are convicts who face more difficulty in readjusting to a normal life beyond the prison walls and thus are more needy of rehabilitation than other prisoners. Rule 22.05 of the MPM 2016 also provides that:

> *"While after-care services should be provided to all needy prisoners, at the very least,* ***prisoners having served a minimum of five years of imprisonment shall necessarily be entitled to after-care services.****"*

Therefore, one of the criteria to classify prisoners at the time of admission should also be the nature of need of after-care and reform potential.

2.2.1 After-care in Indian correctional system

For the purpose of understanding the extent of evolution of after-care programmes in the correctional institutions in India, a questionnaire containing following questions were sent to the prison departments in all the States and UTs:

1. *What are the provisions for rehabilitation and after-care of prisoners?*
2. *Is there a Discharged Prisoners' After-Care & Rehabilitation Committee set up at District level or State level in light of Model Prison Manual, 2016?*
3. *Is there any provision to follow up on prisoners who have been released?*
4. *Is there a database maintained on the status of the released prisoners?*
5. *Issues faced in providing aftercare to released prisoners.*
6. *Impact of NGOs and other institutions in reformation and rehabilitation of prisoners.*

As per the information received from prison and correctional departments across India, prisoners in most correctional institutions are engaged in a variety of prison industries like carpentry, smithery, tailoring, power looms, handlooms, computer training, agricultural farming, sanitary napkin manufacturing, horticulture, etc. Vocational training and skill

development programmes are also regularly organised in prisons to rehabilitate and benefit them in securing employment/self-employment.

Goa Prison Department submitted that there is a full-fledged Industrial Block in Central Jail, Colvale which has a carpentry unit, tailoring unit, candle making, handicraft, paper bag making, gardening, bakery and a cow-shed. In many States like Andhra Pradesh and Maharashtra, **certificates are also issued to those prisoners who successfully complete the courses.** In Delhi, certificates are awarded to prisoners in unique courses like housekeeping & catering services training under Deen Dayal Antyodaya Yojana-National Urban Livelihood Mission (DAY-NULM), chal charkha, hospitality training by Max Hospital, basic Indian wear course by Pearl Academy and so on. The inmates of Special Jail, Bhubaneswar and Circle Jail, Cuttack are also given training of bedside attendants for medical care. A community radio station has also been set up at the Special Jail, Bhubaneshwar in collaboration with· Amulya Jeevan Foundation for skill development of inmates in which 14 inmates have been imparted with radio jockey training.

With employment-oriented training and wages earned based on the prison work done, prisoners instead of being a burden, are proving to be financially helpful for their families, which is a significant factor in smooth re-integration of long-term convicts in society.

As per the Directorate of Correctional Services, West Bengal, obtaining employment and financial assistance from various societies, banks, NGOs, etc., settling family problems, encouraging the savings habit of prisoners by opening account in bank, counselling and admitting the destitute children of prisoners in recognised homes run are some of the other rehabilitation measures undertaken by the Probation-cum-After-Care Officers in West Bengal for the upliftment of the wards as well as their family. The MPM 2016 provides that the scope of after-care will be determined by the District Committee and may include matters such as supply of artisan tools, subsistence money, food, temporary housing in shelter homes, family/marital adjustment and legal-aid and protection. Some of the initiatives taken by the prison departments for after-care of the prisoner is shown as follows:

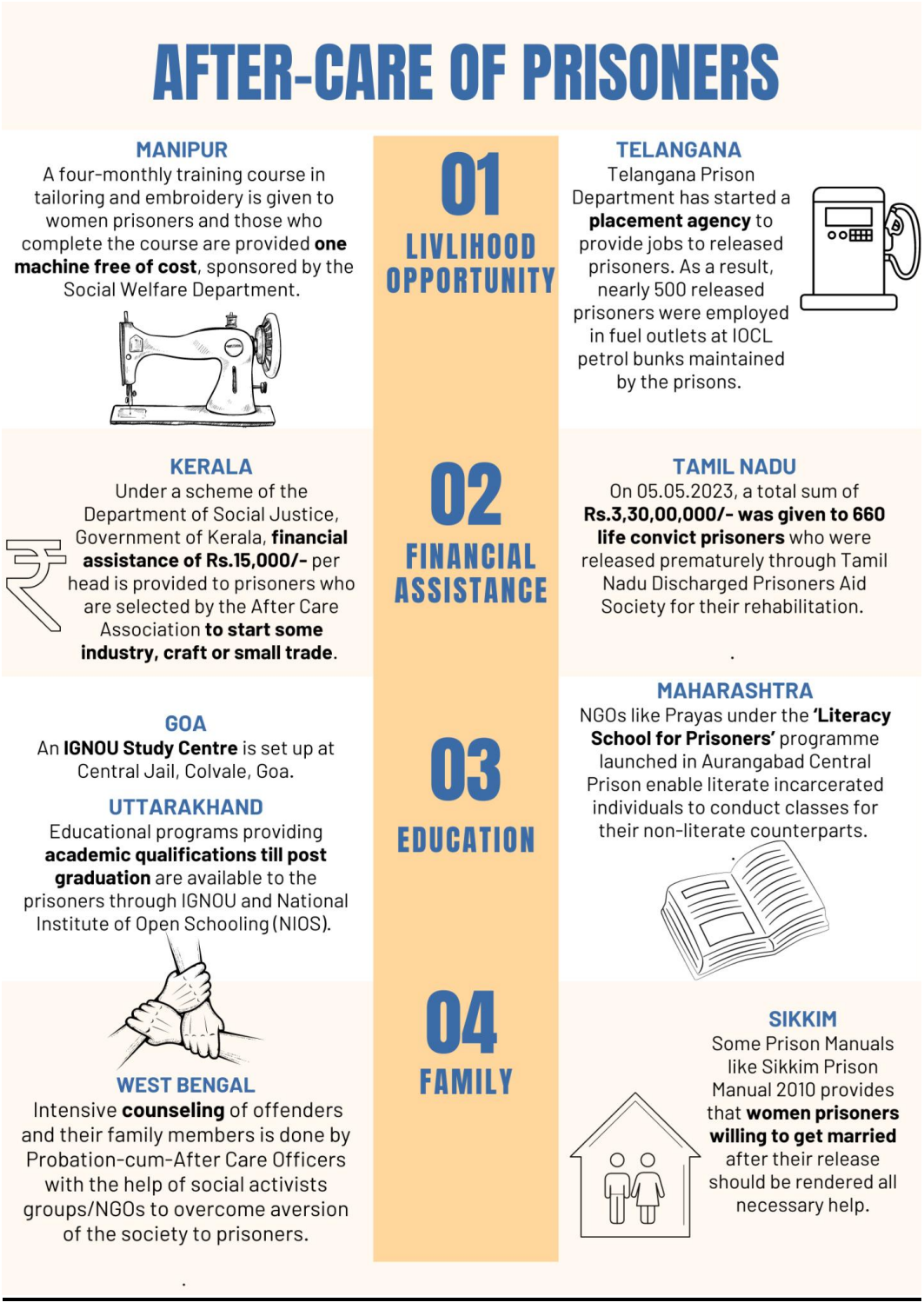

Figure 2.4 - After-care provisions across states[361]

[361] As per information received from prison departments.

However, the information received from prison departments shows that the implementation of a coherent after-care regime in prisons is patchy. As per information received from prison departments, there are no after-care programmes running in States/UTs like Uttar Pradesh, Chhattisgarh, Haryana, Rajasthan, Jammu & Kashmir and Ladakh, Lakshadweep, Tripura, Arunachal Pradesh, Mizoram, Nagaland, Meghalaya as on 31 January 2024. As per the Chhattisgarh and Madhya Pradesh Prison Departments, the reason is the non-applicability of MPM 2016 in the two States. In other prisons, there seems to be a lack of clarity between implementation of reformative measures and that of after-care in most correctional systems. In response to the questions, many prisons have submitted that they organise behavioural skill development, and stress-relieving programs like yoga and meditation for prisoners which basically focuses on the spiritual aspects of leading a righteous life. While moral discourse may improve the mental health of prisoners, after-care involves more concrete measures to ensure that convicts have sufficient means to start over and sustain a livelihood, without committing any further crime.

2.2.2 Follow up of Released Prisoners in Need

The MPM 2016 includes 'follow-up action/service' as part of the after-care regime. A structured follow-up action implies visiting the released prisoners at regular intervals to track the status of their resettlement into the community in terms of employment, accommodation, family ties and mental health. The Report of the All India Committee on Jail Reforms, 1980-83 (Vol II) also discussed the need for after-care and follow-up service of prisoners.However, it acknowledged that it is not required by each and every inmate leaving from the correctional facility. The MPM 2016 provides that:

> *"22.03 There are **other prisoners who resist follow-up action as they consider it a kind of surveillance on them**. But majority of the inmates would welcome such programmes which help them settle in the society after their release, and get themselves rehabilitated beyond the possibility of reverting to crime."*

22.26 After release from the institution, ***the case of a released person should be followed up for a period ranging from one to five years*** *according to the requirements of each case.*

22.27 The Probation/Welfare/Rehabilitation Officer shall establish follow-up study through interviews or correspondence. A six monthly report evaluating the released person's adjustments and resettlement should be prepared by him and copies of it should be sent to the correctional institution where the individual had undergone treatment and to the record branch in the headquarters organisation.

22.28 The record branch in the headquarters should maintain all the case files and followup reports according to the central indexing system."

As per the information received from prison departments across India, only a few States have follow-up action as part of the long-term correctional treatment of the prisoner. In West Bengal, after release from the correctional home**,** the case of a released person is followed up for a period of three years according to the requirements of each case.[362]

As per the information received Maharashtra prisons, there is a provision to follow-up on prisoners in prisons like Nanded District Prison and a database is also maintained of the same. NGOs and institutions like Maharashtra-State Infrastructure Development Corporation (MSIDC) help in reformation and rehabilitation of prisoners. For instance, MSIDC has sanctioned loans for released prisoners. As per the Andaman and Nicobar Secretariat, NGOs attached with prison administration follow up with prisoners and sort out their problems in coordination with the prison administration. However, communication with the released prisoners in remote islands is a challenging issue faced by the prison administration. Similarly, in Delhi and Kerala, after release from prison, the Social Welfare Department and Probation wing at the Social Justice Department follows-up the welfare of the prisoners respectively.

[362] Information received from West Bengal Prison Department.

While follow up of prisoners for their reintegration in society is done with the help of non-profit organisations and private enterprises liasoning with the prison administration, the exact modalities of the follow-up process is unclear. One of the reasons is lack of the letter of law guiding carrying out a follow-up action which does not appear to be an encroachment upon the privacy of the prisoner post-release, rather is perceived as a rehabilitative and favourable step. Delhi Prison Department also raised the concern that communication with the prisoners after their release is a problem. Adequate awareness must be given to the prisoners while they are behind the bars, educating them the need for after-care and follow-up service after release.

In the United Kingdom, the National Probation Service (NPS) and privatised probation services called the Community Rehabilitation Companies (CRC's) are responsible for supervising offenders who have been released into the community and providing resettlement services to them.[363] Based on the supervision, correctional statistics with respect to the number of offenders housed or employed after release from custodial sentences into the community are also collected and studied to understand the rate of recidivism.[364]

One of the many challenges that prisoners imprisoned for longer periods of time face after their release is lack of shelter. The scope of after-care must also include stay in district shelter or after-care hostel/state home, wherever available.[365] Some of the initiatives like the Prayas Project run in Maharashtra and Gujarat, shelter facilities in institutions, hostels, and group homes are provided for women and young prisoners who cannot live with their families, due to past behaviour, family circumstances or social stigma.[366] NGOs like Jesus Fraternity in Kerala also establish rehabilitation homes for accommodating released prisoners.[367]

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[363] UK Law Commission, *Government contracts for Community Rehabilitation Companies* (UK Law Com No 27, 2017-19), <https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/897/897.pdf> accessed 27 June 2024.
[364] Justice data UK, (last updated on 17 June 2024) <https://data.justice.gov.uk/probation/ps-performance#ps-sl017b> accessed 17 June 2024.
[365] Model Prison Manual 2016, Rule 22.21(iv); The All-India Committee on Jail Reforms.
[366] Prayas – A field action project of Tata Institute of Social Sciences <https://tiss.edu/view/11/projects/prayas/> accessed 14 May 2024.
[367] As per information received from Prisons and Correctional Services, Kerala.

Rule 861 of the Odisha Model Jail Manual, 2020 provides for the establishment of District After-Care Shelter under the After-Care programme. As per the information provided by the Directorate of Prisons and Correctional Services, Government of Odisha, after-care shelter is functioning in the district of Cuttack for poor, released prisoners in need, where they can stay up to 3 months to become self-sustained. However, in the last three years, nobody has been admitted into the shelter.[368]

After-care process requires adequate identification of prisoners who have no place to go after serving their sentence in prison. The existing network of after-care homes and shelters for homeless people and those in need in the States can be leveraged to provide initial accommodation to released homeless prisoners. After-care shelters may become prospective halfway houses for released homeless prisoners and facilitate their absorption in the ordinary ranks of the community until they find employment and a place to live in.

2.2.3 After-care and welfare personnel

Effective after-care of prisoners requires a dedicated cadre of officers for this purpose. Chapter IV of the MPM 2016 provides that the institutional personnel in a prison shall comprise a welfare unit which will primarily be concerned with the wellbeing of prisoners and undertake individualised care for prisoners in need of institutional adjustment and responsiveness through correctional programmes. This Welfare Unit shall consist of an Assistant Director of Correctional Services, Welfare Officer, Law Officer, Counsellor, Probation Officer and a Psychologist. Part IV of Chapter IV further provides that:

> *"There should be **one Correctional Officer for every 200 hundred prisoners** and one psychologist/counselor for every 500 prisoners.*
>
> *(b)...It is advisable to have at least **one welfare officer for every 500 prisoners** in a central prison and at least one for each district prison."*

[368] As per information received from Odisha Prison Department.

Despite this guideline, as per NCRB Reports over three consecutive years (2020-22), **there has been a vacancy of 40%, 36.3% and 44.1% posts of correctional staff in 2020, 2021 and 2022 respectively.**[369] Bihar reported the highest number of vacant posts for correctional staff post (256) in 2022.[370] The 44.1% vacancy of correctional staff in 2022 does not account the States and UTs of Andhra Pradesh, Arunachal Pradesh, Goa, Haryana, Manipur, Meghalaya, Mizoram, Punjab, Sikkim, Tripura, Uttar Pradesh, Uttarakhand, DNH & Daman & Diu, Ladakh, Lakshadweep and Puducherry which have no correctional staff sanctioned in 2022.[371] Punjab, Haryana and Goa continue to have 100 percent vacancies since 2017.[372] This stark gap in strength of welfare personnel shows that attention of the States needs to be drawn towards filling vacancies of officers responsible for rehabilitation of prisoners as per the sanctioned strength.

As far as the strength of welfare officers in prisons is concerned, as per the information received from prison departments, all the 59 prisons in Bihar have welfare officers posted. Furthermore, the Chhattisgarh Prison Department has submitted that welfare officers are posted only in 4 prisons and 28 prisons still do not have any welfare officers. It is significant to note that as per the Chhattisgarh Prison department, there is no apparent requirement of welfare officers in sub-jails and district jails.

As per the Gujarat Prison Department, welfare officers are posted in 2 prisons, whereas for the rest 30 prisons, services are often obtained on deputation from the social welfare department. Karnataka Prison Department has submitted that there is no post of welfare officer available in all the 54 prisons in the State. However, the Department has taken the initiative to nominate and train the existing Assistant Superintendent at Central Prisons and Jailor at District Prisons as Welfare Officers.

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[369] National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs 2023) <https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2022&keyword=> accessed 23 March 2024.
[370] *Ibid.*
[371] *Ibid.*
[372] National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs 2023) <https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2022&keyword=> accessed 23 March 2024.

The Welfare Officer is responsible *inter alia* for connecting the correctional needs of prisoners with the resources available within and outside the prison, participating in the pre-release programme and helping the inmate establish contacts useful to him after release. If any existing officers like the Probation Officer or Assistant Superintendent is additionally given the charge of Welfare Officer, planning for the after-care of the prisoner will be compromised. Meghalaya and Karnataka Prison Department in this regard has also suggested that one post of probation officer and welfare officer in all the district prisons and correctional homes is essential.[373] Kerala Prison Department has also suggested that the number of welfare officers should be increased in the State, as the post of welfare officers are sanctioned in only 21 out of the 56 jails in the State, as of 31st January 2024.

For the purpose of devising appropriate mechanisms for rehabilitation and after-care assistance to prisoners, Rule 22.09 of the MPM 2016 provides that a special committee called the Discharged Prisoner After-care and Rehabilitation Committee should be set up at district or State level. However, from the information received from all the prison departments, only three prisons in Maharashtra namely Nanded District Prison, Yerwada Central Jail and Kolhapur Central Prison have constituted such a committee. As per the Office of the Prisons Administration & Correctional Services Department, Uttarakhand, the MPM 2016 was adopted on 07.11.2023, thereby, the Department is in process to set up the Discharged Prisoners After-care & Rehabilitation Committee.

Tamil Nadu Prison Department responded that instead of the Rehabilitation Committee, the Tamil Nadu Discharged Prisoners' Aid society (DPAS) has been functioning since 1921. The branches of DPAS have been established in 16 districts. The administration of this Committee is looked after by the District Committee members and the Collector of the district is the President of the concerned district society. Similarly, in West Bengal, there is a West Bengal Advisory Committee for After-Care Services under the West Bengal Correctional Services Act, 1992 to scrutinise the activities of Pobation-cum-After-Care Officers and they render such guidance as may be necessary.

[373] As per information received from prison departments.

Although the MPM was introduced in 2016, many States had not constituted the Discharged Prisoner After-care and Rehabilitation Committee, as of 31 January 2024. The Kerala Prisons and Correctional Department has also suggested that a Discharged Prisoner's After-care and Rehabilitation Committee should be constituted at District level comprising of officials of DLSA, Jail department, Social Justice Department, Industrial development department, Agricultural department etc., to guide and help the released prisoners in their future lives.

2.3 Open and Semi-open Jails

A murder convict hailing from an impoverished background, while serving his sentence in a jail in Kota, Rajasthan supported his son who lived with him and studied inside the prison, went on to qualify the IIT-JEE examination.[374] Another murder convict who has been a dari artisan for the last 20 years lived with his wife inside a prison at Ajmer, Rajasthan and earned Rs.5,120/- a month by making daris. He wishes to work at a dari workshop in Jaipur on his release.[375]

This reform could be possible only with the evolution of 'open prisons' or as they are called 'open air camps' or 'open air correctional homes'. Open prison is a trust-based reform facility where eligible prisoners with good conduct serve their sentence in minimum security. It is a prison complex where the prisoners go out for work to earn a livelihood and come back in the evening.[376] Here, prisoners have the freedom of living with their immediate family members. The only condition on their liberty is that they must attend the morning and evening roll-calls.

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[374] ''Unique success story': Living in Kota jail, convict's son cracks IIT entrance exam' *The Indian Express* (Jaipur, 1 July 2016) <https://indianexpress.com/article/india/india-news-india/unique-success-story-living-in-kota-jail-convicts-son-cracks-iit-entrance-exam-2886936/ > accessed 22 November 2025.
[375] Rajasthan SLSA, *The Open Prisons of Rajasthan- detailed study by Smita Chakraburtty* (2017) <https://rajasthan.nalsa.gov.in/publication/a-study-on-the-open-prisons-of-rajasthan/ > accessed 20 November 2025.
[376] *Ibid.*

Figure 2.5 - Bikaner Open Prison, Rajasthan - Prisoners working in the research centre field[377]

Figure 2.6 - Sanganer Open Prison, Rajasthan - Prisoners sitting in row for roll call[378]

[377] Rajasthan SLSA, *The Open Prisons of Rajasthan- detailed study by Smita Chakraburtty*(2017) <https://rajasthan.nalsa.gov.in/publication/a-study-on-the-open-prisons-of-rajasthan/ > accessed 20 November 2025.
[378] *Ibid*.

In its functional sense, open jail is not a novel idea. In 1891, Witzill Prison in Switzerland was established as the first minimum security establishment, which now is also the largest farm of Switzerland with a total agricultural land of 612 hectares.[379] In the United States, the idea of open camps grew out of necessity in the 1930s to build a highway near Tucson, Arizona. The success of this camp led the authorities to transfer prisoners from overcrowded prisons to these camps.[380] Open institutions gained momentum with the 12th International Penal and Penitentiary Conference held at Hague in 1950. The agenda of the conference was -

> *"To what extent can open institutions replace the traditional prison."*[381]

In independent India, the first ever open-air camp was set up and attached to the Model Prison at Lucknow in 1949. The State of Uttar Pradesh further established an open prison camp in 1953 for the construction of a dam over Chandraprabha river near Varanasi. During the 1950s, open prison camps were set up at various places such as Chakiya, Naugarh, and Shahgarh. In Rajasthan, the first open prison camp was set up in Sanganer in 1963. These camps were popularly called Sampurnanand camps after the reformist politician Sampurnanand who, in his capacity as Chief Minister of Uttar Pradesh in the 1950s and as Governor of Rajasthan in the 1960s, vigorously promoted the idea.[382]

In 1996, the Supreme Court in *Rama Murthy v. State of Karnataka*[383] observed the importance of open air prisons:

> "45. *Open air prisons play an important role in the scheme of reformation of a prisoner which has to be one of the desideratum of prison management. They represent one of the most successful applications of the principle of*

[379] Jeannie Wurz, 'Challenges posed by an ageing prison population' *SWI* (5 April 2016) <https://www.swissinfo.ch/eng/society/challenges-posed-by-an-ageing-prison-population/42007482> accessed 21 May 2024.
[380] D. Chandra, *Open Air Prisons- A Sociological study* (1st edn, O.P. Vohra 1984).
[381] Open Institutions, First United Nations Congress on the prevention of crime and the treatment of offenders Geneva 1955 <087_ACONF.6.C.2.L.1_Open_Institutions.pdf (unodc.org)> accessed 22 May 2024.
[382] NV Paranjpe, *Criminology and Penology* (Central Law Publications, 2001).
[383] Writ Petition (Civil) No. 12223 of 1984, dated 23 December 1996.

individualization of penalties with a view to social readjustment as stated by B. Chandra in the Preface to his book titled "Open Air Prisons". It has been said so because release of offenders on probation, home leave to prisoners, introduction of wage system, release on parole, educational, moral and vocational training of prisoners are some of the features of the open air prison (camp) system. Chandra has stated in the concluding portion of Chapter 3 at page 150 (of 1984 edition) that in terms of finances, ***open institution is far 45 less costly than a closed establishment and the scheme has further advantage that the Government is able to employ in work, for the benefit of the public at large, the jail population which would have otherwise remained unproductive.*** *According to the author, the monetary returns are positive, and once put into operation, the camps pay for themselves."*

Chapter XXIII of the MPM 2016 categorises open institutions into three types: 1. Semi-open Institutions 2. Open Training Institution/Open Work Camp and 3. Open Colony. Section 2(21) of the Model Prisons and Correctional Services Act, 2023 defines 'Open Correctional Institution' as:

> *"Open Correctional Institution means a place for confinement of eligible prisoners on such conditions, as may be prescribed under the rules, for giving them more liberty outside a regular prison for facilitating their rehabilitation after release."*

Besides open prisons, semi-open prison is another type of prison which takes the best features from both open and closed prison by providing the inmates some freedom while maintaining a controlled environment. In a semi-open prison, the prisoners are free to move inside the prison, however they cannot leave the jail premises unlike open prisons. As per Delhi[384] and Goa[385] prison manuals, semi-open prison is defined as:

[384] Delhi Prison Rules 2018, Sec 2(49).
[385] Goa Prisons Rules 2021, Sec 2(aah).

> *"Semi-open Prison means any place within the prison complex so declared by the Government for temporary or permanent use for the detention of prisoners in which the prisoners are trusted to serve their sentences with minimal supervision and perimeter security and* ***are not locked up in prison cells and do the work within the area demarcated*** *by the Inspector General inside the prison complex as assigned to them from time to time while serving their sentence."*[386]

In 2017, the Rajasthan State Legal Services Authority (RSLSA) prepared a report titled 'The Open Prisons of Rajasthan'.[387] It analysed the comparative prison budgets between Jaipur Central Jail and Sanganer Open Camp and found that the open prison was 78 times cheaper than closed prison**.** In open prisons, the State does not bear the prisoner's expense on food, medicine, electricity or wages, which substantially cuts down the total cost per prisoner.[388]

2.3.1 Eligibility for Transfer to Open Prisons

The Prison Statistics Report, 2022[389] shows that there are 91 open jails in India housing 4,258 prisoners which account only for 0.74% of the total prison population. Out of these prisoners, 4,224 prisoners are convicts which account for 3.1% of the total convicts in custody in India. Since open and semi-open institutions operate entirely on the idea of trust, self-responsibility, discipline and the potential of the prisoner to be benefitted by the treatment in such institutions, only a specific category of prisoners with good conduct are eligible for transfer to open and semi-open prisons.

As per the MPM 2016,[390] before recommending the transfer of prisoners to open jails, a Selection/Classification Committee screens the case of each prisoner on various grounds such as the conduct and character in prison, physical and mental fitness, progress in work

[386] Delhi Prison Rules 2018, Sec 2(49).
[387] Rajasthan SLSA, *The Open Prisons of Rajasthan- detailed study by Smita Chakraburtty*, (2017) <https://rajasthan.nalsa.gov.in/publication/a-study-on-the-open-prisons-of-rajasthan/ > accessed 20 November 2025.
[388] *Ibid.*
[389] National Crime Records Bureau, *Prison Statistics India, (2022).*
[390] Ministry of Home Affairs, *Model Prison Manual*, (2016).

vocational training and education and verification of address/relatives.[391] Prisoners such as those convicted for serious offences like dacoity, terrorist crimes, kidnapping, smuggling or under NDPS Act, POCSO Act, who are suffering from mental illness, or are involved in serious prison violence like assault, riot, mutiny or escape or habitual offenders provided they have not earned a higher grade in the proposed progressive system are not eligible for transfer from closed to open institutions.[392]

State Governments frame their own rules specifying the eligibility criteria for admission to an open prison. In India, except for the State of Jharkhand, only convicts are sent to open prisons. As per the Prison Statistics Report, 2022, there were 34 undertrial prisoners (29 males and 5 females) in Jharkhand who were transferred to open jail.[393] However, as per information received from Jharkhand Prison Department, such undertrials are now shifted to a special jail and none of them are housed in any open jail in India as of 31 December 2023.

The MPM 2016 lays down the following criteria for transfer of prisoners to open prisons, semi-open institutions and open colonies. It is shown pictorially as below:[394]

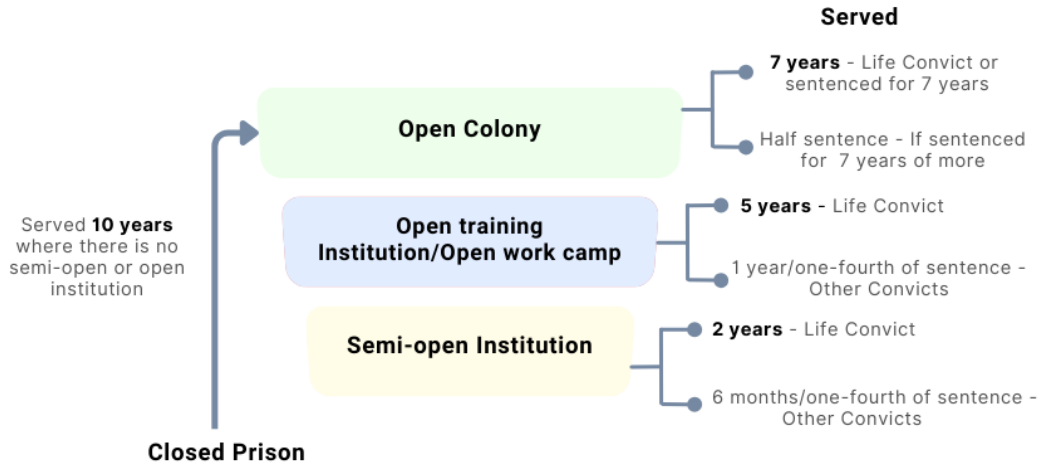

Figure 2.7: Eligibility Criteria for Transfer to Open Institutions[395]

[391] MPM 2016, Rule 23.03.2.
[392] As per the rules related to open prisons applicable to States and UTs.
[393] National Crime Records Bureau, *Prison Statistics India, (2022).*
[394] MPM 2016, Rules 23.05, 23.09 and 23.12.
[395] Annexure F : Open Prisons in India.

A caution for administration of open jails is that since prisoners go outside the prison for work, it increases the chances of escapes.

The potential to escape is one of the basis for deciding the eligibility of prisoners to be transferred to open institutions. In some States like Bihar and West Bengal, prisoners who are ordinary residents of the State are eligible for this purpose.[396] In other States, married prisoners are not considered eligible for admission to open institutions.[397] There is a huge disparity in the criteria of eligibility in all the State jail manuals/open prison rules, which may lead to the underutilisation of open jails. This is discussed below at length on following parameters:[398]

1. **<u>On the basis of gender</u> -** The Prison Statistics Report, 2022 of NCRB reveals that there are 23,772 women incarcerated in prisons.[399] In fulfilling the reformative purpose of any correctional system, all genders must be placed at the same footing with each other, unless there is a reasonable classification. However, from the analysis of State Jail Manuals and Rules, it was found that some States like West Bengal, Odisha[400], Tamil Nadu[401] and Assam exclude women prisoners from the benefit of being transferred to semi-open and open jails. Rule 23.03 of Chapter XXIII 'Open Institutions' of the MPM 2016 nowhere excludes women prisoners from being eligible for transfer to open institutions.[402]

   This issue also came up before the Delhi High Court in *Sunil Kumar Gupta v. Government of NCT of Delhi*[403] in which a writ petition was filed against the exclusion of women prisoners from the beneficial treatment of being lodged in open and semi-open jails without any reasonable justification. When the case

[396] Bihar Open Prison Rules 2008, Rule 3; West Bengal Correctional Services Act 1992, Section 89.
[397] Annexure F : Open Prisons in India.
[398] *Ibid.*
[399] Prison Statistics Report, 2022, NCRB, MHA, Government of India.
[400] Odisha Jail Manual 2020, Rule 844(2)(j).
[401] Tamil Nadu Prison Manual 1983, Rule 797(9).
[402] Model Prison Manual 2016, Rule 23.03.
[403] *Sunil Kumar Gupta v. Government of NCT of Delhi* [2018] DHC 3184-DB.

was *sub-judice*, the Court was informed that the Government of NCT of Delhi has approved the Semi-Open Prison Guidelines Amendment, 2018 directing the deletion of the provision excluding women prisoners from availing the benefit of semi-open and open jails in the same manner as the facility was made available to the male prisoners.[404]

While most of the States place women and men prisoners at par with each other for the purpose of transfer to open jails, some States, as shown above, continue to retain this arbitrary exclusion of women prisoners.

2. **<u>On the basis of marital status</u>** - In States like Rajasthan,[405] West Bengal,[406] and Odisha,[407] unmarried prisoners are ineligible to be transferred to open jails. One of the rationales behind this exclusion could be that a prisoner having marital ties is less likely to abscond the discipline of an open prison. When the correctional system in India is struggling with congested prisons, it is time that for the purpose of being eligible for open prisons, prisoners are assessed on the basis of sentence served, flight risk, conduct, parole and furlough records, criminal history and family ties which may not necessarily be marital.

3. **<u>On the basis of age</u> -** Some of the States like Andhra Pradesh[408] and Tamil Nadu[409] prescribe that in order to avail the benefit of open prison, the prisoner has to be between 21 to 55 years of age. However, States like Bihar[410] and Odisha[411] exclude prisoners who are below the age of 30 years from being eligible for open jails, which as per the NCRB Report accounts for the 44.7% of inmates in India. Excluding this considerable group of prisoners from the opportunity of reform by way of admission to open jails is also a major roadblock to decongesting the correctional institutions in India.

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[404] *Ibid,* Delhi Government, Order No.F.9/7/2010/HOME(G) dated 11th May, 2018.
[405] The Rajasthan Prisoners Open Air Camp Rules 1972, Section 3(m).
[406] West Bengal Correctional Services Act 1992, Section 89 .
[407] Odisha Jail Manual 2020, Rule 844(2)(j).
[408] *Ibid.*
[409] Tamil Nadu Prison Manual 1983, Rule 796(3).
[410] *Ibid.*
[411] *Ibid.*

4. **<u>On the basis of minimum punishment inflicted and sentence served</u> -** When open prisons started in the United States, only those prisoners were eligible who had served a substantial period of their sentence and were nearing the completion of their sentence. This was done to ensure that before their release, the prisoner is exposed to a more favourable environment, thereby, ensuring swift reintegration into society. In India, the concept of open prisons has evolved differently across States, with varying eligibility criteria based on the proportion of the sentence already served. For example, in Bihar, one of the eligibility criteria for open prison is that the prisoner has served one-half of the sentence in traditional jails, while in States like Himachal Pradesh and Karnataka, a prisoner who has served even one-fourth of the period of sentence is eligible.[412]

   As regards the period of imprisonment imposed as punishment, in States like West Bengal, the prisoner must be sentenced to a minimum of 7 years to be eligible for open prison, whereas, in Punjab, a prisoner who is sentenced to even 1 year of imprisonment is also eligible to be transferred to open prison.[413] In States like Assam, convicts sentenced to simple imprisonment are not eligible for open institutions. Usually preference is given to those prisoners who are sentenced for longer periods.[414]

Besides open institutions, with respect to semi-open prisons, from the analysis of prison manuals, it was found that while the eligibility criteria for transfer of prisoners to semi-open prisons in prison legislations of Tripura, Mizoram and Puducherry is the same as in the MPM 2016, there is inconsistency in States like Haryana,[415] Goa[416] and Delhi.[417] Most of the remaining States have not specifically dealt with semi-open institutions, as not many

[412] *Ibid.*
[413] *Ibid.*
[414] Kerala Prison Rules 1958, Chapter I, Rule 3A.
[415] Haryana Prison rules 2022, Rule 948.
[416] Goa Prisons Rules 2021, Rule 1320.
[417] Delhi Prisons Rules 2018, Rule 1321.

States in India have semi-open prisons. There is also a need for data with respect to the number of semi-open prisons in India in the prison statistics report of NCRB.

Semi-open prisons offer a middle path to the prison authorities, especially in cases of security concerns. Instead of transferring prisoners directly into open prisons, a gradual approach of placing them in semi-open prisons for better observation can be adopted, and if their behaviour remains positive, they can eventually be transferred to open prisons. Rule 23.13 of the MPM 2016 also provides the same:

> *"23.13* ***Inmates should initially be treated in Semi-open Institutions and then in Open Institutions.*** *Transfer to an Open Colony should be made only after ensuring that the inmate has satisfactorily responded to the treatment in Semi-open and Open Institutions…"*

In Haryana and Delhi also, a convict sentenced upto 10 years is eligible for open institution only when he has completed one year in a semi-open air prison.[418]

Open prisons play a crucial role in reintegrating prisoners into society. However, as per the NCRB Report of 2022, open jails are underutilised with an occupancy rate only of 74%. States must therefore, take efforts to carefully relax the eligibility criteria of prisoners for transfer to open and semi-open institutions, in conformity with the guidelines laid down in the MPM 2016. In addition, possibility may also be explored with due caution to gradually extend this facility to undertrial prisoners who constitute 75% of the prison population, like had been done in Jharkhand.[419] This has also been suggested by the Rajasthan SLSA in its report on open prisons.[420]

The Prison Statistics India, 2022 of NCRB also reveals that the actual capacity of open prisons in India is only 6,043 prisoners, which categorically shows that there is an urgent

[418] Haryana Prison Rules 2022, Rule 949; see also Delhi Prison Rules 2018, Rule 1325.
[419] As per the Prison Statistics Report, 2022 of NCRB, 34 undertrial prisoners (29 males and 5 females) in Jharkhand were transferred to open jail.
[420] Rajasthan SLSA, '*The Open Prisons of Rajasthan- detailed study by Smita Chakraburtty* (2017) <https://rajasthan.nalsa.gov.in/publication/a-study-on-the-open-prisons-of-rajasthan/ > accessed 20 November 2025.

need to construct more open jails. The Supreme Court in *Re-Inhuman Conditions In 1382 Prisons*[421] also observed that:

> *"We expect the state governments concerned to not only try and utilise the existing capacity of these open prisons and if necessary* ***increase the existing capacity of these open prisons*** *in due course of time."*

Open prisons are resource intensive and can be constructed even in makeshift arrangements next to the boundary wall of the closed prisons. Agricultural farms/colonies can also be converted into open jails. The Rajasthan SLSA in its Report also suggested that there should be a minimum of 2 open prisons in every district.[422] It can be built as a prisoner village like that of Sanganer Open Prison.

Open institutions for prisoners in the form of agricultural colonies and open work camps is a measure to humanise the correctional system and actualise the reformative theory of punishment. While it gives a second chance to the prisoners to start their life afresh as law-abiding citizens, it also creates a skilled workforce for nation building activities, agriculture and construction projects. More number of open and semi-open institutions for prisoners can undeniably make a dent on the current congested condition of Indian jails, while also playing a transitional role in minimising the gap between the institutional life of prisoners inside closed prisons and free life in society.[423]

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[421] *Re-Inhuman Conditions in 1382 Prisons,* Writ Petition (C) No. 406/2013, Order dated 8 May 2018.
[422] Rajasthan SLSA, '*The Open Prisons of Rajasthan- detailed study by Smita Chakraburtty*, (2017) <https://rajasthan.nalsa.gov.in/publication/a-study-on-the-open-prisons-of-rajasthan/ > accessed 20 November 2025.
[423] Ibid.

Part III: LEGAL AID SERVICES IN PRISONS

The right to access to justice is a fundamental right conferred by Article 21 of the Indian Constitution upon all persons, irrespective of the social or economic standing of the person. To enforce this fundamental right, the legal system must dispense justice based on equal opportunity to access justice. Legal aid in this context, forms the cornerstone of the right to approach the courts to secure justice.[424] In 1987, the legal services framework was institutionalised for the first time in India with the enactment of the Legal Services Authorities Act, 1987 (LSA Act, 1987).

The object of this beneficiary legislation is to constitute legal services authorities to provide free and competent legal services to the disadvantaged sections of society so that no citizen is denied the opportunity to secure justice because of economic or other disabilities. Section 12(g) of the LSA Act, 1987 provides that persons in custody are entitled to free legal aid in the form of representation in court or legal advice.[425]

The LSA Act, 1987 provides that there shall be legal services authorities from the national to the taluka level with the National Legal Services Authority (NALSA) headed by the Chief Justice of India at the apex level, followed by the Supreme Court and High Court Legal Services Committee, the State Legal Services Authority (SLSA), and the District Legal Services Authority (DLSA) and Taluka Services Committee. The Act facilitates a prisoner to approach any legal service authority, subject to its territorial and subject matter jurisdiction.

[424] *Sheela Barse v. State of Maharashtra* [1983] INSC 9.
[425] Legal Services Authorities Act 1987, Section 12(g).

3.1 Legal Awareness : The First Step

Legal awareness is a pre-requisite for legal empowerment. Besides the socioeconomic background, prisoners are housed in a place of confinement, distant from their family and courts, which further exacerbates their disadvantage. The undertrial prisoners and convicts who are at the mercy of the prison administration are usually unaware that the State is under a mandate to provide them with free and competent legal aid.

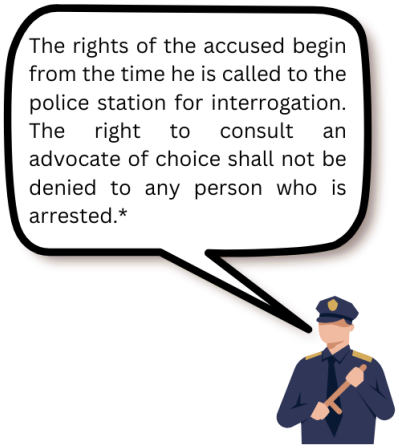
The provision of legal aid is triggered at the moment the accused is arrested. The criminal justice system comprising of the police, the judges, lawyers, legal services authorities, and the prison administration is duty bound to ensure that legal aid is provided at every stage of interface with the detainee. At the police station, suspects have the right to legal assistance and be provided with a leaflet outlining their rights to free legal aid.[426] Upon receiving a request for legal assistance during interrogation, the concerned legal services authority based on duty rosters for various police stations, notifies appointed lawyers.[427]

On 23 October 2024, the Supreme Court emphasised that raising legal aid awareness is essential and directed that public places, including police stations, bus stands, post offices, and railway stations must prominently display the address and contact details of the nearest legal aid officer in both the local language and English. Additionally, the Court recommended conducting awareness campaigns through All India Radio and expanding promotional efforts via digital platforms.[428]

The duties of concerned stakeholders of the criminal justice system in providing legal aid at various stages are adequately depicted in the following figure:

[426] NALSA, *Early Access to Justice at Pre-Arrest, Arrest and Remand Stage*,Para 4.1.1.
[427] NALSA, Early Access to Justice at Pre-Arrest, Arrest and Remand Stage,Para 4.1.2.
[428] *Suhas Chakma v. Union of India* [2024] INSC 813.

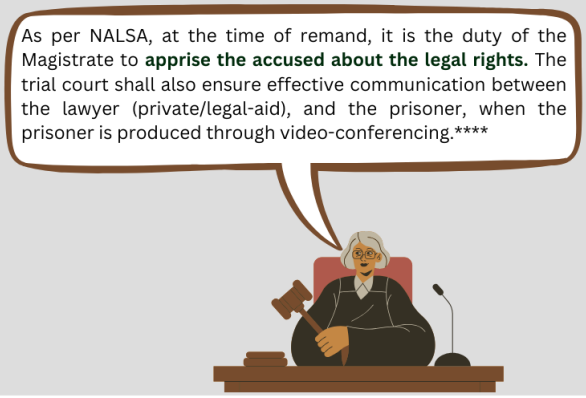
AT THE POLICE STATION



As per the Early Access to Justice at Pre-Arrest, Arrest and Remand Stage, NALSA, the police shall inform the accused of the **grounds of arrest, the right to bail and that free legal assistance can be availed from the legal services authorities.** The police is also mandated to provide the accused with a **leaflet of rights** prepared by the SLSA.

The Supreme Court of India also directed that the police must immediately intimate the fact of arrest to the nearest Legal-Aid Committee which shall take immediate steps to provide legal assistance to the arrestee at State cost. **

AT THE COURT



On production of the arrested person in court, the concerned Magistrate shall satisfy himself that the requirements of informing the person arrested about the grounds of arrest and the right of bail by the police officer has been complied with.

The Magistrate is also bounden to inform the accused of the right to have a legal practitioner.***

AT THE PRISON

As per Rule 5.47 MPM 2016, every newly admitted prisoner shall be subjected to a **programme of orientation** to inform them about the rules and regulations. Further, their rights and duties as a prisoner shall be clearly displayed at each part of the prison and explained to them in a language they understand.

Similarly, Rule 5.35 of the MPM 2016 provides that at the time of admission, the prisoners shall be handed over a **manual/ handbook containing rights and duties of the prisoners.**

Nandini Satpathy v. P.L. Dani, (1978) 2 SCC 424.

** *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96.

*** *Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid v. State of Maharashtra,* AIR 2012 SC 3565.

**** Regulation 18, SOP Access to Legal Aid Services to Prisoners and Functioning of the Prison Legal-Aid Clinics, 2022, NALSA.

Figure 3.2 - Duties of Criminal Justice Stakeholders in Legal Aid

3.1.1 Case Table and Touchscreen Kiosks

For prisoners, one of the major concerns is a lack of knowledge of the case status in which they are accused/convicted. For that purpose, Regulation 8 of the SOP on Access to Legal Aid Services to Prisoners and Functioning of the Prison Legal Aid Clinics, 2022 of the NALSA has introduced a provision of '*Case Table*' which is to be organised for all the newly admitted prisoners on the same day or the next day of the admission by the Prison Superintendent, where they shall explain the offences under which the person has been sent to judicial custody, general rights and duties of prisoners, and also ensure whether they are represented by a legal counsel.[429]

With the advent of technology, touchscreen kiosks are also being installed for the prisoners, accessible inside the prison premises.[430] These kiosks are equipped with computer terminals where prisoners can enter their unique identification numbers/register numbers to access information like case details, next date of hearing, and period of custody. Kiosks also display information like remission, incentives earned, history ticket, and any other information as deemed necessary by the prison administration.

Many States have updated their prison policy by including touchscreen kiosks in the prison statutes.[431] Rule 707 of the Uttar Pradesh Jail Manual, 2022 mandates the establishment of a sufficient number of interactive prisoner information kiosks. In 2021, all prisons in Delhi had installed e-kiosks.[432] The Maharashtra Prison Department has also recently installed biometric touch screen e-kiosk machines in its 45 prisons.[433]

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[429] NALSA, *SOP on Access to Legal aid Services to Prisoners and Functioning of the Prison Legal aid Clinics, 2022*, Regulation 8. <https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/04/20250408618042663.pdf> accessed 19 April 2024.

[430] e-committee, Supreme Court of India, Information and Communication Technology in Indian Judiciary, <https://ecommitteesci.gov.in/service/touch-screen-kiosks/> accessed 17 November 2024.

[431] Odisha Model Jail Manual 2020, Rule 1191; Prison Manual for the Superintendence and Management of the jails in Himachal Pradesh 2021, Rule 31.03; Bihar Jail Manual 2012, Rule 247.

[432] *Mukesh Kumar v. State (Govt. of NCT of Delhi)*, Criminal Appeal No. 1343 of 2012, dated 28 July 2021, Delhi High Court.

[433] Mateen Hafeez, 'With e-kiosks in jails, inmates free to access court dates & parole info' *Times of India*, (Mumbai, 15 February 2024) <http://timesofindia.indiatimes.com/articleshow/107704903.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed 22 April 2024.

In *Rathinam v. State,*[434] Madras High Court directed the State to set up kiosks inside prisons for the prisoners in their vernacular language, other than Hindi and English to enable the prisoners to know the case status, without any linguistic hardship.

The High Court of Uttarakhand suggested that a mechanism should be developed in a manner so that prisoners can track the status of their cases pending at the level of the Supreme Court. In this mechanism, information about the concerned case may automatically be sent to the e-prison portal which the prisoner can access through e-kiosk, and telephone networking must be established by the prison department within the concerned jail.[435] Touchscreen kiosks manned by trained staff should be installed in all the prisons to enable the prisoner to track their case particulars. This will also save the time of legal aid lawyers and facilitate a better legal aid service to prisoners.

3.2 Modus of communication with LSAs

Legal services are available to persons in need through legal service institutions at various levels of the justice system like the DLSAs, HCLSC, and SLSAs all of which have a front office for submitting applications. It is preferred that applications are in Form-I[436] in the local language or English, but arrangements can be made to help illiterate applicants fill out the application form.[437] In the electronic mode, any person can apply online on the website of the concerned LSA or via the Legal Services Mobile Application. In addition, there are toll-free helpline numbers for LSAs for easy access to legal aid.[438]

The application form for legal aid available on the homepage of NALSA looks like:

[434] WP (MD).No.10524 of 2020, dated 12 July 2023 , Madras High Court.
[435] As per the information received from the High Court of Uttarakhand.
[436]Form - 1 of Form for Application for Legal Services as per Regulation 3, National Legal Services Authority, (Free and Competent Legal Services) Regulations, 2010 .
[437] Regulation 3(4), The National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010.
[438] NALSA Helpline Toll-Free Number - 15100 <https://nalsa.gov.in/> accessed 15 April 2024.

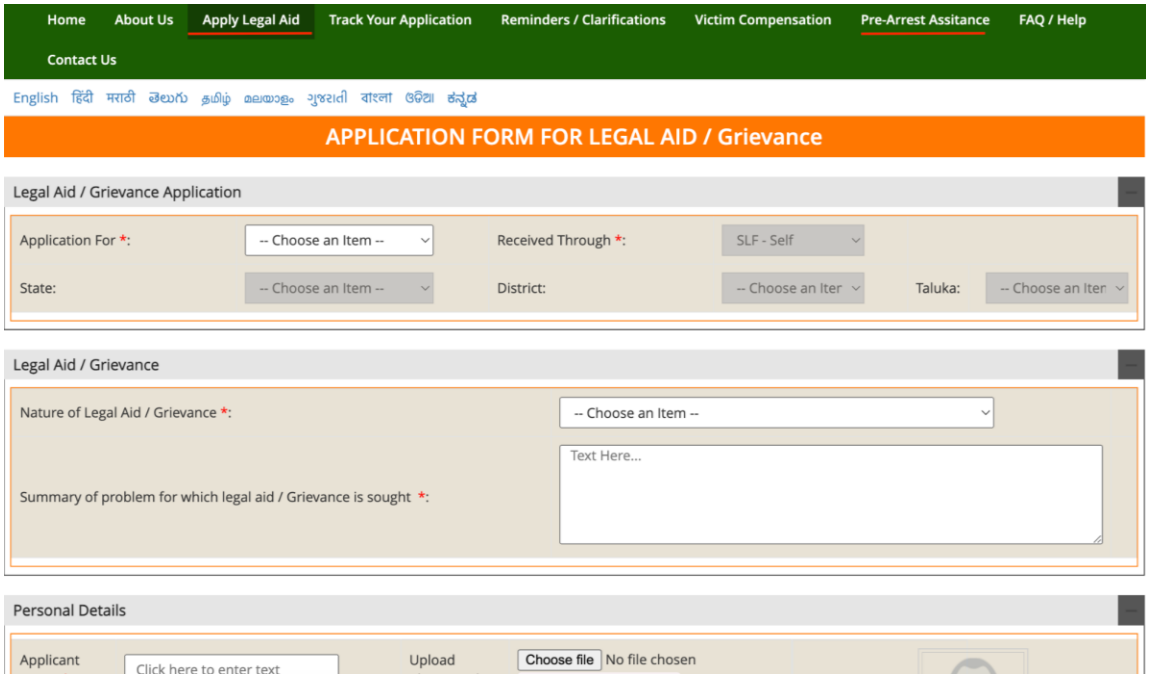

Figure 3.3 - Application Form for Legal aid available on the homepage of NALSA[439]

The figure above shows that besides legal aid to persons in need, NALSA also provides assistance at the pre-arrest stage. To further this initiative, it has devised comprehensive guidelines "*Early Access to Justice at Pre-Arrest, Arrest, and Remand Stage*"[440] to ensure timely and effective legal support at all stages.

3.2.1 Prison Legal Aid Clinics

Legal aid clinics act as a bridge between persons who are unable to access justice and the courts. Regulation 3 of the National Legal Services Authority (Legal Services Clinic) Regulation, 2011 for the first time provided for the establishment of legal services clinics in jails. Thereafter, in 2015, NALSA directed all the SLSAs to set up a Prison Legal Aid Clinic (PLAC) in each prison which shall serve as the first point of contact for the prisoners

[439] Homepage, NALSA, Government of India <https://scourtapp.nic.in/lsams/nologin/applicationFiling.action?requestLocale=en> accessed 6 April 2024.
[440] NALSA, *Early Access to Justice at Pre-Arrest, Arrest and Remand Stage.* <https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/04/20250408448855620.pdf> accessed 15th October 2025.

to seek free and competent legal aid.[441] PLACs are governed by the SOP on Access to Legal Aid Services to Prisoners and Functioning of the Prison Legal Aid Clinics, 2022. Regulation 1 of SOP 2022[442] provides that:

> *"1. Setting up of the Prison Legal aid Clinic: The District Legal Services Authority (DLSA) of every district shall establish a Prison Legal aid Clinic (PLAC) within the premises of every prison under its jurisdiction. This is in furtherance of NALSA (Legal Services Clinics) Regulations 2011, which mandates the setting up of legal services clinic in prisons."*

The function of PLACs is to provide meaningful, efficient and effective legal services to ensure that no person in custody is without legal representation at any stage of the criminal proceeding and to raise awareness regarding the same. These clinics also act as a one-stop centre to raise the grievances of prisoners.[443]

As per the information received from prison departments, 1,140 legal aid clinics are functioning across 1,327 jails in India in 2023, catering to the legal needs of prisoners.[444] Out of the 187 jails which do not have PLACs, some of such jails are either non-functional or temporarily closed or are under repair. As per information received from the respective prison departments, 5 jails in Odisha which do not have PLACs are not functional; 3 open air jails and 10 temporarily closed jails in Tamil Nadu do not have PLACs and 1 jail in Punjab which does not have a PLAC is under repair.

The SOP provides that the PLACs should be situated in an open area with unfettered access to prisoners.[445] In this regard, the Calcutta High Court has submitted that in 23 sub-

[441]NALSA, *SOP on Access to Legal aid Services to Prisoners and Functioning of the Prison Legal aid Clinics(*2022)https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/04/20250408618042663.pdf> accessed 14th October 2025 .
[442] ibid
[443] NALSA, *SOP on Access to Legal aid Services to Prisoners and Functioning of the Prison Legal aid Clinics*(2022) Regulation 2.
[444] Annexure I : No. of Prison Legal Aid Clinics.
[445] NALSA, *SOP on Access to Legal aid Services to Prisoners and Functioning of the Prison Legal aid Clinics*(2022) Regulation 1.1 <https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/04/20250408618042663.pdf> accessed 19 April 2024.

correctional homes in West Bengal, there is a need for setting up a PLAC at conspicuous places along with banners of legal aid services for legal awareness of prisoners.[446]

The PLAC is manned by Jail Visiting Lawyers (JVLs) and Paralegal Volunteers (PLVs) who work as mediators between the prisoners and the DLSA. The SOP mandates the DLSA to assign each PLAC with an adequate number of convict and community PLVs. Convict PLVs are PLVs nominated by the prison department and appointed by the Legal Services Institution from amongst the convicted persons serving long-term sentences. They have the duty to manage the PLAC, draft bail applications, appeals, parole and other applications and maintain the records and registers.[447]

Prisoners at any stage of their case, may apply for legal aid by contacting the JLV/PLV deputed at the PLAC. In addition, the prisoner may also raise the request of appointing a legal aid lawyer through the concerned court or also with the DLSA Secretary during the prison visit.[448]

The SOP provides that the number of JVLs and PLVs appointed should be directly proportional to the population of inmates in each of the respective prisons. It also provides the number of legal aid personnel required to be appointed for every Central and District Prison and Sub-Jails *(as depicted in figure 3.4 below)*:

[446] As per the information received from the High Court of Calcutta.
[447] NALSA, *SOP on Access to Legal aid Services to Prisoners and Functioning of the Prison Legal aid Clinics*(2022) Regulation 3.2. <https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/04/20250408618042663.pdf> accessed 18 October 2024.
[448] NALSA, *SOP on Access to Legal aid Services to Prisoners and Functioning of the Prison Legal aid Clinics*(2022) Regulation 7 <https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/04/20250408618042663.pdf> accessed 1 May 2024.

Figure 3.4 - Number of JVLs and PLVs required in Prisons[449]

As per information received from the High Courts, some of them like Calcutta, Sikkim, and Himachal Pradesh High Court have submitted that legal aid clinics are manned by long term convict PLVs.[450] In Koderma District Jail, Jharkhand, one trained UTP PLV is also deputed in the jail legal clinic to provide legal aid to undertrial prisonsers.[451] Nominating willing undertrial prisonsers who are in prison for a substantial time as PLVs to interact with other undertrial prisonsers and ensure effective legal representation will ensure a better comfort level for the prisoners to ventilate their grievances. It will also create more opportunities for the prisoners to be engaged in useful work within the prison confines.[452]

3.2.2 Grievance Redressal Box

A grievance box inside a prison provides a simple and accessible method for prisoners to voice their concerns and seek assistance from the prison and legal services authorities. As per SOP on Access to Legal aid Services to Prisoners and Functioning of the Prison Legal

[449], NALSA, *SOP on Access to Legal aid Services to Prisoners and Functioning of the Prison Legal aid Clinics*(2022) Regulation 3.1.1 & 3.2.3.<https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/04/20250408618042663.pdf> accessed 19 April 2024.
[450] As per the information received from the High Courts.
[451] As per the information received from the High Court of Jharkhand.
[452] 'UP: Legal aid to fellow inmates makes murder convict 'lakhpati'' *The Print* (India, 06 September 2024) < https://theprint.in/india/up-legal-aid-to-fellow-inmates-makes-murder-convict-lakhpati/2256039/ > accessed 18 November 2025; Faiz Rahman Siddiqui, 'Murder convict works as para-legal aid, becomes UP's highest paid inmate' *The Times of India* (India, 06 September 2024) < https://timesofindia.indiatimes.com/india/murder-convict-works-as-para-legal-aid-becomes-ups-highest-paid-inmate/articleshow/113109833.cms > accessed 18 November 2025.

aid Clinics, 2022 of NALSA, a complaint box under the exclusive control of the Chairman/Secretary of the DLSA must be installed in every prison by the DLSA, and it must be ensured that the prisoners are informed and encouraged to raise their grievances without fear.[453] Puducherry Prison Department has submitted that a complaint box/suggestion box has been installed in the prison, in which the complaints dropped by the prisoners are directly collected by the officials of legal service authorities and taken to the direct knowledge of the judges.[454]

Besides a complaint box exclusively accessible by the LSA, a grievance box is also placed for prisoners inside the prison complex which is maintained by the jail authorities as well as judges visiting the prisons on inspection. As per Rule 257 of Bihar Prison Manual 2012, complaint boxes are to be placed in every prison:

> *"Each prison shall have **two complaint boxes (one for complaints addressed to District Magistrate and the other for Superintendent)** kept securely at a prominent place within reach of the inmates. The inmates may drop their complaints in the form of written petitions addressed to superintendent, or to the higher authorities into such boxes."*

The Kerala Prison Department has also submitted that a meeting of the Prison Grievance Committee is convened once every month.[455] Further, as per the Jharkhand Prison Department, no issue seems to be raised by the inmates in the grievance box as most of the time their grievances are addressed by taking *darbar* now and then.[456]

3.3 Facilitating Legal aid to Prisoners: Role of UTRCs

Prison Statistics Reports of NCRB show that there has been a noticeable rise in the undertrial prisoner population from 68.5% in 2017 to 75.8% in 2022.[457] In response to the

[453] NALSA, *SOP on Access to Legal aid Services to Prisoners and Functioning of the Prison Legal aid Clinics*(2022)Regulation 14. <https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/04/20250408618042663.pdf> accessed 24 April 2024.
[454] As per information received from Puducherry Prison Department.
[455] As per information received from Kerala Prisons and Correctional Department.
[456] As per information received from Jharkhand Prison Department.
[457] National Crime Records Bureau,Prison Statistics India (2017)(2022).

rising number of UTP and the issue of overcrowding within prisons, the Supreme Court in *Re-Inhuman Conditions in 1382 Prisons*[458] issued a directive in 2015 mandating the collaboration of the NALSA with the MHA to establish an Under-trial Review Committee (UTRC) chaired by the District & Sessions Judge in every district, It comprisings of the District Magistrate, Superintendent of Police, Secretary, DLSA and the Superintendent of Prison. The primary purpose of this Committee is to review the cases of prisoners and ensure they are not subjected to prolonged detention. UTRCs are regulated by a Standard Operating Procedure formulated by NALSA.

The existing gap in the digitisation of jail records makes the process of review and recommendation a multi-step process, with the Jail Superintendent compiling the quarterly data on inmate, the Secretary DLSA and other legal professionals identifying eligible cases for release and the District and Sessions judge convening a meeting with other members to review and make recommendations. [459]

The functioning of UTRC has helped reduce congestion in prisons. After the setting up of UTRCs, there has been a steady increase in the number of undertrials being released.[460] It is important to note that from 16 July to 13 August 2022, in celebration of the Azadi Ka Amrit Mahotsav, a campaign titled Release@75 was organised to address the issue of overcrowding in prisons by identifying prisoners eligible for release under various categories as directed by the Supreme Court in *Re-Inhuman Conditions in 1382 Prisons*.[461] Under this initiative, 24,789 undertrial prisoners were released out of 47,618 recommendations made.[462] This led to a steep jump in the number of prisoners being released from prisons from 3% (12,478) in 2019 to 6.1% (35,480) in 2022 as shown below:[463]

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[458]Supreme Court of India, Writ Petition (Civil) No. 406/2013, dated 24 April 2015.
[459] NALSA, Revised Standard Operating Procedure for Undertrial Review Committes.
[460] Unstarred Question No.2663, Rajya Sabha, 23 April 2023 <https://sansad.in/getFile/annex/259/AU2663.pdf?source=pqars> accessed 26 May 2024.
[461] A Campaign for the release of prisoners by the Under Trial Review Committees to commemorate the 75th Independence Day of India: A Report, NALSA <https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/04/20250420607992949.pdf> accessed 14 October 2025.
[462] *Ibid.*
[463] *Ibid.* As per information provided by NALSA.

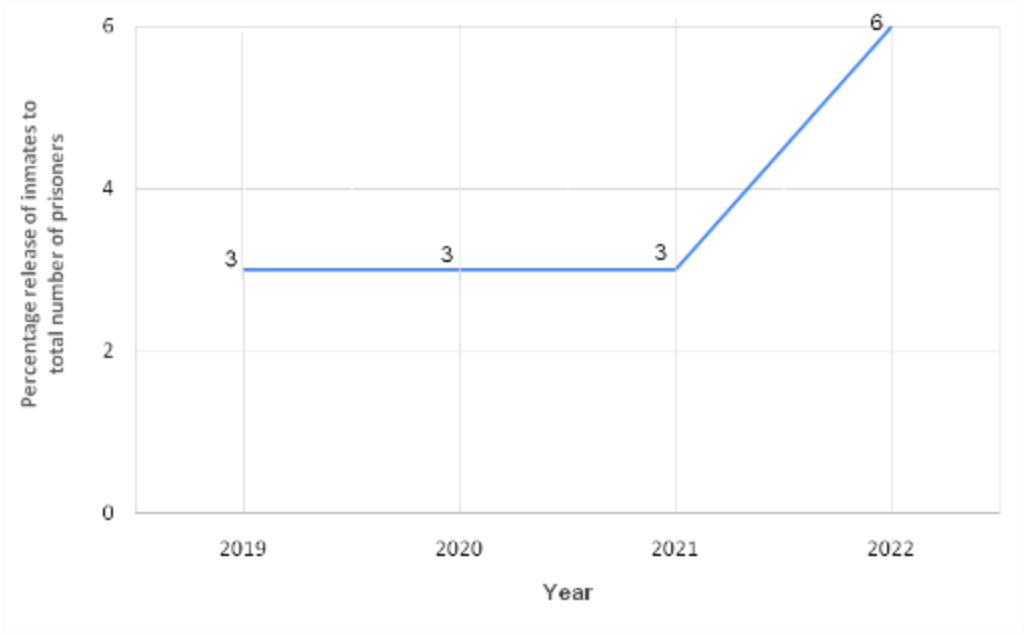

Figure 3.5 - Percentage release of Inmates between 2019 to 2022

The directions in *Re-Inhuman Conditions in 1382 Prisons*[464] for effective implementation of Section 436[465] and 436A[466] of CrPC 1973 for release of those who cannot furnish bail bonds due to poverty and those falling under the eligible categories of inmates has led to a steady increase in the number of UTRC meetings, thereby increasing the number of released undertrials.

In 2024, NALSA also launched the "Framework and Quarterly Schedule of UTRC Meetings" outlining a schedule for quarterly UTRC Meetings.[467] As per the information received from NALSA, 48% undertrials (35,398) out of 73,635 recommended undertrial prisonsers were released in the year 2023.[468] With respect to convicts, 352 convicts were released out of 2,188 recommendations made by UTRCs in 2023, which accounts for 16% of the recommendations made.[469]

[464] Supreme Court of India, Writ Petition (Civil) No. 406/2013 dated 5 February 2016.
[465] Corresponds to Bhartiya Nagrik Suraksha Sanhita 2023, Section 478.
[466] Corresponds to Bhartiya Nagrik Suraksha Sanhita 2023, Section 479.
[467] Schedule of Quarterly UTRC Meetings - 2024, NALSA <https://cdnbbsr.s3waas.gov.in/s3ec05ba304f3809ed31d0ad97b5a2b5df/uploads/2024/04/2024042012.pdf > accessed 24 April 2024.
[468] Annexure J : Performance of UTRCs in 2023.
[469] *Ibid.*

At the launch of the quarterly UTRC schedule, Justice Sanjiv Khanna, Judge, Supreme Court of India and Executive Chairperson of NALSA observed the gap between the number of undertrial prisonsers recommended for release and those who were released in consequence, was concerning and there is a need to focus on the reasons for non release.[470] As per the information received from NALSA, the reasons for non-release of the recommended prisoners were *inter alia* multiple FIRs, the gravity of the offence and even the prisoner being a foreign national.[471] It was also observed that many times, undertrial prisonsers do not opt for filing of applications due to multiple cases against them or the lack of awareness of the guidelines for release of eligible cases by UTRC.[472] Some other issues that were highlighted pertained to delay in filing of bail applications by counsels after recommendations by UTRC and early listing of bail applications after filing.[473] As per the directions of the Supreme Court in *Shankar Mahto v. State of Bihar,*[474] NALSA has also formulated an SOP for ensuring the timely filing of bail applications of undertrial prisonsers before the High Court.[475]

Overall, the UTRCs have emerged as effective mechanisms for addressing the issue of prolonged detention of undertrial prisoners and bridging the gap between prisons and courts. Nevertheless, as per the data submitted by the High Courts, in the year 2023, 24,879 accused who were granted bail by Trial Courts continue to be in custody, due to the inability to furnish bail bond.[476] The following graph shows the High Court-wise breakup of this number:

[470] NALSA, Launch of Quarterly Schedule of UTRC Meeting, 2024 <https://www.youtube.com/watch?v=7VjnfpxPNZ4> accessed 9 April 2024.
[471] As per information received from NALSA.
[472] NALSA, Launch of Quarterly Schedule of UTRC Meeting, 2024 <https://www.youtube.com/watch?v=7VjnfpxPNZ4> accessed 9 April 2024.
[473] *Ibid.*
[474] Supreme Court of India CRLMP No. 7862 of 2017, Order dated 24 October 2017.
[475] Module for Timely Filing of Appeals/SLPs of Convicts in Prisons through Legal Services Institutions, 2019, NALSA.
[476] Annexure H : Data with respect to bail.

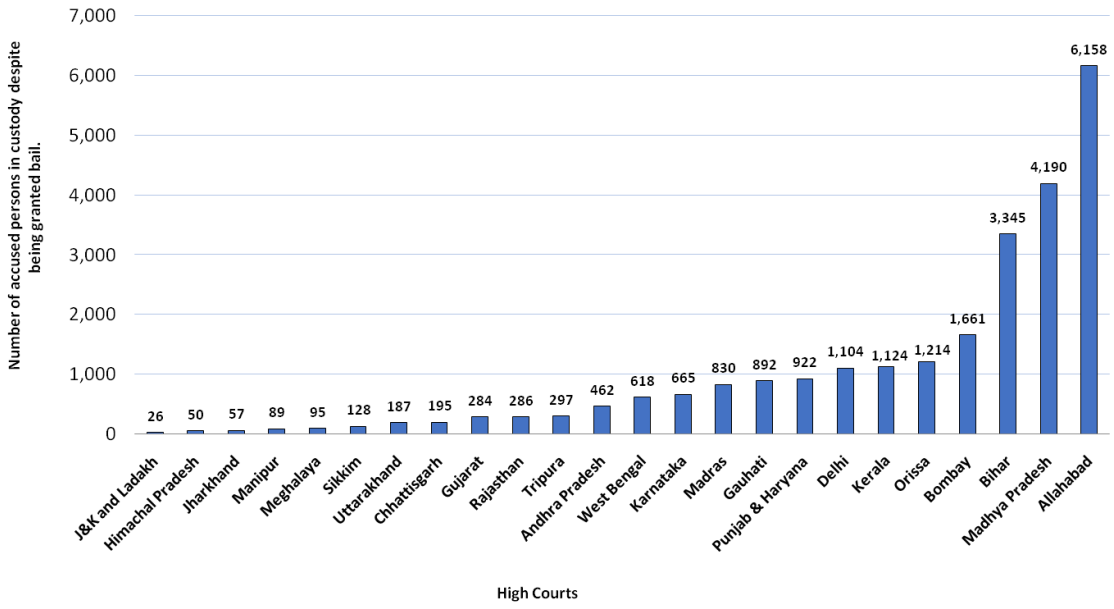

Figure 3.7 - No. of accused granted bail by District Courts but not released, due to inability of furnishing bail bond[477]

The above figure shows that as per the information received from the High Courts, prisons in Uttar Pradesh (6,158), Madhya Pradesh (4,190), Bihar (3,345) and Bombay (1,661) have the most number of undertrials in prison, despite a favourable bail order, due to their inability to furnish bail bond.

One of the main reasons why the accused are in jail despite the grant of bail is that they may be an accused in multiple cases and are apparently not willing to furnish bail bonds until grant of bail in all the cases.[478] The inability to fulfil the bond many times also stems from financial and territorial constraints and lack of legal awareness, forfeiting the chance for timely release and being detained in excess. While NCRB does not maintain any information regarding the economic status of prisoners, as per the information received from 23 out of 36 prison departments regarding the annual family income of the prisoners, around 38.3% of prisoners have an annual income which is less than Rs. 30,000 and 39%

[477] Annexure H : Data with respect to bail. *Note*: Data of the High Court of Telangana is not available.
[478] *In Re Policy Strategy for Grant of Bail,* SMWP (Criminal) No.4 of 2021, dated 31 January 2023, Supreme Court of India.

have annual income between Rs. 30,000 and Rs. 1 lakh.[479] The Law Commission in its 268th Report, 2017 made similar observations:[480]

> *"It has become a norm than an aberration in most jurisdictions including India that the* ***powerful, rich and influential obtain bail promptly and with ease, whereas the mass/common/the poor languishes in jails.*** *Thus, it is one of the malaise which is affecting the common citizens and family thereto, which not only deny the basic tenets of 'justice' but even human dignity is at stake."*

Sections 440 to 450 of the CrPC, 1973[481] lay down the provisions for furnishing of bail bonds, which are of various types like personal bond, property bonds or cash surety.[482] An accused is released on bail on certain conditions. These conditions include the accused and the sureties to enter into a bond of a certain amount so fixed by the judge, which may be forfeited upon violation of the conditions. This amount is then recovered from the property attached in the bond as collateral if sufficient cause is not shown. Section 440 of CrPC, 1973[483] mandates against the excessiveness of bail bonds:

> *"Section 440 - Amount of bond and reduction thereof - The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case and* ***shall not be excessive****."*

But notwithstanding this specific directive, there are cases in which unreasonably strict conditions like a high amount of bail, and local and related surety are posted. For instance, in *Guddan @ Roop Narayan v. State of Rajasthan,*[484] the appellant was granted bail by the High Court on the condition to deposit a fine of Rs.1 lakh along with a surety of another Rs.1 lakh and two further bail bonds of Rs.50,000/- each. The Supreme Court depreciated the conditions of bail as they were excessively imposed by the High Court and stated that

[479] As per information received from prison departments, as on 31 December 2023.
[480] Law Commission of India, *Amendments To Criminal Procedure Code, 1973 - Provisions Relating To Bail*, (Law Com No 268, 2017) para 1.9.
[481] Corresponds to Bhartiya Nagrik Suraksha Sanhita 2023, Sections 484 to 498.
[482] *Sagayam @ Devasagayam v. State* [2017] 3 CTC 291.
[483] Corresponds to Bhartiya Nagrik Suraksha Sanhita 2023, Section 484.
[484] Supreme Court of India, Criminal Appeal No. 120 of 2023,Order dated 3 January 2023.

an excessive bail condition would defeat the purpose of bail. The Supreme Court observed that:

> *"15.* ***While bail has been granted to the Appellant, the excessive conditions imposed have, in-fact, in practical manifestation, acted as a refusal to the grant of bail.*** *If the Appellant had paid the required amount, it would have been a different matter. However, the fact that the Appellant was not able to pay the amount, and in default thereof is still languishing in jail, is sufficient indication that he was not able to make up the amount.*
>
> *16. As has been stated in the Sandeep Jain case,*[485] *the conditions of bail cannot be so onerous that their existence itself tantamounts to refusal of bail. In the present case, however,* ***the excessive conditions herein have precisely become that, an antithesis to the grant of bail.***
>
> *17…To keep the Appellant in jail, that too in a case where he normally would have been granted bail for the alleged offences, is not just a symptom of injustice, but injustice itself."*

This issue was also highlighted back in 1980 by the Supreme Court in *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna,*[486]

> *"Sometimes the* ***Magistrates also refuse to release the undertrial prisoners produced before them on their personal bond but insist on monetary bail with sureties,*** *which by reason of their poverty the under-trial prisoners are unable to furnish and which, therefore, effectively shuts out for them any possibility of release from pretrial detention.* ***This unfortunate situation cries aloud for introduction of an adequate and comprehensive legal service programme,*** *but so far, these cries do not seem to have evoked any response."*

[485] *Sandeep Jain v. NCT of Delhi*[2000] 2 SCC 66.
[486] *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna*[1979] SCR (3) 532.

Excessive bail conditions where the prisoner is not in a position to furnish bail due to unavoidable reasons underscore the need for reform on the legal and judicial side. In this regard, NALSA devised a framework titled *Early Access to Justice at Pre-Arrest, Arrest and Remand Stage* to provide legal assistance to suspects and arrestees in need, and assist the arrestees in filing bail applications and furnishing bail bonds. Para 4.3.2 of this framework provides that:[487]

> *"d) Bail application - Remand advocate shall file bail applications in appropriate cases. Arrestee be also apprised of the bail application and the next date if the matter is postponed by the court for hearing arguments.* ***In case of grant of bail, the Remand Advocate shall assist in furnishing of bail bonds. Wherever necessary, family members are also contacted through PLVs, for filing of bail bonds.***
>
> *e) Submission with regard to surety - If the arrestee is a resident of some other place and obtaining of local surety may be difficult for him, a submission may be made before the court not to order furnishing of local sureties."*

There is a need to explore alternative methods and intervention by the concerned stakeholders of the justice system to facilitate vulnerable detainees in ensuring that the conditions of the bail do not tantamount to refusal of bail, due to financial, territorial or other factors. Some of the prospective solutions and initiatives are discussed below:

3.3.1 Relaxation/modification of bail bond

Section 440(2) and 439 CrPC[488] empower the High Court and Sessions Court to set aside or modify any condition imposed by a Magistrate while granting the relief of bail to the accused. In *Re Policy Strategy for Grant of Bail,*[489] the Supreme Court has discussed the

[487] NALSA, *Early Access to Justice at Pre-Arrest, Arrest and Remand Stage*.
[488] Corresponds to Bhartiya Nagrik Suraksha Sanhita 2023, Sections 484(2) and 483 respectively.
[489] In *Re Policy Strategy for Grant of Bail,* SMW (Crl.) No. 4 of 2021, Order dated 31 January 2023, Supreme Court of India.

issue of detention of undertrial prisonsers despite having been granted bail due to their inability to furnish bail bonds, at length and passed the following directions:

> *"1) The Court which grants bail to an undertrial prisoner/convict would be required to send a soft copy of the bail order by e-mail to the prisoner through the Jail Superintendent on the same day or the next day. The Jail Superintendent would be required to enter the date of grant of bail in the e-prisons software [or any other software which is being used by the Prison 10 Department].*
>
> *2)* ***If the accused is not released within a period of 7 days from the date of grant of bail,*** *it would be the duty of the Superintendent of Jail to inform the Secretary, DLSA who may depute* ***para legal volunteer or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release****...*
>
> *4) The Secretary, DLSA with a view to find out the economic condition of the accused, may take help of the Probation Officers or the Para Legal Volunteers to prepare* ***a report on the socio-economic conditions of the inmate which may be placed before the concerned Court with a request to relax the condition (s) of bail/surety.***
>
> *5) In cases where the undertrial or convict requests that he can furnish bail bond or sureties once released, then in an appropriate case,* ***the Court may consider granting temporary bail for a specified period*** *to the accused so that he can furnish bail bond or sureties.*
>
> *6) If the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may suo moto take up the case and consider whether the conditions of bail require modification/relaxation.*
>
> *7) One of the reasons which delays the release of the accused/convict is the insistence upon local surety.* ***It is suggested that in such cases, the courts may not impose the condition of local surety.****"*

In light of this judgment, many High Courts and DLSAs have identified similarly placed prisoners. For instance, on 9 March 2023, the Orissa High Court directed the DLSAs of eight districts to take immediate steps to file applications for modification of bail orders, before their respective criminal courts to facilitate the early release of the 45 prisoners who have been granted bail, but are unable to exit the prisons due to inability to furnish bail bonds.[490]

As per the information received from the High Court of Orissa, in such cases, the bail condition to the extent of furnishing bonds has been relaxed or modified after receiving the socio-economic status report from DLSA.[491] The Calcutta High Court also submits that the report of the socio-economic status of the family of the prisoners is prepared by the PLVs and the same is submitted to the concerned court for modification of bail conditions.[492]

In light of the directions of the Supreme Court in *Re Policy Strategy for Grant of Bail*[493] and other judicial precedents, bail orders can be relaxed or modified by the court in the form of personal bond, cash surety, avoiding insistence of local surety and temporary bail.

a. Personal Bond

In cases involving bailable offences, where bail is a matter of right of the accused, Section 436 CrPC, 1973[494] provides a beneficial provision for release on personal bond, in case of an indigent accused who is unable to furnish the bail bond within a week of the date of arrest. The same spirit of releasing the accused on personal bond is reflected in cases of statutory bail under Section 436A CrPC, 1973.[495] A liberal approach may also be employed by the courts in cases involving non-bailable offences in appropriate cases. The Supreme

[490] *Krushna Prasad Sahoo v. State of Odisha,* W.P.(C) No. 6610 of 2006, dated 9 March 2023, High Court of Orissa.
[491] As per information received from the High Court of Orissa.
[492] As per information received from the High Court of Calcutta.
[493] Re Policy Strategy for Grant of Bail, SMW (Crl.) No. 4 of 2021, dated 31 January 2023, Supreme Court of India.
[494] Corresponds to Bhartiya Nagrik Suraksha Sanhita 2023, Section 478.
[495] Corresponds to Bhartiya Nagrik Suraksha Sanhita 2023, Section 479.

Court directed as much in the landmark case of *R.D. Upadhyay v. State of Andhra Pradesh*: [496]

> *"3. There may be cases where the undertrial persons may not be in a position to furnish sureties etc. In those cases, the trial courts may consider — keeping in view the facts of each case, especially the period spent in jail — releasing them on bail by furnishing personal bonds."*

While dealing with the bail jurisprudence, the social realities of the accused were taken into account in *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna*[497] where the Supreme Court listed the following factors to determine the roots of the accused in the community instead of mandating a local surety:

> *"To determine whether the accused has his roots in the community which would deter him from fleeing, the Court should take into account the following factors concerning the accused:*
>
> 1. *The length of his residence in the community,*
> 2. *his employment status, history and his financial condition,*
> 3. *his family ties and relationships,*
> 4. *his reputation, character and monetary condition,*
> 5. *his prior criminal record including any record of prior release on recognizance or on bail,*
> 6. *the identity of responsible members of the community who would vouch for his reliability,*
> 7. *the nature of the offence charged and the apparent probability of conviction and the likely sentence insofar as these factors are relevant to the risk of non-appearance, and*
> 8. *any other factors indicating the ties of the accused to the community or bearing on the risk of wilful failure to appear.*

[496] 1996 3 SCC 422.
[497] *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna*[1979] SCR (3) 532.

If the court is satisfied on a consideration of the relevant factors that the accused has his ties in the community and there is no substantial risk of non-appearance, the accused may, as far as possible, be released on his personal bond."

As per Orissa High Court, legal aid counsels are taking necessary steps in apprising the courts for the release of accused persons on personal bond, enabling them to collect necessary bonds at their own motion so as to get released on regular bail.[498] The High Court of Manipur further provides that when the bond is not furnished, the family members of the accused are informed through the DLSA and legal aid clinic.

The High Court of Gauhati (Kohima bench) provided that the family members of the undertrial prisonsers are encouraged through panel lawyers/PLVs to furnish suitable and solvent surety for the release of the inmates in cases where bail has been granted but the accused not released due to non-furnishing of surety, and if they are unable to get them bailed out, accused is allowed to be released on personal bond.[499]

b. Cash Surety

Cash deposit instead of execution of a bond by the accused is an alternative system of granting bail and is no less efficacious than granting bail of a certain amount with or without surety or sureties.[500] Section 445 CrPC 1973[501] lays down that:[502]

"Section 445 - Deposit instead of recognizance - When any person is required by any Court or officer to execute a bond with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, ***permit him to deposit a sum of money or Government promissory notes to such amount as the Court of officer may if in lieu of executing such bond****."*

[498] As per information received from the Orissa High Court.
[499] *Ibid.*
[500] *Gokul Das v. State of Assam*[1981] CrLJ 229.
[501] Corresponds to Bhartiya Nagrik Suraksha Sanhita 2023, Section 490.
[502] *Maha Ahmad Yusuf v. State of U.P.*[2015] (5) R.C.R.(Criminal) 13.

This method of depositing a sum of money is being used by various High Courts like the High Courts of Kerala and Karnataka in cases where bail has been granted but the accused remained in custody due to non-furnishing of surety.[503] This provision is beneficial for prisoners who are unable to find a fit surety who can take guarantee of appearance in court. The High Court of Madras has elucidated the ground reality of unavailability of bailors and issued directions:[504]

> *"41.* ***Sometimes an accused, who is an utter stranger to the area or he has no friends or relatives in the area or he could not secure a person to stand as surety can offer cash surety. The Court can accept cash surety, instead of personal surety.*** *But the Court cannot demand personal surety, property surety and cash surety, at a time. It is not cumulative. It is alternative…*
>
> *75. In view of the foregoing analysis, the following directions and orders are issued:*
>
> *(ix) In the first instance, cash surety cannot be insisted upon.*
>
> *(x) When the accused is not in a position to produce personal surety and offers cash surety, it can be accepted."*

There have been several instances where the High Court released the accused on cash surety. In *Abhishek Kumar Singh v. State of Himachal Pradesh,*[505] the petitioner who was accused of committing a white-collar crime submitted before the Himachal Pradesh High Court that since he did not know anyone who resides nearby to stand as surety, his release should be on cash security instead of surety bonds. The High Court while granting the same, surveyed many judicial precedents and summarised the principles of law related to the choice of the accused to furnish surety bonds or secure recognisance by cash deposit. Some of the relevant part is culled out here:

> *"...d) Court cannot demand cash deposit as a condition of bail.*

[503] As per information received from the High Courts.
[504] *Sagayam @ Devasagayam v. State,* [2017] 3 CTC 291.
[505] Abhishek Kumar Singh v. State of Himachal Pradesh, Cr.MP(M) No. 1017 of 2020, Judgment dated 30 July 2020, High Court of Himachal Pradesh.

e) ***The offer to make cash surety must come from the accused.***

h) Cash deposit in lieu of execution of a bond by the accused is an alternative system of granting bail and can be stated to be no less efficacious than granting bail of certain amount with or without surety or sureties of the like amount…

38. The purpose of a cash bond is not to enrich the State's offers but to secure the accused's presence. An Advocate is an officer of the Court and a vigilant watcher of the interest of her client. Owing allegiance to the Constitution of India and being a professional, ***it's her onerous duty to apprise the accused of the existence of the provision of a cash deposit in the statute.****"*

As seen above, lawyers play an immense role in empowering prisoners and ensuring that no one is detained in prison owing to any socio-economic disadvantage. Cash surety is a viable alternative option and should be encouraged by courts and LSAs in appropriate cases to avoid any undue incarceration.

c. Avoid insistence for local Surety

To ensure the accused's appearance in trial, judges sometimes impose bail conditions requiring a surety who is either a blood relative or a local resident, to prevent the accused from fleeing the area. Accused persons specially those who are not based in the jurisdiction of the court often face difficulty in securing a local surety of the requisite amount. In this regard, reference can be made to the observations of the Supreme Court in *Moti Ram v. State of Madhya Pradesh.*[506] In this case, the Magistrate declined to accept the petitioner's brother as surety, citing that his assets were located in a different district, against which the petitioner appealed to the Supreme Court. The Court mandated the Magistrate to release the petitioner on his own bond in a sum of Rs.1,000 and observed that:

"33. To add insult to injury, the Magistrate has demanded sureties from his own district. (We assume the allegation in the petition). What is a

[506] *Moti Ram v. State of Madhya Pradesh* [1978] 4 SCC 47.

Malayalee, Kannadiga, Tamil or Telugu to do if arrested for alleged misappropriation or theft or criminal trespass in Bastar, Port Blair, Pahalgam or Chandni Chowk? He cannot have sureties owning properties in these distant places. He may not know any one there and might have come in a batch or to seek a job or in: a morcha. Judicial disruption of Indian unity is surest achieved by such provincial allergies. What law prescribes sureties from outside or non-regional language applications? ***What law prescribes the geographical discrimination implicit in asking for sureties from the Court district? This tendency takes many forms, sometimes, geographic, sometimes linguistic, sometimes legalistic. Article 14 protects all Indians qua Indians within the territory of India****…*

35. ***We leave it to Parliament to consider whether in our socialist republic, with social justice as its hallmark, monetary superstition, not other relevant considerations like family ties, roots in the community, membership of stable organisations, should prevail for bail bonds to ensure that the 'bailee' does not flee justice.*** *The best guarantee of presence in court is the reach of the law, not the money tag. A parting thought. If the indigents are not to be betrayed by the law including bail law, re-writing of many processual laws is an urgent desideratum; and the judiciary will do well to remember that the geo-legal frontiers of the Central Codes cannot be disfigured by cartographic dissection in the name of language or province."*

Excessive stress on local surety also leads to the menace of bogus and professional sureties. The Supreme Court in the above case also took into account the report of the Legal Aid Committee, Government of Gujarat, 1971, headed by the then Chief Justice of the State, Justice P.N. Bhagwati, which acknowledged for the first time the common practice of bogus sureties in district courts:[507]

[507] Ibid.

> ***"The evil of the bail system is that either the poor accused has to fall back on touts and professional sureties for providing bail or suffer pre-trial detention****. Both these consequences are fraught with great hardship to the poor. In one case the poor accused is fleeced of his moneys by touts and professional sureties and sometimes has even to incur debts to make payment to them for securing his release; in the other he is deprived of his liberty without trial and conviction and this leads to grave consequences…"*

While deciding bail is a matter of discretion and fixing a bail bond is an individualised exercise, trial courts must not mechanically impose bail conditions as a matter of course. Rather, they must make a preliminary inquiry into the socio-economic conditions and roots of the accused to check cases of flight risk. Factors like employment, length of residence, etc. as laid down in *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna*[508] may guide the courts to determine the bail bond. Courts may also take into account the socio-economic report prepared by the DLSA as discussed above to ensure that no poor or vulnerable person is denied personal liberty despite being granted bail.

d. Temporary Bail

Temporary bail in the general sense means bail for a limited period granted due to reasons like a medical condition, attending a family function, or taking care of the family.[509] It also serves as an alternative method to assist undertrial prisonsers and convicts where they are released temporarily to arrange sureties to fulfil the bail conditions, as has been directed in *Re Policy Strategy for Grant of Bail*.[510] Back in 2008, the Supreme Court had also recognised the idea of temporary bail:

> *"24…True it is that as per the allegation of the prosecution, various offences have been committed by the petitioner and those cases are pending*

[508] *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna* [1979] SCR (3) 532.
[509] *Union of India, C.B.N. v. Devram*, M.Cr.C. No. 9664 of 2015, dated 30 October 2015, High Court of Madhya Pradesh; *Matabhai Shakrabhai Bariya v. State of Gujarat*, [2008] CRI. L. J. 2764, Gujarat High Court; *State of Gujarat v. Narayan*, [2021] 20 SCC 304, respectively.
[510] Re Policy Strategy for Grant of Bail, SMW (Crl.) No. 4 of 2021, Order dated 31 January 2023, Supreme Court of India.

at difference places. But other equally important fact also cannot be overlooked that he is in jail since more than ten years. ***Prima facie, the submission of the learned counsel for the petitioner is well-founded that only if the petitioner comes out of jail that he may be able to make arrangement for repayment of amount and also to defend cases registered against him.****"*

The High Court of Kerala and Allahabad submitted that some of the accused were released on temporary bail with direction to furnish sureties.[511]

At this juncture, the suggestion of the Delhi High Court in *D.M. Bhalla v. State*[512] is worth taking into consideration to subserve the purpose of bail:

"4. However, the purported beneficiary of the bail order is often unable to enjoy the benefit of the same as he/she is unable to meet the terms set out in the bail order and/or is also often unaware of the procedure for relaxation/modification of the bail terms. ...Therefore, it was proposed that:

i. ***The Jail Paralegal Workers would gather instances and ascertain the reasons for the inability to meet the bail conditions and furnish it to the jail authorities and/or to the visiting lawyers of DLSA*** *who, in turn, would prepare an appropriate application for modification/relaxation of the bail conditions. In cases where the undertrial prisoner/convicted-prisoner have their own private counsel similar/appropriate suggestions would be offered to them by the visiting lawyers; and if so instructed the latter would draft and file requisite applications on behalf of such prisoners also;*

ii. ***The bail order would be communicated by the Jail Authorities to the family*** *of the undertrial prisoner/convicted prisoner, with the latter's consent, so that the family could take steps to meet the bail conditions;*

[511] As per information received from the High Courts.
[512] *D.M. Bhalla v. State* W.P.(C) 3465 of 2010, dated 2 February 2011, Delhi High Court.

iii. To facilitate the release on relaxed bail terms or personal bond or acceptance of surety of land, ***the Gram Pradhan's/SDM's certificate that the prisoner is a permanent resident of the village/subdivision or is the owner of such and such parcel of land would suffice;***

iv. ***The Bail Granted Register****, in which the list of the bails granted by the court concerned is maintained,* ***would be examined by the judge*** *concerned to ascertain which undertrial-prisoner/convicted-prisoner has not been released from jail. Reasons for the same would be ascertained through video-conferencing and appropriate orders regarding relaxation/modification of the bail terms would be passed within ten days;*

v. The bail application would be expedited and disposed off as soon as possible regard being had to the objective of release of the prisoner expeditiously and reasons for the delay as may be ascertained through video conferencing with the undertrial-prisoner/convicted prisoner;

vi. In case of non-disposal of the cases within the above proposed timeframe the reasons for the same would be incorporated in the "Monthly Workdone Statement/ Report" sent to the Supervising Judge/High Court."

This process may also be instrumental in facilitating and guiding courts in identifying and releasing accused who are unable to furnish bail bonds. Bail jurisprudence is centred around the liberty of the prisoners.[513] Release on bail must therefore be guided by factors like flight risk, the gravity of the offence, chances of the accused of tampering with witness/evidence.

A fair judicial process mandates that when bail is granted, it is the responsibility of the State through the LSAs in coordination with courts and the prison administration to ensure that the beneficiary can furnish the bond and be released from jail without inordinate delay caused in arranging the amount/sureties.

[513] Law Commission of India, *Amendments To Criminal Procedure Code, 1973 - Provisions Relating To Bail*, (Law Com No 268, 2017).

3.3.2 Support to Poor Prisoners Scheme by MHA

On 19 June 2023, the MHA devised a scheme to provide relief to poor prisoners who are unable to pay the fine or who are unable to secure bail due to financial constraints and made a provision for an amount of Rs. 20 crore annually for its implementation by the States and UTs.[514] The eligibility under the MHA Scheme is:[515]

> *Eligibility under the Scheme:* ***Not released from jail within 7 days of bail order or non-payment of fine***

As per the SOP (*refer Figure 3.9*), the benefit of the Scheme is not available to persons who are accused of offences under Prevention of Corruption Act,1988, Prevention of Money Laundering Act, 2002, or NDPS Act, 1985 or Unlawful Activities Prevention Act, 1967 or any other Act or provisions, as may be specified later.[516]

Regarding the implementation of the Scheme, as of 1 October 2024, most of the States have constituted both the Empowered Committees and the Oversight Committee and initiated the process of identification of eligible prisoners.[517] However, in States of Bihar, and West Bengal, the implementation of the scheme is under consideration.[518]

Some States have pointed out that by the time funds are disbursed by the State Government,

[514] Ministry of Home Affairs, Government of India, D.O.No, 17013/26/2023-PR 'Guidelines and Standard Operating Procedure for implementation of the Scheme for support to poor prisoners', dated 19 June 2023. of India <https://www.mha.gov.in/sites/default/files/poorprisoners_20022024.pdf> accessed 25 April 2024.
[515] *Ibid.*
[516] *Ibid.*
[517] As per information received from the respective High Courts and prison departments.
[518] *Ibid.*

the eligible prisoner is often already released.[519] There is a need for the States to take up the timely implementation of the scheme on an urgent basis so that the right to liberty of prisoners who are confined because of the inability to furnish surety is not stifled because of financial constraints. Digital communication across committees in the implementation of this scheme can expedite the process to a great extent.

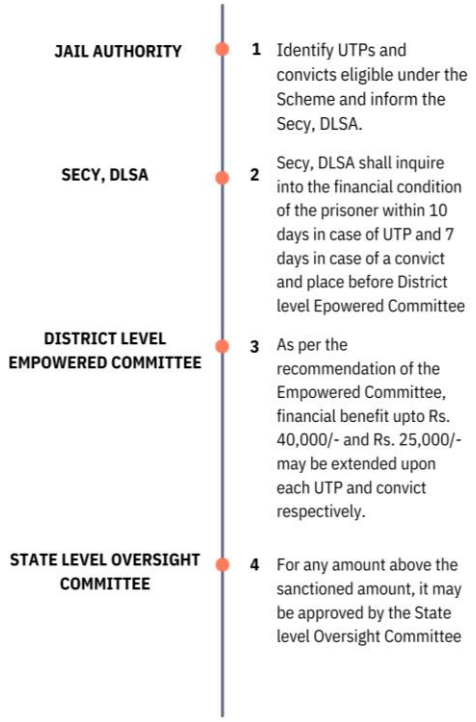

Figure 3.9 - SOP for release of poor prisoners under the MHA Scheme

3.3.3 Delay in filing Appeal by Convicts

Any person is entitled to legal services at any stage of the proceedings which he or she is prosecuting or defending. The Legal Services Authorities Act, 1987 makes no distinction between trials and appeals when it comes to availing the right to free legal aid.[520] Effective access to justice includes the right to appeal by the convicts who are serving sentences in prisons.

Like undertrial prisonsers, convicts housed in prisons have limited access to the outside world. It is therefore imperative on the part of the legal aid system to ensure that lack of awareness about their rights or lack of resources to engage lawyers does not act as a barrier for convicted persons to access justice. The MPM 2016 provides that the convicts in custody are entitled to:[521]

> *"Right to be informed on admission about legal rights to appeal, revision, review either in respect of conviction or sentence;*

[519] As per information received from the respective prison departments.
[520] *Raju @Ramakaant v. State of Madhya Pradesh* [2012] 8 SCC 553.
[521] Model Prison Manual 2016, Rights and Duties of prisoners, pp. 9.

Right to receive all court documents necessary for preferring an appeal or revision or review of sentence or conviction;"

Rule 8.41 of the MPM, 2016 also casts a duty on the welfare officer to explain the relevant rules about appeal and the facilities available in the prison for preparing and sending appeals. Similarly, Rule 8.43,MPM, 2016 mandates the Prison Superintendent to forward appeals to the appellate courts by registered post. The MPM, 2016 also requires the prison welfare officer and the superintendent to maintain an appeal register so that the status of appeals of the convicts can be tracked.[522]

Upon analysis of information supplied by the High Courts, convicts face several issues in exercising their right to appeal. As per the information received from the Calcutta High Court, the findings of DLSA inspections show that convicts are not provided with an advocate within the stipulated period of limitation for preferring appeal before the High Court through HCLSC or for SLP before the Supreme Court.[523] The reason for the inability to file an appeal has been highlighted by some of the High Courts to be poverty, lack of awareness about the provisions of appeal and other socio-economic factors.[524]

In *Shankar Mahto v. State of Bihar,*[525] the Supreme Court acknowledged this issue of inordinate delays in filing SLPs by the SCLSC on behalf of the convicts. In response, NALSA devised a "*Module For Timely Filing of Appeals/SLPs of Convicts in Prisons through Legal Services Institutions*", 2019. As per the module, it is the duty of the Trial Court to inform the convict that the judgment of conviction and order of sentence is appealable.[526] It is noteworthy that this compliance must form part of the order on sentence in all cases of conviction in the following format:

[522] MPM 2016, Rule 8.55.
[523] As per data received from the High Courts.
[524] *Ranjana Shantilal Suryawanshi v. State of Maharashtra,* Criminal Application No. 380 of 2019 in Criminal Appeal (St.) No. 390 of 2019, Judgment dated 16 July 2020, Bombay High Court; see also *Urmila v. State of U.P.,* Criminal Appeal No. 1181 of 2012, dated 30 October 2024; *Shiv Kumar v. State of U.P*., Criminal Appeal Defective No. 190 of 2023.
[525] CRLMP No(s). 7862 of 2017, dated 16 October 2019, Supreme Court of India.
[526] NALSA, *Module For Timely Filing of Appeals/SLPs of Convicts In Prisons Through Legal Services Institutions* 2019, Rule 5.2.

"Judgment in this case and the order on sentence passed today are appealable to __ Court, and ***the Convict may file an appeal within __ days****."*

The Module also provides that in addition, a pamphlet in English as well as in vernacular spelling out information about the availability of free legal aid to file an appeal should be attached to attested copies of the judgment and order supplied to the accused and the jail authorities."[527] It is essential that District Courts adhere to this module to ensure that convicts secure timely legal aid for filing appeals and exercising other legal remedies, wherever applicable.

The Supreme Court has also taken a proactive approach to ensure that delay in filing appeals is not the reason for the prolonged detention of convicts. The relevant ratio of some of the landmark Supreme Court judgments is tabulated herewith:

S.No.	**Eligibility of the Convict**	**Relief** *(in light of the directions of the Supreme Court)*
1.	*Undergone more than 10 years' imprisonment in life sentence cases, unless there are reasons to deny bail*	Be enlarged on bail[528]
2.	*The accused has served 14 years of sentence and for one reason or the other, the appeal has not been heard (even if it be fault of the lawyer)*	Examine the case for release[529]
3.	*Appeal not disposed of within 5 years for no fault of the convict*	May be released on bail on conditions as the Court may deem fit[530]

[527] *Ibid.*
[528] *Sonadhar v. State of Chhattisgarh,* Special Leave to Appeal (Crl.) No(s). 529 of 2021, dated 15 September 2022.
[529] *Saudan Singh v. State of Uttar Pradesh,* Criminal Appeal No. 308/2022 (@ SLP (Crl.) No.4633 of 2021), dated 25 February 2022.
[530] *Akhtari Bi v. State of M.P.*, (2001) 4 SCC 355.

4.	*In case of a fixed term sentence, where appeal is not likely to be heard before completing the entire period of sentence*	Be enlarged on bail[531]

Table 3.1 - Directions of Supreme Court to identify eligible convicts to be released (pending appeal)

As per the data received from NALSA, as of 31 December 2023, 1,220 prisoners have been in prison for more than 10 years and the hearing of the appeal has not started yet.[532] Further, in the year 2023, 3,956 convicts in prisons had served more than 14 years in prison and were not repeat offenders.[533] Such cases must be timely identified to check eligibility for their release in light of the directions passed by the Supreme Court.

Besides, in some cases, the non-availability of advocates also compounds the delay in the disposal of appeals. In this regard, the Supreme Court in *K. Muruganandam v. State* observed that:[534]

> "*8. It is well settled that if the accused does not appear through counsel appointed by him/her, the Court is obliged to proceed with the hearing of the case only after appointing an amicus curiae, but cannot dismiss the appeal merely because of non-representation or default of the advocate for the accused (see Kabira vs. State of Uttar Pradesh*[535] *and Mohd. Sukur Ali vs. State of Assam).*"[536]

As per the information received from prison departments, the Legal Services Authority in Uttarakhand has taken a positive step in this regard:

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[531] *Atul @ Ashutosh v. State of Madhya Pradesh,* Criminal Appeal No.579 of 2024 (Arising out of SLP (CRL) No. 1049/2024), dated 2 February 2024.
[532] As per data received from NALSA.
[533] *Ibid.*
[534] Criminal Appeal No. 809/2021 (Arising out of SLP(Crl.) No. 5690/2021), dated 12 August 2021, Supreme Court of India.
[535] 1981 (Supp) SCC 76.
[536] (2011) 4 SCC 729.

"*Uttarakhand Legal Service Authority has drawn up* ***a panel of lawyers to argue the appeals of poor convicts*** *who have not engaged their private counsels before Hon'ble Court.*"[537]

The Supreme Court in *Akhtari Bi v. State of M.P.*,[538] observed that:

"*5. .... We feel that if an appeal is not disposed of within the aforesaid period of 5 years, for no fault of the convicts, such convicts may be released on bail on such conditions as may be deemed fit and proper by the Court. In computing the period of 5 years, the delay for any period, which is requisite in preparation of the record and the delay attributable to the convict or his counsel can be deducted.* ***There may be cases where even after the lapse of 5 years the convicts may, under the special circumstances of the case, be held not entitled to bail pending the disposal of the appeals filed by them.*** *We request the Chief Justices of the High Courts, where the criminal cases are pending for more than 5 years to* ***take immediate effective steps for their disposal by constituting regular and special benches for that purposes.***"

These cases of convicts in light of directions passed by the Supreme Court can be identified by the UTRC in coordination with the District Courts and the High Courts, and examined for their release.

3.4 Role of Legal aid Personnel

The Directive Principle of providing equal justice and access to free legal aid is enshrined in Article 39-A of the Constitution of India. It reads as:

"The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, ***provide free legal aid, by suitable legislation or schemes or in any other way,*** *to*

[537] As per information received from Uttarakhand Prison Department.
[538] (2001) 4 SCC 355.

ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

Ensuring that persons in need are facilitated with effective legal aid is a collective responsibility of the entire justice machinery. However, there is a need for a dedicated legal aid personnel functioning in the LSAs, police stations and prisons.

For this purpose, the NALSA (Free and Competent Legal Services) Regulations, 2010 provide the procedure for empanelling competent lawyers, retainer lawyers and other necessary legal aid personnel.[539] Legal aid personnel like retainer lawyers,[540] jail visiting lawyers (JVLs),[541] and remand lawyers[542] are selected from the pool of panel lawyers .[543]

Para 3.1.1 of the SOP on Access to Legal Aid Services to Prisoners and Functioning of the Prison Legal Aid Clinics, 2022 states that JVLs are appointed by the DLSA from the office of Legal Aid Defense Counsels (LADC), if functional in the district and if not, then from the pool of panel lawyers.

Besides panel lawyers, NALSA has also envisaged a legal aid delivery-based model *i.e*. LADC on the lines of the public defender system.[544] LADCs deal exclusively with the legal aid work in criminal matters, and they do not engage in any private cases.[545] To be eligible, panel lawyers should have experience of at least three years of practice, whereas, LADCs should have at least 10 years of practice in criminal matters.[546]

[539] NALSA (Free and Competent Legal Services) Regulations 2010, Regulation 8.
[540] *Ibid.*
[541] Definition (d), SOP on Access to Legal aid Services to Prisoners and Functioning of the Prison Legal aid Clinics, 2022, NALSA <https://nalsa.gov.in/acts-rules/guidelines/nalsa-sop-functioning-of-prison-legal aid-clinics-2022> accessed 22 April 2024.
[542] As per recommendation of NALSA, SOP for Representation of persons in custody.
[543] NALSA (Free and Competent Legal Services) Regulations, 2010; SOP on Access to Legal aid Services to Prisoners and Functioning of the Prison Legal aid Clinics, 2022, NALSA.
[544] Legal Aid Defense Counsel Scheme (Modified) 2022, NALSA.
[545] *Ibid.*
[546] NALSA (Free and Competent Legal Services) Regulations 2010, Regulation 8(3); Para 4(a) Selection Procedure, Legal Aid Defense Counsel Scheme (Modified) 2022, NALSA.

Retainer lawyers man the front office of the LSA and assist undertrials who are unrepresented where the remand lawyer has not been appointed.[547] Remand advocates on the other hand are deputed in each Magisterial courts and Courts of Sessions, where required for opposing unnecessary remand and assisting the arrestee in filing bail applications and furnishing bail bonds.[548]

3.4.1 Adequate and representative legal aid personnel

Prisoners come from diverse socio-economic backgrounds. Those prisoners who cannot afford private legal services of lawyers depend entirely on the adequacy and competence of the legal aid system to secure justice. Therefore, the LSAs must have adequate strength of panel lawyers to ensure that the prisoners in need can access timely, fair and competent legal assistance. In *Re-Inhuman Conditions in 1382 Prisons,*[549] the Supreme Court also acknowledged the importance of sufficiency of panel lawyers to render effective legal aid:

> *"56. The sum and substance of the aforesaid discussion is that prisoners, like all human beings, deserve to be treated with dignity. To give effect to this, some positive directions need to be issued by this Court and these are as follows:*
>
> > *ii. the Secretary of the District Legal Services Committee (to ensure that) in every district, that* ***an adequate number of competent lawyers are empanelled*** *to assist undertrial prisoners..."*

The graph shows the State-wise breakup of the number of panel lawyers in India as of 31 December 2023:

[547] Handbook of Formats: Ensuring Effective Legal Services; Standardising Documentation and Reporting by Legal Services Institutions, NALSA 2020.
[548] As per recommendations of NALSA, SOP for Representation of Persons in Custody.
[549] Writ Petition(Civil) No. 406 of 2013, dated 5 February 2016, Supreme Court of India.

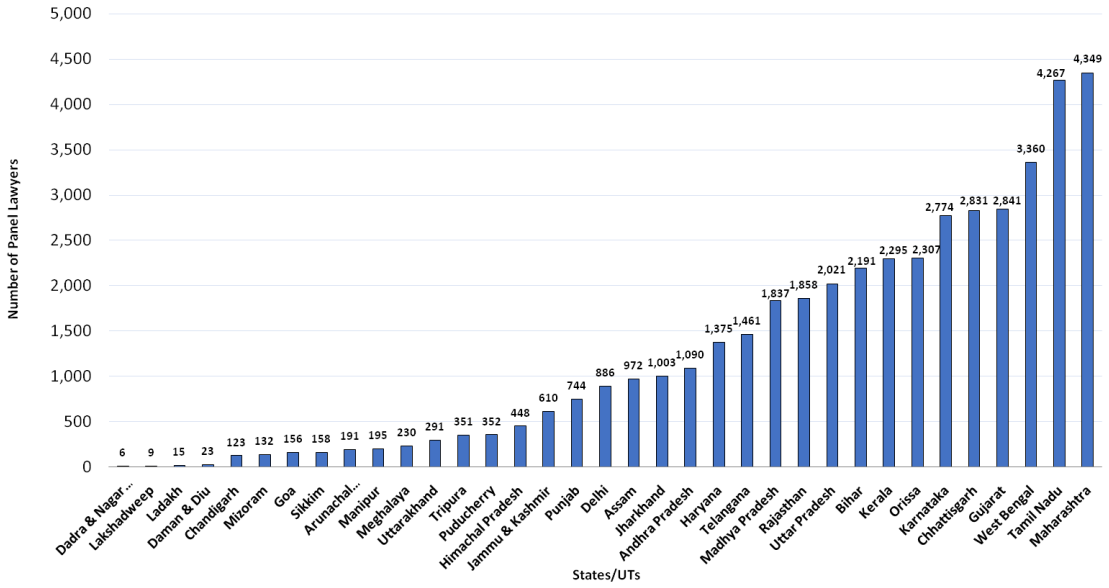

Figure 3.11 - No. of Panel Lawyers in all the States/UTs in 2023[550]

The following graph shows the ratio of total prisoners in the State to the number of panel lawyers in LSAs:

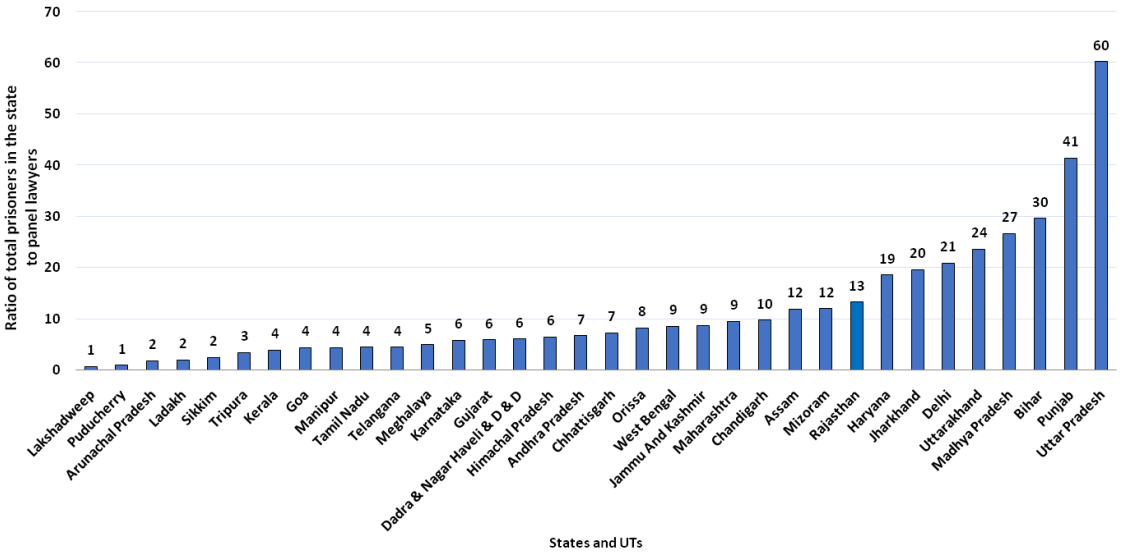

Figure 3.12 - Ratio of total prisoners in the States/UTs and the number of Panel Lawyers[551]

[550] Annexure K : Panel Lawyers in India. *Note:* Data from Nagaland and Andaman & Nicobar Islands not available.

[551] Number of prisoners as per Prison Statistics - India, 2022, NCRB, MHA, Government of India; Annexure K : Panel Lawyers in India.

The above graph leads to the finding that **on an all India level, there is 1 panel lawyer for every 13 prisoners.** However, this proportion starkly varies from State to State. While Uttar Pradesh with a maximum number of prisoners has 1 panel lawyer for every 60 prisoners, Tamil Nadu and Maharashtra have 1 panel lawyer for every 4 and 9 prisoners respectively. It is noteworthy that West Bengal and Punjab do not have a significant difference in their prison population, nevertheless, the ratio of prisoners to panel lawyers differs from 41 in Punjab to 9 in West Bengal.

As per the information received from the Manipur High Court, there is a need to increase the number of panel lawyers in the districts for better execution of providing legal service.[552] While NALSA regulations outline the procedure of empanelment of lawyers, they do not prescribe any metric for calculating the requisite strength of legal aid lawyers in each DLSA. It provides that the size of the panel should be optimised so that each lawyer can be allotted sufficient cases.[553] Para 3.1.1 of the SOP on Access to Legal Aid Services to Prisoners and Functioning of the Prison Legal Aid Clinics, 2022 lays down that the number of JVLs appointed would be directly proportional to the population of inmates in the respective prisons they are appointed to.

In 2016, CHRI also recommended in a *Status Report on Legal Aid for Prisoners in Custody* that the strength of panel lawyers should be based on a specific parameter, which could be the prison population/population of the district, number of fora where presence is required/demand for legal aid.[554]

Maintaining a standard ratio of legal aid providers to prisoners is crucial to provide timely and wider legal aid penetration, without compromising on the competence of the legal aid personnel due to overburden of work.

[552] As per information received from NALSA.
[553] The NALSA (Free and Competent Legal Services) Regulations 2010, Regulation 8.
[554] Hope Behind Bars?: Status Report on Legal aid for Persons in Custody, CHRI 2018 <https://www.humanrightsinitiative.org/download/CHRI%20Legal%20Aid%20Report%20Hope%20Behind%20Bars%20Volume%201.pdf> accessed 19 April 2024.

Representative legal aid machinery

Facilitating legal aid is a measure to secure social justice. Undertrial prisonsers and convicts housed in prisons, specially those who come from poor, marginalised and economically weaker backgrounds occupy a position of disadvantage where they may not have the confidence and capability to voice their concerns with the legal-aid personnel.

A representative and inclusive judiciary reposes the faith of the public in the justice system.[555] Likewise, there is a need for adequate representation in legal aid panels, so that all prisoners irrespective of gender or socio-economic background can access competent legal assistance. Regulation 8(6) of the NALSA (Free and Competent Legal Services) Regulations, 2010 also incorporates this spirit as it lays down that:

> *"8(6) There may be representation of the Scheduled Castes, the Scheduled Tribes, women and differently abled lawyers in the panel."*

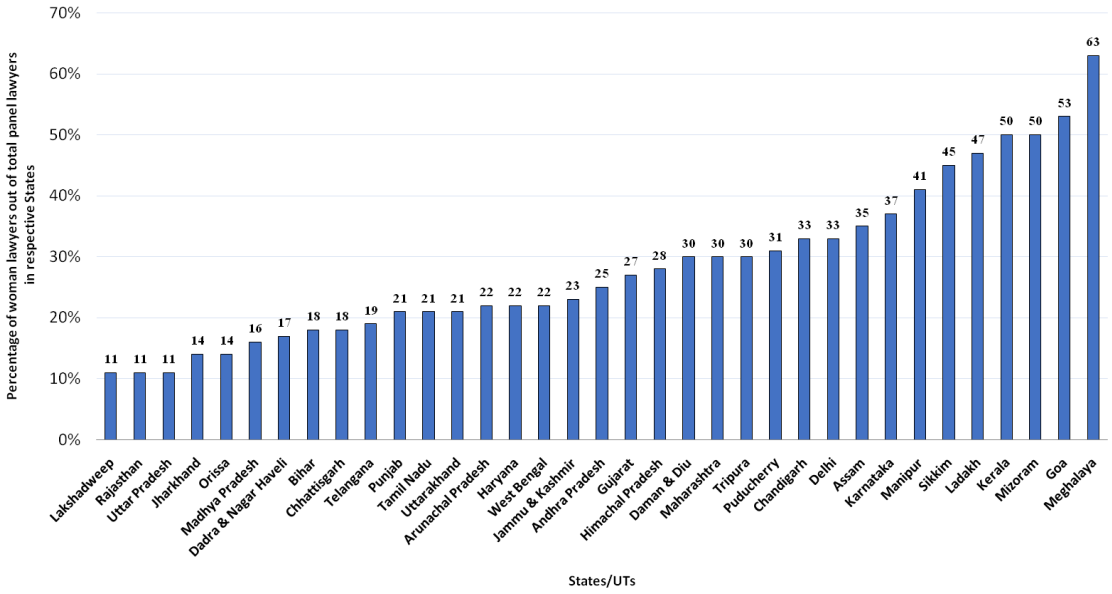

Figure 3.13 - Percentage of Women Panel Lawyers in States/UTs in 2023[556]

[555] 4.6, Report on State of the Judiciary, Centre for Research & Planning, Supreme Court of India, November 2023.

[556] Annexure K : Panel Lawyers in India. *Note:* The above graph does not include States/UTs which have less than 1% representation of women panel lawyers.

Figure 3.13 above shows that there are 43,752 panel lawyers in India, out of which 10,683 panel lawyers are female, as of 31 December 2023. Maharashtra (1,325) and Kerala (1,146) LSAs have the maximum representation of women panel lawyers in India.[557] Rajasthan and Uttar Pradesh have been reported to have the lowest representation of women among panel lawyers providing legal aid, with figures at 11% respectively.[558] The NCRB Report further states that there were 97 transgender prisoners in 2022.[559] However, in light of the information received from NALSA, only Tamil Nadu (6) and Maharashtra (1) have representation of transgender lawyers in the DLSA panels as of 31 December 2023.[560]

Assigning female legal aid lawyers to represent female prisoners can ease the accessibility of women prisoners to justice, addressing their unique needs more effectively, and creating a more compassionate and supportive legal environment. Reiterating the same spirit, the Prison Department of Madhya Pradesh has suggested that appointing separate female panel advocates for female prisoners should be given preference.[561] In 2022, former Chief Justice of India, N.V. Ramana also recommended giving preference to women in panel advocate appointments.[562]

[557] As per data received from NALSA.
[558] *Ibid.*
[559] Prison Statistics Report, 2022, NCRB, MHA, Government of India.
[560] As per data received from NALSA.
[561] As per information received from Madhya Pradesh Prison Department.
[562] International Day of Women Judges, 10 March 2022, Supreme Court of India. <https://www.livelaw.in/top-stories/women-preference-appointment-panel-advocates-girls-reservation-in-legal-education-cji-ramana-international-women-judges-day-193869> accessed 1 May 2024.

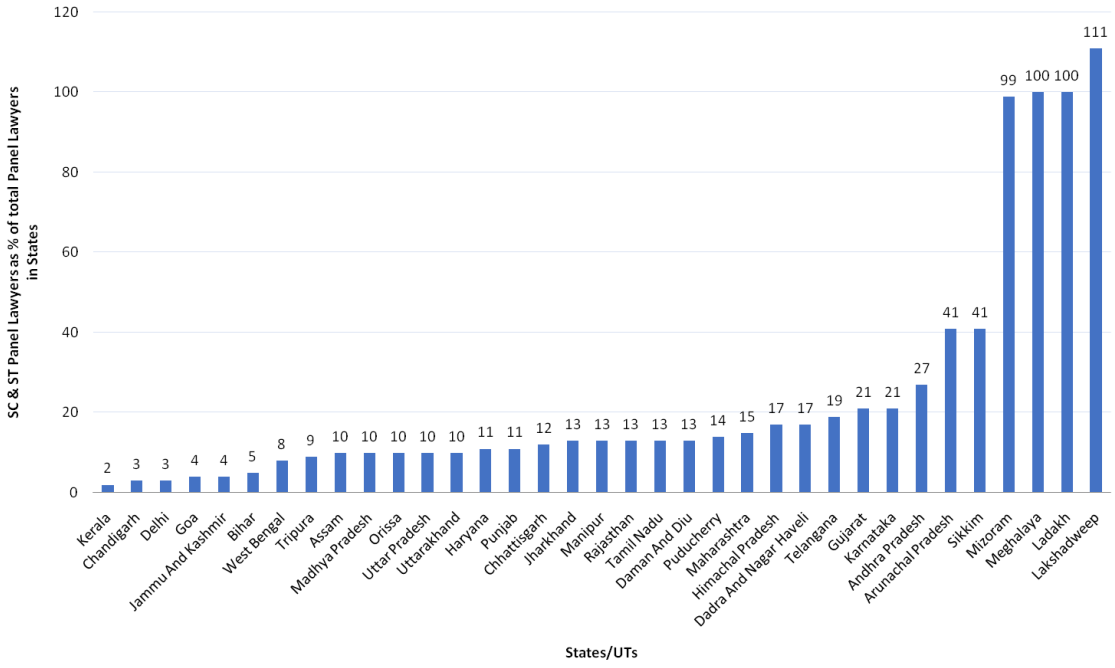

Figure 3.14 - Percentage of SC and ST Panel Lawyers in all the States/UTs in 2023[563]

Similarly, concerning the marginalised prison population, the Prison Statistics India Report of NCRB shows that there are 30.4% (177,400) of the total prisoners who belong to SC/ST categories.[564] Out of the total panel lawyers in India, there are only 13.4% (5,906) panel lawyers who belong to the SC/ST category, with Maharashtra (673) and Tamil Nadu (584) topping the graph.[565] However, as illustrated in the figure, States with the highest number of prisoners from SC/ST communities, such as Uttar Pradesh (37,427) and Madhya Pradesh (20,965), have only around 10% SC & ST representation among panel lawyers.[566]

Access to equal justice in its true sense would require justice to reach those vulnerable and underserved sections of the community who have faced discrimination over a long period. Internalised biases and stereotypes against women or prisoners who are poor or belong to the marginalised sections in prison and correctional institutions may act as a bottleneck in

[563] Annexure K: Panel Lawyers in India. *Note*: The above graph does not include States/UTs which have less than 1% representation of SC and ST panel lawyers.
[564] Prison Statistics Report, 2022, NCRB, MHA, Government of India.
[565] Annexure K: Panel Lawyers in India.
[566] Prison Statistics Report, 2022, NCRB, MHA, Government of India.

their path to seek timely judicial redressal.[567] This necessitates the representation of women, marginalised communities, and differently abled persons in the panel of lawyers of LSAs.

Legal aid should be facilitated to prisoners beyond geographical limitations. A prisoner may be involved in multiple cases, which may belong to different territorial jurisdictions. Consequently, prisoners with cases in different districts or sessions divisions are not receiving effective representation, leading to gaps in legal aid coverage and potentially unfair treatment in the legal process.

In this regard, Telangana High Court submits that the Legal Aid Defense Counsel office pertaining to one sessions division does not render service to such a prisoner who has a case in another district/sessions division. Therefore, prisoners who have cases in other districts are often not effectively represented by the concerned LADC Office.[568] In such a case, the concerned LADCs should furnish proper representation by establishing communication with the LADC of the other district/sessions division.

3.4.2 Challenges in rendering effective legal aid

Legal aid is an important facet of access to equal justice. As per the Prison Statistics Report by NCRB, 1,83,320 prisoners had received legal aid in 202*2*.[569] As per data received from NALSA, there are prisoners who are still unrepresented in prisons like that of Uttar Pradesh (140), Madhya Pradesh (57), Jharkhand (12) and Tripura (3).[570] A strong legal aid machinery can ensure that no prisoner is unrepresented or is unable to seek judicial redress despite being eligible to be released.

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[567] United Nations Office on Drugs and Crime, *Handbook on Women and Imprisonment* (Criminal Justice Handbook Series, 2nd edn) <https://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf> accessed 17 November 2025; Adv Rahul Singh, *Criminal Justice in the Shadow of Caste: Study on Discrimination against Dalit and Adivasi Prisoners and Victims of Police Excesses* (National Dalit Movement for Justice (NDMJ) – NCDHR 2018) <https://www.annihilatecaste.in/uploads/downloads/data_190118030229_21000.pdf> accessed 17 November 2025; *Hussainara Khatoon v. Home Secretary, State of Bihar*, 1979 INSC 34.
[568] As per the information from Telangana High Court.
[569] Prison Statistics Report, 2022, NCRB, MHA, Government of India.
[570] As per the data received from NALSA, as on 31 December 2023.

However, the LSAs face numerous challenges in rendering legal aid assistance like lack of infrastructure and inadequate remuneration, which affects the willingness of lawyers to render assistance and also compromises with the quality of legal aid delivered. Many High Courts like that of Calcutta, Allahabad, and Uttarakhand have raised the concern that due to work pressure and financial gaps, competent, promising and eminent advocates do not apply for their inclusion as panel lawyers of DLSA.[571] The High Courts of Allahabad and Calcutta also highlighted that some undertrial prisonsers, despite requesting to engage legal aid lawyers, resort to appointing their private lawyers indicating a communication gap.[572] To address this issue, the High Court of Calcutta recommended that concerned authorities issue guidelines to address the engagement of private lawyers despite the appointment of legal aid lawyers.[573]

In October 2024, the Supreme Court in *Suhas Chakma v. Union of India*[574] held that

> *"For the success of the functioning of the legal aid mechanism, awareness is the key. A robust mechanism should be put in place and periodically updated to ensure that the various beneficial schemes promoted by the Legal Services Authorities reaches the nook and corner of the nation and particularly, to those whose grievances it has set out to address."*

The Court also reiterated that, *"Legal aid to poor should not be poor legal aid."* The quality of legal assistance rendered by the lawyers depends upon a strong legal aid infrastructure, adequate human resources and reasonable remuneration paid for the legal aid services. Some of the issues as highlighted by the High Courts are discussed hereunder:

a. **Physical and digital Infrastructure**

Infrastructure provides foundational support to the LSAs for the delivery of legal aid services. Information provided by NALSA shows that most of the LSAs face the challenge of lack of space and furniture for DLSA offices. Further, the Allahabad High Court highlights that in the office of DLSA, Balrampur there is insufficiency of funds for

[571] As per information received from the High Courts.
[572] *Ibid.*
[573] As per information received from High Court of Calcutta.
[574] *Suhas Chakma v. Union of India* [2024] INSC 813.

stationery.[575] The unavailability of infrastructural needs as basic as stationery may demotivate the lawyers to render competent legal service and thus may weaken effective legal aid facilitation to undertrial prisoners and also compel the panel lawyers to pay for the same out of their own pockets.

As per NALSA, Assam LSA has submitted that there is no available space in the jail premises of District Jail, Karimganj, Assam for legal aid counsels to sit and render service to the inmates.[576] The High Court of Calcutta further highlighted that in Purulia and Bankura District Correctional Homes, no room is allotted exclusively for the legal aid clinic, and is functioning in the space reserved for the library respectively.[577]

The LADC Scheme 2022 provides that the LADC system deals exclusively with legal aid work in criminal matters at the district headquarters, where it is established.[578] It also recommends that subject to feasibility, the services may be extended to Talukas or outline Courts.[579] In this regard, the High Courts of Madhya Pradesh and Maharashtra suggest that the LADC system should also be introduced at tehsil/taluka level.[580] Similarly, the High Courts of Kerala and Andhra Pradesh suggest the extension of LADCs at muffasils for better implementation of legal aid services which are presently restricted to the District Headquarters only.[581]

The integration of technology in prison systems is crucial for enhancing the efficiency and effectiveness of legal aid services. The adoption of the e-prison system for prisoner scrutiny ensures accurate and efficient management of inmate information.[582] As per information received from the High Court of Punjab & Haryana, the establishment of legal aid clinics with computers and other infrastructure provided by the DLSA Panchkula has improved the functionality of these clinics.[583]

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[575] As per information received from the Allahabad High Court.
[576] As per information received from NALSA.
[577] *Ibid.*
[578] Legal Aid Defense Counsel Scheme (Modified) 2022, NALSA.
[579] *Ibid.*
[580] As per information received from NALSA.
[581] *Ibid.*
[582] *Ibid.*
[583] As per information received from High Court of Punjab & Haryana.

However, challenges remain in other regions where legal aid clinics lack essential technological resources such as desktop computers, printers, and access to the e-Prison portal.[584] Allahabad High Court has further highlighted specific issues like unavailability of internet connection and sufficient bandwidth at DLSA, Baghpat and Varanasi, and non supply of regular electricity in the office of DLSA, Balrampur.[585]

As per the information received from NALSA, Goa LSA suggested the induction of a dedicated computer coordinator for faster communication through mail to curb the delay in receiving information from jail concerning prisoners.[586] High Courts and NALSA must ensure that there is a periodical review of the working of district and State level LSAs, and take steps to ensure that there is proper digital infrastructure and internet connectivity and bandwidth to digitise and use the vast information related to prisoners.

b. Payment of adequate remuneration

To ensure free and competent legal aid services, LSAs remunerate the legal aid lawyers and cover the expenses incurred in relation to the legal work done.[587] NALSA allocates consolidated funds to the SLSAs for the implementation of various legal aid activities/ programmes. From the financial year 2023-24 onwards, there is a ceiling of 50% of allocation/expenditure from the National Legal Aid Fund for legal aid and advice, 25% for ADR and mediation, and awareness and outreach programmes each.[588]

Panel lawyers are paid remuneration in accordance with the fee schedule approved under the respective State regulations. As per Regulation 14 of National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 Panel lawyers shall be paid a fee in accordance with the Schedule of fee, as approved under the State regulations. NALSA lays down the minimum pay structure for panel lawyers which is tabulated below:[589]

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[584] As per information received from the High Court of Calcutta.
[585] As per information received from the High Courts.
[586] As per information received from NALSA.
[587] National Legal Services Authority (Free and Competent Legal Services) Regulations 2010, Regulation 14.
[588] Manual for District Legal Services Authority 2023, NALSA <https://nalsa.gov.in/library/manual-for-district-legal-services-authorities-2023> accessed 5 May 2024.
[589] Minimum Fee Recommended by NALSA for Panel Lawyers, NALSA <https://nalsa.gov.in/acts-rules/guidelines/minimum-fee-recommended-by-nalsa-for-panel-lawyers> accessed 7 May 2024.

Description of Work	High Court	District Court
Drafting of substantive pleading such as Suit, Matrimonial Proceedings such as Divorce, Maintenance, Custody, Restitution etc., Succession, Probate, Memo of Appeal, Revision, Written Statement, Reply, Rejoinder, Replication etc.	Rs. 1,500/-	Rs.1,200/
Drafting of Miscellaneous applications such as stay, bail, direction, exemption etc.	**Rs.500/- per application** *(subject to maximum of Rs.1,000/- for all applications)*	**Rs.400/- per application** *(subject to maximum of Rs.800/- for all applications)*
Appearance	Rs.1,000/- per effective hearing and Rs.750/- for non-effective hearing *(subject to maximum of Rs.10,000/-)*	Rs.750/- per effective hearing and Rs.500/- for non-effective hearing *(subject to a maximum of Rs.7,500/-)*

Table 3.2 - Minimum pay structure for panel lawyers as per NALSA

As shown in the table above, panel lawyers in district courts receive a minimal remuneration of Rs.750/- for an effective hearing in a case to a maximum of Rs. 7,500/- (10 hearings in a case). A non-effective hearing is one where there has merely been an

adjournment or delivery of judgment or passing of an interlocutory direction by the court.[590]

As per the information received from NALSA, Andhra Pradesh LSA submitted that efficient lawyers are not showing interest in empanelling themselves to render necessary legal assistance to the needy litigants because of the low fee structure.[591] The High Court of Gauhati has also raised the issue of low remuneration and non-payment of honorarium on time.[592]

On 7 February 2024, the Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its report on the *"Review of the Working of Legal Aid under the Legal Services Authorities Act, 1987"* also addressed the issue of meagre compensation to panel lawyers:[593]

> *"22. As regard fees, it is being observed that* ***panel lawyers are not being adequately compensated and their remuneration has remained stagnant for years together.*** *This affects the quality of legal aid service provided to the clients.* ***This also often leads to lawyers found harassing beneficiaries or demanding 'fees' from them.*** *The Committee accordingly, recommends NALSA to compensate lawyers adequately, so that they are able to sustain themselves and remain motivated in their job. While ensuring this, a robust system of monitoring the efficacy and accountability of Legal aid services provided to the beneficiaries may also be put in place by NALSA.*"

To strengthen legal aid programs, a resolution was also passed at the Chief Justices' Conference in 2016 that the Chief Justices of the High Courts shall take necessary steps to ensure that suitable amendments are made to the SLSA Regulations to enhance the fees

[590] Fee Schedule, 2017, Delhi State Legal Services Authority.
[591] As per information received from NALSA.
[592] As per information received from High Court of Gauhati.
[593] One Hundred Forty-Third Report on the Subject "Review of the Working of Legal aid under the Legal Services Authorities Act, 1987", Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, Rajya Sabha Secretariat, New Delhi, 7 February 2024 <https://sansad.in/getFile/rsnew/Committee_site/Committee_File/ReportFile/18/191/143_2024_2_12.pdf?source=rajyasabha> accessed 19 May 2024.

payable to panel lawyers along lines suggested by NALSA.[594] In compliance with the said resolution, all the High Courts except Jharkhand, Karnataka, Rajasthan, and Sikkim have submitted that required amendments have been made, as of 1 April 2024.[595]

Further, as per the Ministry of Law and Justice as on September 2020, while States like Gujarat, Kerala, Punjab, Rajasthan, Uttarakhand, and Delhi LSAs have fixed remuneration for panel lawyers higher than the prescribed rates by NALSA, UTs of Dadra and Nagar Haveli and Lakshadweep have a comparatively lower fee structure than that fixed by NALSA.[596]

Another challenge which has been raised by the LSAs through the questionnaire is insufficient travel allowance for the JVLs. Regulation 3.1.5 of the NALSA's SOP on Access to Legal Aid Services to Prisoners and Functioning of the Prison Legal Aid Clinics, 2022 lays down that:

> *"3.1.5 - The payment of honorarium to JVL(s) should normally* ***include the costs incurred in the conveyance to the prisons and back. Additional payment on account of conveyance shall not be made from NALSA fund.*** *The payment to the JVLs must be cleared promptly upon the submission of the weekly report(s) and proof of visit(s), if any."*

As per the Maharashtra Prison Department, Kolhapur Central Prison being a central prison houses many prisoners from adjacent districts. Thus, the LADCs from the concerned districts have to visit the central prison to facilitate legal aid to the prisoners from that district.[597] Similarly, Allahabad High Court has submitted that the Central Jail in Etawah is situated in a remote area, and female panel lawyers face trouble in approaching the jail and have to make extra efforts to provide legal aid to the prisoners.[598]

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[594] Resolutions Adopted in the Chief Justices' Conference, 2016 (22 & 23 April, 2016) <https://main.sci.gov.in/pdf/sciconf/Resolutions%20adopted%20in%20the%20Chief%20Justices%27%20Conference,%202016.pdf> accessed 5 May 2024.
[595] CJI Conference Questionnaire, Conference Secretariat, Supreme Court of India - as on 1 April 2024. Data of Sikkim unavailable.
[596] Lok Sabha, Unstarred Question No. 1817, Ministry of Law & Justice, 21 September, 2020 <https://sansad.in/getFile/loksabhaquestions/annex/174/AU1817.pdf?source=pqals> accessed 2 May 2024.
[597] As per information received from the Bombay High Court.
[598] As per information received from the Allahabad High Court.

As per the information received from NALSA, Assam submits that there is no official vehicle in DLSA, Goalpara.[599] Similarly, Allahabad High Court highlights the lack of transportation in conducting socio-legal activities in Jaunpur and Kannauj.[600] As per the information received from NALSA, Assam LSA has raised the concern that since all the districts do not have a jail, communication with jails becomes a matter of inconvenience.[601] This shows that there is a need for each DLSA to facilitate convenient conveyance for JVLs from court to jails.

c. Delayed payment

Timely payment of remuneration is a crucial determinant of the adequacy of any kind of payment. Regulation 14 of National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 provides that as soon as the report of completion of the proceedings is received from the panel lawyer, the DLSA shall, without any delay, pay them. However, Uttarakhand High Court highlights that there is considerable delay in payment to the legal aid lawyers.[602]

According to a pan-India empirical study funded by the Ministry of Human Resource Development, around 34% of legal aid counsels reported significant delay in payment of honorarium for the legal service rendered, often exceeding six months after the conclusion of the case.[603]

Inordinate delay in payment of remuneration causes legal aid lawyers to pay out of their own pockets to meet the expenses incurred in the delivery of legal services. This casts a shadow of doubt upon the quality of legal aid service rendered to the beneficiary. Nominal and delayed honorariums also discourage competent and experienced lawyers from actively participating in the legal aid mechanism. It has also been submitted by the High Court of Calcutta that prison inmates have been alleging that legal aid lawyers do not

[599] As per information received from NALSA.
[600] As per information received from the Allahabad High Court.
[601] As per information received from NALSA.
[602] As per information received from NALSA.
[603] Jeet Singh Mann 'An Empirical Study to Examine the Impact of Legal Aid Services Provided by the Legal Aid Counsels on the Quality of the Legal Aid System in India', Economic and Political Weekly (Engage), Vol. 55, Issue No. 19, 09 May, 2020, Centre for Transparency and Accountability in Governance.

cooperate with them.[604] Further, Madhya Pradesh High Court has submitted that "as minimum as once in a month a complaint/feedback received from the legal aided parties that the concerned panel lawyer directed them that unless you will not pay financial remuneration, your case will not be exercised seriously."[605]

The MHA has also highlighted the disparity in legal representation between wealthy and poor offenders:[606]

> *"Rich offenders would have the best counsel to defend them whereas* ***the poor will have mediocre lawyers poorly paid by the Legal aid scheme, who sometimes compromise the interests of the client by accepting illegal gratification****."*

Delays caused by procedural claptraps and administrative bottlenecks in raising bills can be reduced to a great extent if the process of claiming remuneration is digitised.

Regulation 8(16) of NALSA (Free and Competent Legal Services) Regulations of 2010 prohibits panel lawyers from demanding or receiving any additional fees from the legal aid beneficiaries. The relevant regulations read as:[607]

> *"8 (16). The panel lawyers shall not ask for or receive any fee, remuneration or any valuable consideration in any manner, from the person to whom he has rendered legal services under these regulations.*
>
> *8 (17). If the panel lawyer engaged is not performing satisfactorily or* ***has acted contrary to the object and spirit of the Act and these regulations, the Legal Services Institution shall take appropriate steps including withdrawal of the case from such lawyer and his removal from the panel.****"*

[604] As per information received from the High Court of Calcutta.
[605] As per information received from the High Court of Madhya Pradesh.
[606] Report of the Committee on Draft National Policy on Criminal Justice, Ministry of Home Affairs Government of India, July, 2007 <https://www.mha.gov.in/sites/default/files/2022-08/DraftPolicyPaperAug%5B1%5D.pdf> accessed on 17 May 2024.
[607] National Legal Services Authority (Free and Competent Legal Services) Regulations 2010.

Complaints in this regard can be raised with the Monitoring Committees established under the NALSA (Free and Competent Legal Services) Regulations of 2010.[608] Besides, for effective and expeditious redressal of complaints, NALSA has also formulated an SOP for *Redressal of Complaints/Public Grievance* under which any party who has been assigned and is represented by a legal aid lawyer can raise a complaint against such lawyer in respect of working and conduct.[609]

While there are many beneficial legal provisions, there is a need to make the prisoners aware of the same. The High Court of Himachal Pradesh has suggested developing a feedback mechanism for legal aid beneficiaries to evaluate the services rendered by legal services providers.[610] The PLACs and other access points for legal aid in courts and police stations must have pamphlets placed at prominent places, clearly displaying the prohibition against demanding/receiving money by legal aid lawyers and the grievance redressal mechanism in case of violation. As per a report by a former Director of NALSA, there is also a need for data on the performance indicators for monitoring the effectiveness and overall performance standards of the legal aid lawyers.[611]

The legal profession is not merely a means to make ends meet, rather has an elemental object and responsibility of bringing social justice to the disadvantaged sections of the society. Therefore, besides the mandate of law, it is the ethical obligation of every lawyer to represent the underprivileged and advance the jurisprudence of pro bono lawyering in India. For a strong and efficient legal aid machinery in India, it is necessary that it is equipped with adequate infrastructure, human resources and sufficient compensation for legal services. In addition, the sense of duty and compassion towards the weaker sections of society, especially those housed in the confines of prisons is equally important.

[608] National Legal Services Authority (Free and Competent Legal Services) Regulations 2010, Regulation 10.
[609] NALSA, Standard Operating Procedure for Redressal of Complaints/Public Grievance.
[610] As per information received from High Court of Himachal Pradesh.
[611] Sunil Chauhan, 'Role of Legal Services Authorities in Providing Legal Services: A Study with Reference to the State of Haryana' (Department of Law, Panjab University, 2021) available at <http://hdl.handle.net/10603/379998> accessed 15th April 2024.

The 143rd Report of the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice recommended that:[612]

> "*The Committee is also of the view that designated Senior Advocates in all High Courts/Supreme Court may come together to* ***form a panel for doing pro-bono works and undertake such works.*** *In each District Judiciary, High Courts and in Supreme Court, the Advocates/Bar Association can involve advocates in pro-bono works by rotation and Association can monitor the same."*

In this sense, rendering competent legal aid to prisoners is not merely a legal obligation but a profound moral imperative. Ensuring access to justice by way of legal aid for those behind bars is pivotal for meaningful prison reforms and the decongestion of overcrowded prisons. This requires a strong network of UTRCs, District level committees, LSAs and legal aid clinics at police stations, villages and prisons manned by adequately remunerated and respected legal aid personnel. The Training Modules prepared by NALSA must be followed by training institutions and academies for capacity building of the legal aid personnel.[613]

However, for the legal aid system to function efficiently, it is essential to establish a streamlined process for raising bills for services rendered, supported by clear performance indicators and a robust feedback mechanism. It is time that the justice delivery system moves towards an ecosystem where justice is not a privilege of a few but a right ensured for all.

3.5 <u>Role of Law Schools in Providing Legal Aid in Prisons</u>The constitutional vision articulated in Articles 21 and 39-A, together with the Supreme Court's jurisprudence on legal aid, requires a multidimensional justice-delivery ecosystem that is not solely dependent on statutory bodies. Under the mandate of Bar Council of India and NALSA, law schools are required to set up

[612] One Hundred Forty-Third Report on the Subject *"Review of the Working of Legal aid under the Legal Services Authorities Act, 1987",* Rajya Sabha Secretariat, New Delhi, February 2024 <https://sansad.in/getFile/rsnew/Committee_site/Committee_File/ReportFile/18/191/143_2024_2_12.pdf?source=rajyasabha> accessed 19 May 2024.
[613] Training Modules for Legal Services Lawyers, NALSA <https://nalsa.gov.in/training-modules> accessed 14 May 2024.

legal aid cells/societies/clinics on their premises. According to the latest data, there are around 1721 law colleges in India.[614] Therefore, law school legal aid clinics, operating under clinical legal education models, can support this ecosystem by supplementing the work of DLSAs, PLACs and prison authorities.[615] Their role is necessarily supportive and supervised, because students in India cannot represent prisoners or provide independent legal advice.

However, when appropriately structured, law school engagement can meaningfully address several systemic barriers identified in this Report, including limited legal awareness, weak communication with LSAs, delays in bail and appeal processes, and insufficient availability of trained personnel inside prisons.

3.5.1 Rationale for Law School Involvement in Prison Legal Aid

Prison legal aid in India faces chronic shortages of human resources, high case load among legal aid lawyers, and limited institutional capacity for sustained monitoring or follow-up.[616] Law schools can offer three contributions that other institutions may not replicate as efficiently:

1. **Continuity of engagement**, with clinics operating across academic years through rotating student teams;
2. **Independent documentation**, which is essential for identifying patterns of systemic failure; and
3. **Multidisciplinary expertise**, enabling integration of legal, criminological, psychological and socio-economic perspectives relevant to prisoners' rights.

These structural advantages justify a formal role for law school clinics within the broader legal aid architecture.

[614] 1,721 law schools in India; more than twice as many private law colleges than government law colleges: Law Minister , Bar & Bench, 29 March 2022 <https://www.barandbench.com/news/lawschools/1721-law-schools-in-india-more-than-twice-as-many-private-law-colleges-than-govt-law-colleges-law-minister>
[615] Legal Aid Through Law Schools: A Report on Working of Legal Aid Cells in India, Centre for Research and Planning (November 2024) available at < https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024110665.pdf>
[616] Bharti, Nitin Kumar, and Jonathan Lehne. "Justice for all? The impact of legal aid in India." Paris School of Economics (2024).

a. Enhancing Legal Awareness and Strengthening Communication

The Supreme Court's Centre for Research and Planning conducted an empirical research (the legal aid report) on the working of the legal aid cells in the law schools in India.[617] A questionnaire was circulated among 125 colleges/law universities, of which 81 participated in the survey. The survey results showed that only 10 out of 83 legal cells were actively involved in conducting prison reform initiatives. These initiatives include conducting legal awareness camps or organising pre-litigation activities in prisons.[618] The report concluded that the law schools can form a significant, though currently under-utilised, institutional resource for strengthening legal aid within prisons.[619]

The legal aid report documents that several clinics, including those in Pune, Jodhpur and Lucknow, conduct structured legal literacy programmes and prison camps on undertrial rights, bail processes, women prisoners' entitlements and procedural safeguards.[620] The legal aid report recommends that each prison visit by the members of the legal aid cell should be followed by written observations shared with DLSAs and prison authorities to enable responsive corrective action. Law school clinics can also support the communication gaps with LSAs noted in Section 3.2 of this report.

Furthermore, the Commonwealth Human Rights Initiative (CHRI), in its 2019 report, recommends that law school clinics work in coordination with key stakeholders of the criminal justice system, including police stations, prisons, and legal services institutions. With the permission of the Superintendent of Police, a student legal aid clinic may inform arrested persons or their family members of their rights and the relevant procedures, and may assist unrepresented individuals during the initial stages of arrest and interrogation.[621]

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[617] Legal Aid Through Law Schools: A Report on Working of Legal Aid Cells in India, Centre for Research and Planning (November 2024) available at < https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024110665.pdf>
[618] Ibid
[619] Ibid
[620] Legal Aid Through Law Schools: A Report on Working of Legal Aid Cells in India, Centre for Research and Planning (November 2024) available at < https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024110665.pdf>
[621] Commonwealth Human Rights Initiative, "University based Legal Aid Clinics and Persons in Custody - A Guide" (2019), available at <https://www.humanrightsinitiative.org/publication/guidebook-university-based-legal-aid-clinics-and-persons-in-custody#:~:text=Tweets%20by%20@chri_INT-,Guidebook%2D%20University%20Based%20Legal%20Aid%20Clinics%20and%20Persons%20in%20Custody,legal%20aid%20delivery%20and%20advice.>

b. Supporting Litigation Processes and Bail-Related Documentation

Many undertrials continue in custody due to delays in filing bail applications, criminal appeals, incomplete paperwork or inability to handle procedural requirements. Under supervision of DLSAs, law school clinics can help prepare draft applications for default bail, compile socio-economic data required for modification of bail conditions, and gather records necessary for release. These tasks do not constitute legal representation but significantly reduce procedural hurdles. The legal aid report has highlighted that the efficacy of such assistance would increase when legal aid clinics of law schools would enter into formal MoUs with DLSAs.[622]

c. Paralegal Volunteer Training and In-Prison Legal Assistance

The shortage of legal aid personnel described in Section 3.4 directly affects timely legal assistance. Law school clinics can strengthen PLACs by training selected prisoners, identified by prison authorities, to serve as paralegal volunteers. The legal aid report documents initiatives where clinics trained inmates in form-filling, case-tracking and basic procedural guidance.[623] However, these programmes must follow strict SOPs, ensure confidentiality, and operate only under faculty and advocate supervision.

d. Research, Monitoring and Evidence Generation

Law school clinics also contribute through structured research, documentation and monitoring, which are essential for evidence-based prison reform. The legal aid report highlights collaborations done by the several legal aid cells of the several law schools with organisations such as CHRI and the Justice Project on studies of prison conditions, women's life convicts, well-being workshops and discrepancies in the Prison Statistics of India.[624] The research outputs arrived by such collaborations may serve two distinct functions:

(i) internal reporting for DLSAs and prison authorities, and

(ii) academically supervised studies feeding into broader policy reform.

It is important to note that engagement inside prisons requires strict adherence to ethical norms.[625] Legal aid clinics must ensure consent-based interactions, confidentiality of prisoner information,

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[622] Legal Aid Through Law Schools: A Report on Working of Legal Aid Cells in India, Centre for Research and Planning (November 2024) available at < https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024110665.pdf>

[623] Ibid

[624] Ibid

[625] Kalmbach, Karen C. and Lyons, Phillip M., "Ethical and Legal Standards for Research in Prisons" (2003). Psychology Faculty Publications. 15. https://digitalcommons.tamusa.edu/psyc_faculty/15

security-cleared access, trauma-sensitive interview practices and careful handling of sensitive documents. These safeguards protect both prisoners and students, and align with the responsibilities of prison administrations.

e. Institutional Preconditions and Mechanisms for Sustainability

For meaningful and accountable participation, law schools require clear institutional frameworks that define their role within the prison legal aid ecosystem.[626] This includes formalised Memoranda of Understanding with DLSAs and prison authorities, specifying the scope of activities, frequency of visits, supervision requirements, and reporting responsibilities.[627] Faculty-led clinical supervision is essential to ensure that all student engagement aligns with statutory mandates, ethical standards, and prison security protocols. Standardised procedures for documentation, confidentiality, storage of sensitive information, and communication with LSAs must be established so that interactions with prisoners are consistent, consent-based, and professionally managed.

Law schools should also incorporate structured training modules to familiarise students with the Legal Services Authorities Act, NALSA's SOPs, prison manuals, and interviewing techniques, along with curricular recognition to ensure continuity across academic years. To maintain accountability, a uniform reporting mechanism should be instituted.[628] Clinics must submit periodic reports summarising each prison visit, case-status observations, follow-up actions, and any gaps in implementation noticed during interactions with prisoners or PLAC personnel.[629] These reports should also record systemic issues such as delays in filing appeals, non-release despite bail, lack of communication with families, or discrepancies in digital records, so that DLSAs and prison authorities can take timely corrective steps. A structured framework of this nature ensures that law school engagement remains consistent, responsible, and aligned with the broader legal aid mechanism.

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[626] Legal Aid Through Law Schools: A Report on Working of Legal Aid Cells in India, Centre for Research and Planning (November 2024) available at < https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024110665.pdf>

[627] Ibid

[628] Leon Thomas David, "The Value of Legal Aid Work to Law Schools", 205 Frontiers of Legal Aid Work, The Annals of the American Academy of Political and Social Science 121-128 (September 1939).

[629] Legal Aid Through Law Schools A Report on Working of Legal Aid Cells in India, Centre for Research and Planning (November 2024) available at < https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024110665.pdf>

Part IV: ROLE OF JUDICIARY

Background

The various components of the criminal justice system such as prisons, police and investigating authorities, the judiciary and the prosecution are deeply intertwined with each other for the unified purpose of administration of justice. Thus, any agenda to reform prisons cannot be effectively achieved without understanding the role of other institutions and examining their interaction with the prison system.

The first step of detention generally begins when the police apprehends a person against whom there exists credible information or reasonable suspicion of the commission of an offence. The accused is then transported from the police lockup to the court where they are produced before the concerned Magistrate within 24 hours of arrest. At this juncture, if an order of judicial remand is passed by the court under Section 167(2) of CrPC, 1973,[630] the remanded accused goes to judicial custody *i.e.* the jail, from where they may petition the courts for release on bail.

This procedure shows that prisons house those undertrials who are remanded or whose bail applications are rejected by the courts. It has been noted in Part I of the Report that 75.8% of the prison population comprises of undertrial prisonsers awaiting the completion of trial.[631] Therefore, in addition to the treatment of convicts, the population and conditions in prisons are materially affected by the role of the judiciary.

The right to speedy trial is a fundamental right under Article 21 of the Constitution. Access to free and competent legal aid helps the prisoner seek justice. However, the extensiveness of a trial is a major impediment for the undertrials who are detained in prison awaiting the court to determine whether they are guilty or not. The overflowing docket of courts coupled

[630] Police remand may also be granted by the Magistrate, as per the facts and circumstances of the case. Corresponds to BNSS 2023, Section 187.
[631] Prison Statistics India - 2022, NCRB, MHA, Government of India.

with the shortfall in judge strength forms a central concern in judicial reforms.[632] The mutual interdependence within the justice delivery mechanism makes judicial reforms key to prison reforms.

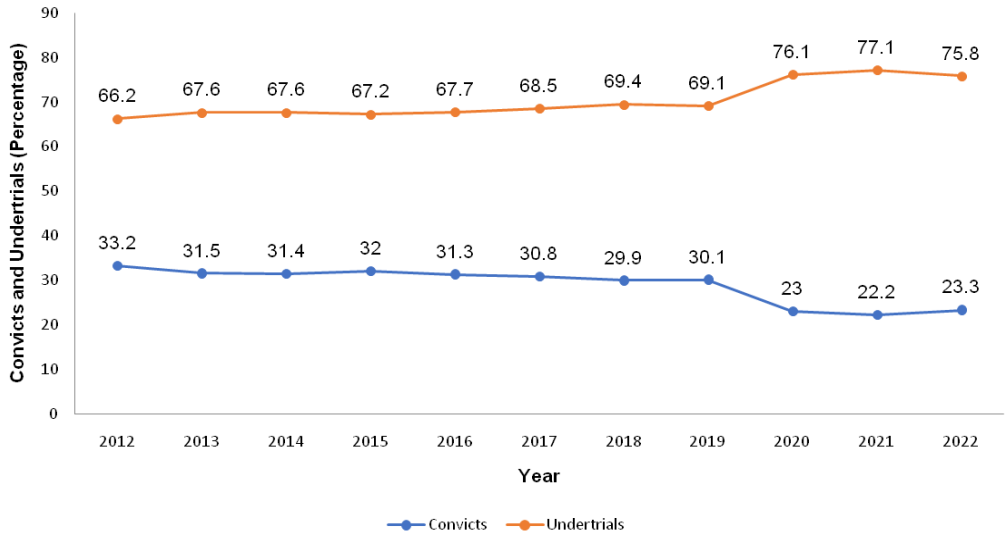

Figure 4.1 - Percentage of Convicts and Undertrials from 2012 to 2022[633]

Figure 4.1 delineates that the percentage of undertrial prisonsers has been consistently increasing over the years, reaching its peak in 2021 at 77.1%. The figure also shows that the percentage of convicts in Indian prisons has been reducing, reaching its lowest in 2021 at 22.2%.

[632] Centre for Research and Planning, *State of the Judiciary*, Supreme Court of India, <https://main.sci.gov.in/pdf/CRP/15122023_082223.pdf> accessed 10 July 2024.
[633] Prison Statistics India (2012-2022), NCRB, MHA, Government of India.

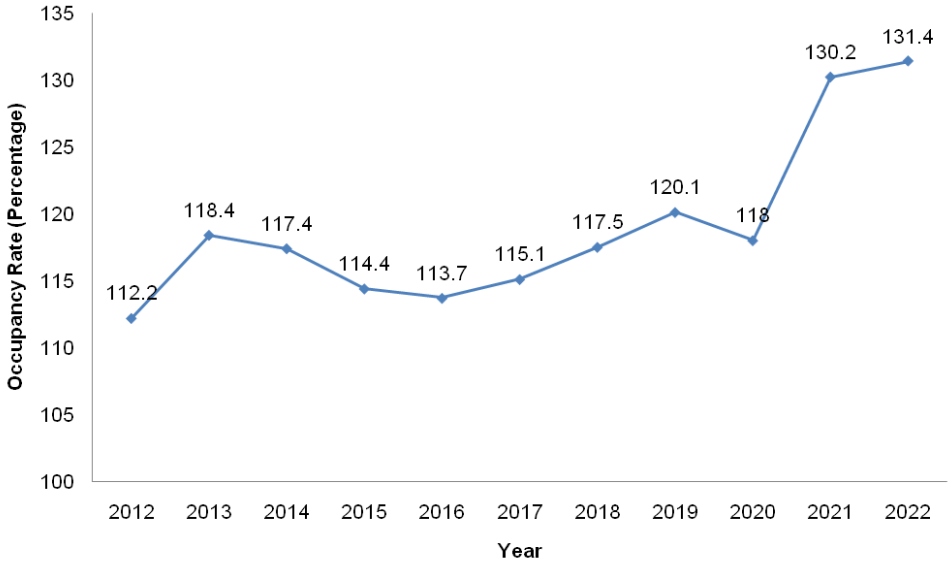

Figure 4.2 -Prison Occupancy Rates in India as per NCRB Data from 2012 to 2022[634]

As per Figure 4.2, prison occupancy rates have increased over the years reaching their peak in 2022 at 131.40%. Since 2016, the occupancy rate has been consistently increasing, except in 2020, where a drop was seen due to decongestion efforts during COVID-19. The conjoint understanding Figures 4.1 and 4.2 reflect that increasing numbers of undertrial prisonsers is the largest contributing factor to increasing occupancy rates. This warrants an active role of the judiciary in decongesting prisons.

Part IV of this Report therefore deals with the role and impact of the judiciary on prisons and the use of alternative methods of punishment like admonition, probation of good conduct and community service, as well as interventions such as plea bargaining, which may lighten the burden upon the prison infrastructure and secure the right to speedy justice to the incarcerated.

4.1 Bail is the Rule, Jail is the Exception

The presumption of innocence forms the bedrock of the criminal justice system. Blackstone's ratio of "*It is better that ten guilty persons escape than that one innocent*

[634] *Ibid.*

suffer"[635] shows the high standard of evidence required in criminal law to prove the guilt of a person. However, a key issue before the justice system is that in the present times, while a person might ultimately be acquitted at the end of the trial, the lengthy process of the trial itself is often punitive in nature. The presumption of innocence coupled with the spirit to ensure that the procedure of trial itself is not punitive forms the basis of the legal postulate '*Bail is the rule, jail is the exception*', as has been well established in *State of Rajasthan v. Balchand, aka Baliya*.[636]

The purpose of bail is to secure the appearance of the accused during trial.[637] The underlying principle of the law of bail is striking a balance between an individual's right to liberty and the state's interest in maintaining law and order in society. Detention of a presumably innocent person before his conviction therefore can only be done by a 'procedure established by law', which is by way of a speaking order under the provisions of the criminal law. The observation of the Himachal Pradesh High Court in *Abhishek Kumar Singh v. State of Himachal Pradesh*[638] is befitting to mention here:

> *"9.* ***Pre-trial incarceration needs justification*** *depending upon the offense's heinous nature, terms of the sentence prescribed in the statute for such a crime, probability of the accused fleeing from justice, hampering the investigation, criminal history of the accused, and doing away with the victim(s) and witnesses. The Court is under an obligation to maintain a balance between all stakeholders and safeguard the interests of the victim, accused, society, and State."*

The Ministry of Justice of the United Kingdom annually maintains a database tracking the performance of the criminal justice system by releasing a bulletin on 'Criminal Justice Statistics'.[639] The criminal statistics monitor and compare the yearly trend of grants of bail,

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[635] William Blackstone, Commentaries on the Laws of England (Oxford, Clarendon Press, 1765) Vol 4.
[636] [1977] INSC 180.
[637] *Hussainara Khatoon v. Home Secretary, State of Bihar* [1979] AIR 1369.
[638] Cr.MP(M) No. 1017 of 2020, dated 30 July 2020.
[639] 'Criminal Justice Statistics Quarterly: June 2023' (Ministry of Justice, UK, 19 March 2024) <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-june-2023/criminal-justice-statistics-quarterly-june-2023-html> accessed 25 June 2024.

remand, prosecutions and convictions, out-of-court disposals, and sentences passed. Concerning bail, the 'Criminal Justice Statistics quarterly: June 2023' of England and Wales provides that:[640]

> "*At magistrates' court, the proportion of defendants granted bail in year ending June 2023 decreased from 14% in year ending June 2022 to 13%.*"

In India, the National Judicial Data Grid (NJDG) is a central repository of data on cases instituted, pending and disposed in Supreme Court, High Courts and District Courts. However, the NJDG does not monitor the data on rejection and grant of bail and remand.[641] To understand the bail trend in district courts in India, information was sought from all the High Courts and the following statistics emerged from the data received:

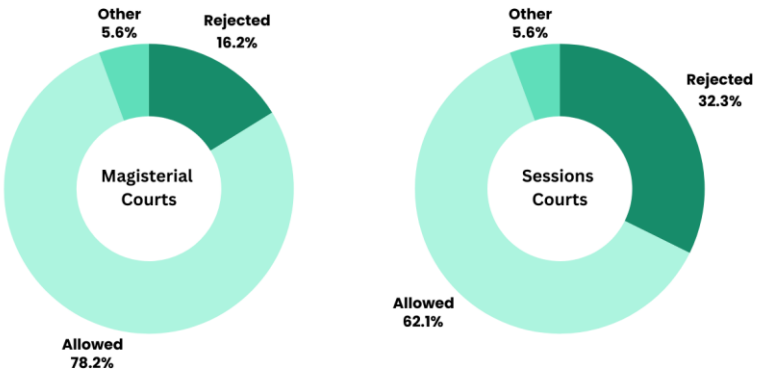

Figure 4.3 - Bails trend in District Courts (Magisterial & Sessions Courts) in 2023[642]

The above pie charts show that there has been a 16.2% rejection of bail applications in Magisterial courts and 32.3% rejection of bail applications/appeals in Sessions Courts.[643] **Bail rejection in Sessions Courts is nearly 2 times that in the Magisterial Courts.** It is well settled that nature and gravity of accusation is one of the factors for consideration in

[640] *Ibid.*
[641] National Judicial Data Grid <https://njdg.ecourts.gov.in/njdgnew/index.php?> accessed 30 June 2024.
[642] Annexure L : Bail Rejection Statistics in District Judiciary in 2023. *Note*: 'Other' in the pie chart includes those bail applications which have been DAW/Withdrawn/Non-Maintainable/Infructuous/DID applications. This data includes both bailable and non-bailable cases, and does not include anticipatory bails.
[643] *Ibid*.

deciding bail applications.[644] However, the High Court and Supreme Court have time and again acknowledged a sense of reluctance in the District Judiciary in granting bail.

In this regard, the Supreme Court, in *Arnab Manoranjan Goswami v. State of Maharashtra,*[645] while granting interim bail observed that:

> *"63. The High Courts and Courts in the District Judiciary of India must enforce this principle (bail is rule, jail is exception) in practice, and not forego that duty, leaving this Court to intervene at all times. We must in particular also emphasise the role of the District Judiciary, which provides the first point of interface to the citizen…* ***High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases. This continues in the Supreme Court as well,*** *when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law.…Courts must be alive to the situation as it prevails on the ground—in the jails and police stations where human dignity has no protector. As Judges, we would do well to remind ourselves that* ***it is through the instrumentality of bail that our criminal justice system's primordial interest in preserving the presumption of innocence finds its most eloquent expression.*** *The remedy of bail is the "solemn expression of the humaneness of the justice system."*

Matters of bail and remand involve the essential right of personal liberty. Every order of bail that is passed by a court must sincerely take into account the grounds on which the Court resorted to the exception of sending the accused to jail. Even in heinous offences, bail orders cannot be passed routinely, but by a judicious exercise of discretion.[646]

> *"9. This court has emphasised the values of personal liberty in the context of applying discretion to grant bail. It has been ruled, in a long line of cases that ordinarily bail ought to be granted and that in serious cases – which*

[644] *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496.
[645] 2020 INSC 665.
[646] *Md. Asfak Alam v. State of Jharkhand,* 2023 INSC 660.

> *are specified in the provisions of the CrPC (Section 437) which involve allegations relating to offences carrying long sentences or other special offences, the court should be circumspect and careful in exercising discretion."*

While the purpose of bail is to secure the presence of the accused in trial, society often perceives the rejection of bail as a punishment to the unconvicted person, which leads to the stigmatisation of the accused even before the prosecution discharges its burden of proving the guilt of the accused. In *Sanjay Chandra v. CBI,*[647] the Supreme Court also observed that:

> *"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail.* ***The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon.*** *The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty."*

Any court deciding bail must keep in mind that refusing to grant bail not only deprives the accused of liberty for a considerable period but also poses a risk of 'prisonisation' before him along with loss of livelihood, family bonds and autonomy of personal life.[648]

The Court in its recent order in *Maulvi Syed Shad Kazmi v. State of Uttar Pradesh*[649] recognised the reluctance of the District Judiciary in granting bail. The Court observed,

[647] (2012) 1 SCC 40.
[648] *A Convict Prisoner v. State*, 1993 Cri LJ 3242, Kerala High Court.
[649] SLP (Crl.) No. 1059/2025.

"We can understand that the trial court declined bail as trial courts seldom muster the courage of granting bail, be it any offence.

....

We are conscious of the fact that grant of bail is a matter of discretion. But discretion has to be exercised judicially keeping in mind the well settled principles of grant of bail. Discretion does not mean that the judge on his own whims and fancy declines bail saying conversion is something very serious."

The Indian judiciary functions in a three-tier structure comprising of the District Judiciary at the grassroot level forming the first point of contact with the public, the High Courts having the power of superintendence over district courts under Articles 227 and 235 of the Constitution, and the Supreme Court being the highest court of the country. Judges hold public office and irrespective of the existing hierarchical structure, they equally discharge the essential service of adjudication. They must be independent and free from any kind of influence in the discharge of their judicial duties and upholding the rule of law.

However, despite the protective safeguards, judges of the District Judiciary counter the fear of baseless allegations. In *Sadhna Chaudhary v. State of Uttar Pradesh,*[650] the Supreme Court observed that:

"22. Furthermore, one cannot overlook the reality of ours being a country wherein countless complainants are readily available without hesitation to tarnish the image of the judiciary, often for mere pennies or even cheap momentary popularity. Sometimes a few disgruntled members of the Bar also join hands with them, and ***officers of the subordinate judiciary are usually the easiest target. It is, therefore, the duty of High Courts to extend their protective umbrella*** *and ensure that upright and straightforward judicial officers are not subjected to unmerited onslaught."*

[650] *Sadhna Chaudhary v. State of Uttar Pradesh* [2020] INSC 292.

The District Judiciary is the face of the judicial system and decongestion of prisons can be achieved to a great extent by bringing reforms at the level of the Trial Courts. To reiterate the worth and pivotal role that the District Judiciary plays and get rid of regressive semantics, the Supreme Court directed that the District Judiciary should not be referred to as subordinate or inferior judiciary.[651]

It is important that the judicial officers pass orders concerning the liberty of individuals, free from any kind of influence or pressure. No external or internal hierarchical biases should affect the judicial discretion of judges in granting bail in befitting cases. It is essential that the national and state judicial academies reinforce a sense of responsibility and fearlessness among judges, and train them to unlearn the prejudices nourished within the judicial fraternity.

There are no watertight rules for refusal or grant of bail, as every case is decided on its own merits. Nevertheless, it is important to note that judicial discretion in deciding bail has been guided by way of principles/guidelines laid down in a plethora of judgments. For instance, it has been well settled by the Supreme Court in *Prasanta Kumar Sarkar v. Ashis Chaterjee*[652] that, among other circumstances, the factors to be borne in mind while deciding a bail application are:

> *"(i) whether there is any* ***prima facie or reasonable ground to believe that the accused had committed the offence****;*
>
> *(ii) nature and gravity of the accusation;*
>
> *(iii) severity of the punishment in the event of conviction;*
>
> *(iv) danger of the accused absconding or fleeing, if released on bail;*
>
> *(v) character, behaviour, means, position and standing of the accused;*

[651] *All India Judges Association v. Union of India,* Writ Petition (Civil) No. 643/2015.
[652] *Prasanta Kumar Sarkar v. Ashis Chaterjee* [2010] 14 SCC 496.

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail."

Besides these determinants, the period of custody in a delayed trial may also be weighed simultaneously in the totality of circumstances and criminal antecedents, while deciding a bail application.[653]

The Supreme Court in *Satender Kumar Antil v. CBI*[654] took notice of jails being flooded by undertrial prisonsers and issued various guidelines to ensure that the postulate of 'bail and not jail' is adhered to. The Court categorised offences into four categories to decide bail applications. It was also suggested that a separate bail legislation may be enacted by the Parliament to streamline the guidelines for the grant of bail similar to the Bail Act of the United Kingdom. The Court observed that:

> *"The Bail Act of United Kingdom takes into consideration various factors. It is an attempt to have a* comprehensive law dealing with bails by following a simple procedure. *The Act takes into consideration clogging of the prisons with the undertrial prisoners, cases involving the issuance of warrants, granting of bail both before and after conviction, exercise of the power by the investigating agency and the court, violation of the bail conditions, execution of bond and sureties on the unassailable principle of presumption [sic] and right to get bail. Exceptions have been carved out as mentioned in Schedule I dealing with different contingencies and factors including the nature and continuity of offence…We believe there is a pressing need for a similar enactment in our country."*

[653] *Ash Mohammad v. Shiv Raj Singh @ Lalla Bahu* [2012] 9 SCC 446.
[654] *Satender Kumar Antil v. Central Bureau of Investigation* [2022] INSC 690.

In light of the above judgment, the Central Government undertook a review of the criminal laws in consultation with all stakeholders.[655] The new criminal code, the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) incorporates the following modifications:

> *"Section 480…Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation or for police custody beyond the first fifteen days shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.*
>
> *Section 479 (3) The Superintendent of jail, where the accused person is detained,* ***on completion of one-half or one-third of the period*** *mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section (1) for the release of such person on bail."*

Earlier, an undertrial prisoner was eligible for bail on completion of one-half or the maximum sentence prescribed for the offence under Section 436-A of CrPC, 1973.[656] As per the new law, having served even one-third sentence would be a factor in the release of a person on bail. Effective implementation of this provision may make a significant dent in the UTP population in prisons.[657]

The element of time is the most vital factor for any undertrial languishing in prison. **Timely disposal of bail applications therefore is a core component of the right to speedy trial.** In *Amol Vitthal Vahile v. State of Maharashtra,*[658] the Supreme Court directed the High Courts to refrain from the practice of shunting away bail applications to Trial Courts.

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[655] Unstarred Question No. 2289, Lok Sabha, *New Law for Undertrials*, 14 March 2023, <https://sansad.in/getFile/loksabhaquestions/annex/1711/AU2289.pdf?source=pqals> accessed 24 April 2024.
[656] Corresponds to Bhartiya Nagrik Suraksha Sanhita 2023, Section 479.
[657] *In Re-Inhuman Conditions in 1382 Prisons*, Writ Petition (Civil) No. 406/2013, Order dated 22.10.2024.
[658] *Amol Vitthal Vahile v. State of Maharashtra*, Criminal Appeal No. 545/2024, dated 16 February 2024.

Besides, it is also essential that bail applications are listed on a priority basis in the High Courts, without granting unnecessary adjournments after admitting the applications.[659]

In *Hussain v. Union of India*,[660] the Supreme Court held that bail applications should, as far as possible, ordinarily be decided within one week by the Magisterial Courts and in High Courts within two-to-three weeks. Further, in the landmark case of *Satender Antil*,[661] **the Supreme Court held that a bail application should normally be disposed of within two weeks, except if the provisions mandate otherwise.**

The Supreme Court has also taken up the cudgels to monitor the compliance of the directions of the above judgment by the judges in District Courts. In an order dated 2 May 2023, the Supreme Court even directed the Allahabad High Court to ensure that directions laid down in the above judgment were followed by judicial officers, and in case of non-compliance, such officers should be sent to judicial academies for upgradation of skills.[662]

Judicial orders of bail and remand reflect how sensitised the judiciary is in matters concerning the liberty of individuals. While deciding a bail application, courts deal with the highly sensitive task of balancing the delicate line between the interest of unconvicted persons in preserving their right to personal liberty, and the interest of the State in ensuring that the process of trial is unhampered. No order of bail should be passed as a matter of course and practice in the district courts, rather with cogent reasons, by placing due regard to the vital facts of the case brought on record and the guidelines of the Supreme Court in the *Satender Antil* case.[663]

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[659] *Kavish Gupta v. State of Chhattisgarh*, SLP (Crl.) No.16025/2023, dated 11 December 2023.
[660] *Hussain v. Union of India* [2017] (5) SCC 702.
[661] *Satender Kumar Antil v. Central Bureau of Investigation*[2022] INSC 690.
[662] *Satender Kumar Antil v, CBI*, Miscellaneous Application No. 2034/2022 In MA 1849/2021 In SLP(Crl) No. 5191/2021, Order dated 2 May 2023.
[663] *Satender Kumar Antil v. Central Bureau of Investigation*[2022] INSC 690.

4.2 Alternatives to Imprisonment

As of 31 December 2023, 23,696 undertrial prisonsers, which accounts for 5% of the total undertrial prisonsers, are accused of compoundable offences.[664] Many compoundable offences - particularly of the nature of hurt, criminal intimidation, wrongful restraint etc., which significantly add to the judicial pendency, are often committed as a result of family feuds, property disputes, recovery of money, etc, where there is scope for compromise and the aggressor may not necessarily be subjected to imprisonment by a court of law, unless the circumstances otherwise require.

The criminal justice framework prescribes various alternatives to imprisonment without obliterating the essence of conviction, offering a better chance to the convicts for reformation. Correctional alternatives like probation, admonition, and community service[665] help minimise the burden upon the overcrowded correctional infrastructure. Besides, alternative dispute resolution (ADR) methods allow the parties to arrive at a mutual settlement and avoid lengthy trials.

In the All India Conference of Correctional Administrators held in 2010, one of the agendas for discussion was the issue of "*Overcrowding- Reducing the number of undertrials"* and all states/UTs were advised to explore alternatives to imprisonment.[666] The modalities of MPM, 2016 also recognised the need for the effective use of alternative solutions to imprisonment:[667]

> *"(vi) Since it is recognized that* ***imprisonment is not always the best way to meet the objectives of punishments the government shall endeavour to provide in law new alternatives to imprisonment such as community service, forfeiture of property, payment of compensation to victims, public censure, etc.,*** *in addition to the ones already existing and shall specially*

[664] Annexure M : Use of alternatives to imprisonment and other ADR methods by District Judiciary in 2023.
[665] BNS 2023, Section 4(f).
[666] No.17011/2/2010-PR, MHA, Government of India, 9 May, 2011 <https://www.mha.gov.in/sites/default/files/2022-09/OvercrowdingPrison09052011%5B1%5D_0.pdf> accessed 3 July 2024.
[667] MPM 2016, Modalities.

ensure that the Probation of Offenders Act, 1958 is effectively implemented throughout the country."

Moreover, the Supreme Court in *Re Policy Strategy for Grant of Bail*[668] also suggested disposing of criminal cases by resorting to the triple method of plea bargaining, compounding of offences and the Probation of Offenders Act, 1958 (hereinafter referred to as 'Probation Act'). Under the said pilot project, the Apex Court suggested that one Magisterial Court and Sessions Court may be selected in each district and one day dedicated to identifying and hearing cases suitable for disposal using plea bargaining, compounding of offences and under the Probation Act:

"1. 3.1 As a pilot case, one Court each of Ld. Judicial Magistrate 1st Class, Ld. ACJM or CJM, and Court of Sessions in each district may be selected.

3.2 The said courts may ***identify cases*** *pending at pre-trial stage, or evidence stage and where the accused is charge sheeted/charged with offence(s)* ***with a maximum sentence of 7 years' imprisonment.*** *The Ld. Court would exclude cases mentioned in Section 265A Cr.P.C., namely offences notified by the Central Government vide notification dated 11.07.2006 or offences committed against women or child/ children less than 14 years.'*

3.3 ***The identified cases can thereafter be posted on a working Saturday or any other day which is suitable to the court with notice to the Public Prosecutor, complainant and the accused.*** *The said notice would indicate that the court proposes to consider disposing of those cases under Chapter XXIA of Cr.P.C. plea bargaining, Probation of Offenders Act, 1958 or compounding i.e. Section 320 Cr.P.C…*

[668] *In Re Policy Strategy for Grant of Bail*, Suo Motu Writ Petition (Criminal) No. 4 of 2021, Order dated 14 September 2022.

> *...Moreover, the court directed that a* ***timeline of 4 months may be fixed to complete this exercise.*** *The apex court also directed that a brief training session may be organised for the learned judicial officers in the judicial academies."*

As a consequence of this order, judicial training to effectively use the triple method has been imparted to many judicial officers in the National Judicial Academy and State Academies.[669] Under this head, the Report aims to compile a status report of the utilisation of these methods by the district courts and examine challenges faced by the stakeholders of the justice system.

4.2.1. Effective implementation of the Probation of Offenders Act, 1958

Probation and admonition are widely used non-custodial strategies for offenders who have good conduct and potential for reform. Back in 1898, Section 562 CrPC (corresponding to Section 360 CrPC, 1973)[670] regulated the release of first-time offenders on good conduct. The Indian Jails Committee Report, 1919-20 discussed elaborately the importance of probation and its application by the courts in India.[671] In 1957, a special legislation called the Probation of Offenders Act was passed to give effect to the liberal and reformative view of punishment by conferring power to courts to release certain offenders after admonition or on probation of good conduct.[672] The object of the Act is to prevent the conversion of offenders into obdurate criminals as a result of their association with hardened criminals.[673]

As per the Black's Law Dictionary, probation is a court-imposed criminal sentence that, subject to stated conditions, releases a convicted person into the community instead of sending the criminal to prison, subject to certain conditions including routinely checking in with a probation officer over a specified period.[674] Admonition, on the other hand, is

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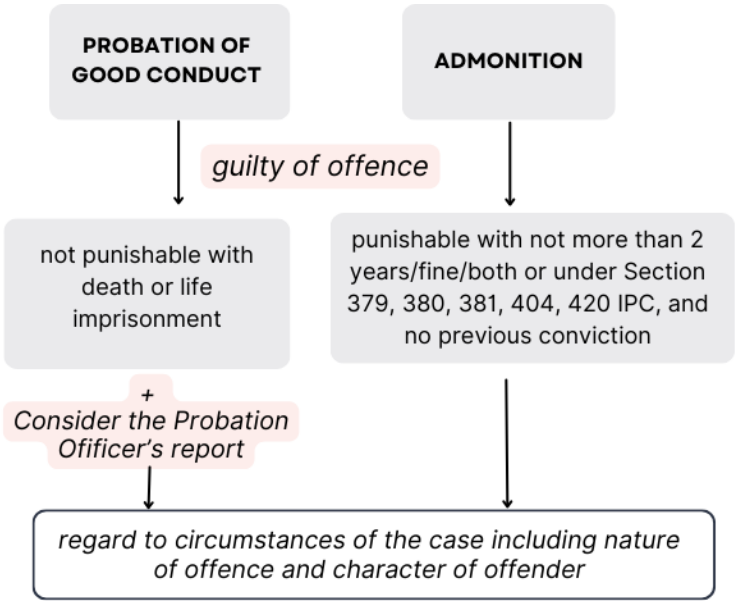
[669] Office of the Chief Metropolitan Magistrate Tis Hazari Courts : Delhi, *Plea Bargaining : Practice Directions*, <https://session.delhi.gov.in/sites/default/files/session/generic_multiple_files/plea_20bargaining.pdf> accessed 10 July 2024.
[670] Corresponds to BNSS 2023, Section 401.
[671] Report of the Indian Jails Committee, 1919-20, Superintendent, Government Central Press, Simla, Vol 1.
[672] Probation of Offenders Act 1958, Sections 3 and 4.
[673]Probation Act 1958, Statement of Objects and Reasons.
[674] Bryan A Garner, Black's Law Dictionary, (Thomas Reuters, 11th Edition).

defined as a warning or expression of disapproval about someone's behaviour.[675] In admonition, a verbal warning is given to the convict, whereas in probation, the offender enters into a bond not exceeding three years, to appear and receive sentence when called upon to do so and keep peace and be of good behaviour.[676] The sentencing court also has the power to pass an additional supervision order directing the offender to remain under the supervision of a probation officer for not less than a year.[677]

While issuing directives to state administration and High Courts, the Supreme Court in *Re Inhuman Conditions In 1382 Prison*s,[678] also encouraged courts to release offenders under the Probation Act, particularly with regard to first-time offenders so that they have a chance of being restored and rehabilitated in society.

The following figure explains the eligibility of offenders for release on probation or admonition under Sections 3 and 4 of the Probation Act respectively.



[675] *Ibid.*
[676] Probation of Offenders Act 1958, Section 4.
[677] *Ibid.*
[678] *In Re-Inhuman Conditions In 1382 Prison*s, Writ Petition (Civil) No. 406/2013, Order dated 5 February, 2016.

Figure 4.4 - Eligibility of offenders for release under Sections 3 and 4 of the Probation Act, 1958[679]

As per the information received from the High Courts, in 2023, twice the number of convicts were released after due admonition (1,62,016 cases) by the District Courts than on a bond of probation of good conduct (70,448 cases), as has also been depicted below:[680]

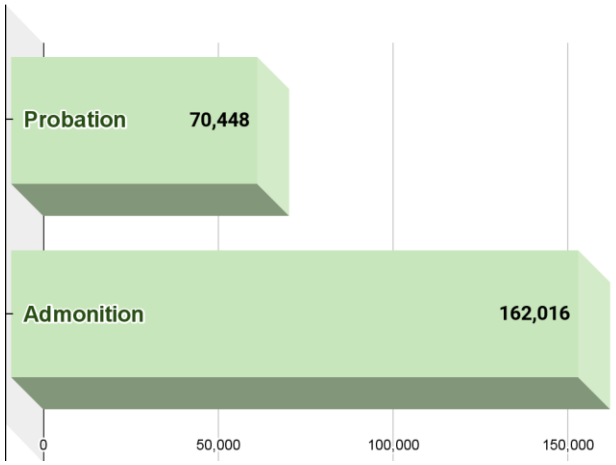


Figure 4.5 - Total cases disposed of by the District Courts using Probation & Admonition in 2023[681]

The above data shows that District Courts across India are resorting to the method of admonition more than probation. Further, *Figures 4.6 and 4.7* below show the use of probation and admonition by the District Courts under the jurisdiction of respective High Courts in 2023.

[679] Probation of Offenders Act 1958, Sections 3 and 4.
[680] As per data received from the High Courts, as on 31 December 2023.
[681] Annexure M : Use of alternatives to imprisonment and other ADR methods by District Judiciary in 2023.

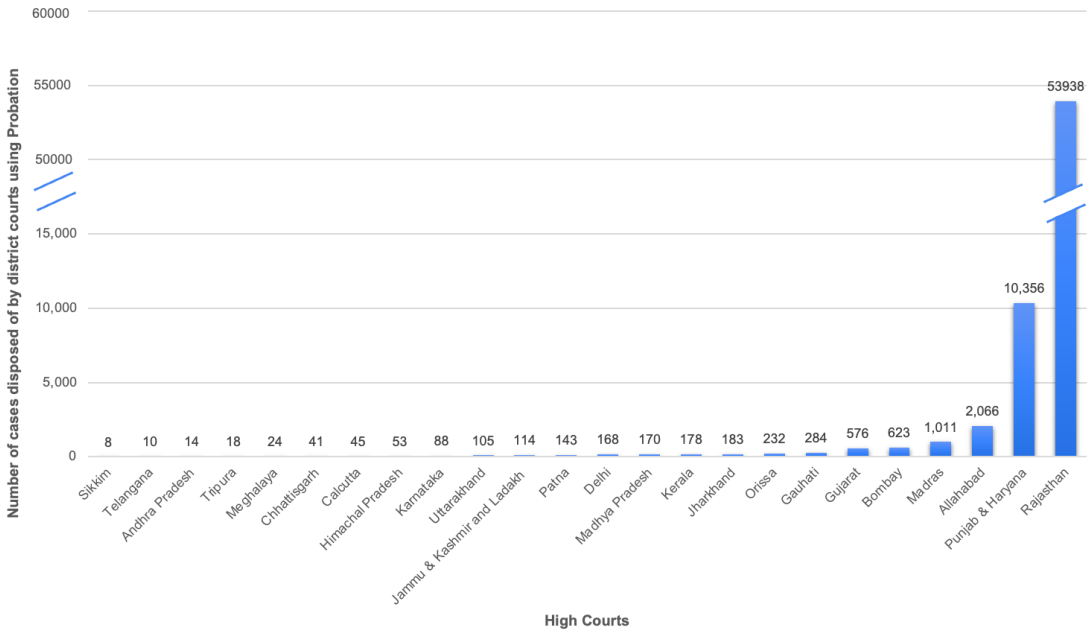


Figure 4.6 - Cases in which the convict was released on probation in 2023[682]

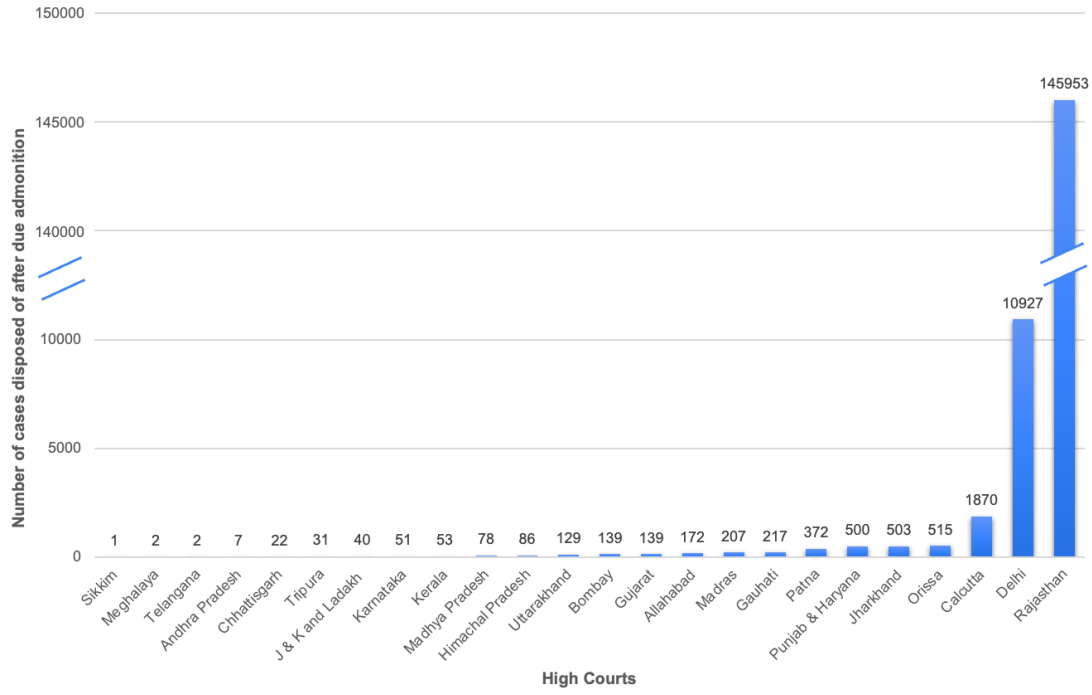


Figure 4.7 - Cases in which the convict was released after due admonition in 2023[683]

[682] Annexure M : Use of alternatives to imprisonment and other ADR methods by District Judiciary in 2023. *Note:* Manipur did not release any convict on probation of good conduct in 2023. The graph has a broken y-axis to accommodate the extreme values.
[683] *Ibid. Note:* Manipur did not release any convict after due admonition in 2023.

The above two bar graphs show that District Courts in Rajasthan have disposed of the maximum cases using probation (53,938) and admonition (1,45,953). As per the Rajasthan High Court, most of the cases disposed of by way of probation have been under special acts like the Motor Vehicles Act, 1988.[684]

It is important to point out that in West Bengal, while the total criminal cases disposed of in 2023 are 5,37,599 cases,[685] disposal by way of probation and admonition in the State is 45 and 1,870 respectively.[686] It may also be noted that the District Judiciary in Madhya Pradesh is also making limited utilisation of these alternative methods of probation (170 cases) and admonition (78 cases), as shown in the above graphs. In Andhra Pradesh and Telangana, convicts have been released on probation of good conduct only in 14 cases and 10 cases, respectively in 2023.[687]

The figures also reveal that as per 10 out of 25 High Courts, the District Courts under their respective jurisdictions have resorted to probation in less than 100 cases in 2023.[688] Likewise, **12 High Courts have submitted that District Courts under their jurisdiction have used admonition in less than 100 cases.**[689]

As per the information received from the High Courts, the Maharashtra Legal Services Authority has raised a concern that probation reports are not received in time in respect of prisoners belonging to other States.[690] Probation has a mandatory requirement of perusing the confidential report of the probation officer in which the probation officer inquires into the circumstances or home surroundings of the person accused of the offence, with a view to assist the court in determining the most suitable method of dealing with him.[691] Timely submission of probation officer reports is necessary to effectively implement the Probation

[684] As per information received from the Rajasthan High Court.
[685] As per data received from the Information and Statistics Secretariat, Supreme Court of India, as on 31 December 2023.
[686] Annexure M : Use of alternatives to imprisonment and other ADR methods by District Judiciary in 2023.
[687] *Ibid.*
[688] *Ibid.*
[689] *Ibid.*
[690] As per data received from the High Courts.
[691] Probation of Offenders Act 1958, Section 14.

Act and aid in prison decongestion. As per the Standard Operating Procedure for the functioning of UTRCs by NALSA:[692]

> *"The UTRC may* ***recommend to the trial court to consider invoking of Probation of Offenders Act in fit cases as also plea bargaining in appropriate cases.***"

Early identification of eligible cases will aid the judges in District Courts in disposing of cases using the Probation Act. Efforts must be made by the DLSAs for effective communication between UTRCs, Legal Service Authorities and concerned courts for invoking the Probation Act.

There is also a need for regular sensitisation and practical training of judicial officers and probation officers with regard to the use of the Probation Act, 1958.

4.2.2 Utilisation of plea bargaining

In compoundable cases, a mutual settlement between the parties leads to a speedy and cordial resolution of disputes under Section 320 CrPC, 1973.[693] While non-compoundable cases cannot be settled, parties may still enter into a concessional agreement by effectuating the remedial method of plea bargaining and resolving their disputes.

Plea bargaining as the name suggests, is a plea of guilt made by the accused, as a result of a bargain of reduced sentence or charge. This ameliorative concept evolved in the United States of America from the doctrine of '*nolo contendere'*, which means the accused 'does not wish to contend'.[694] In 1976 and 1977, benches led by Justice V. R. Krishna Iyer disapproved of the method of plea bargaining in economic and food adulteration offences and regarded it as a reprehensible practice.[695] Later in 1980, confronted with another case

[692] Standard Operating Procedure/Guidelines for UTRCs, NALSA <https://cdnbbsr.s3waas.gov.in/s3ec05820e694038fadbf9b60b834215b4/uploads/2024/04/2024041379.pdf> accessed 3 July 2024.
[693] Corresponds to Bhartiya Nagrik Suraksha Sanhita 2023, Section 359.
[694] *State Ex. Rel Clark v. Adams*, 363 US 807.
[695] *Murlidhar Meghraj Loya v. State of Maharashtra* [1976] 3 SCC 684; *Kisan Trimbak Kothula v. State of Maharashtra* [1977] SCR (2) 102.

involving food adulteration offences, the Supreme Court in *Kasambhai Abdulrehmanbhai Sheikh v. State of Gujarat*[696] held that the method of pleading guilty on the assurance of being let off with a lighter punishment is unreasonable, unfair and unjust, and hence, violative of Article 21 of the Constitution.

To deal with the explosion of undertrial prisonsers in jails, and curb the delay in the disposal of criminal trials, the 12th Law Commission of India in 1991 recommended introducing the concessional option of sentence bargain in the criminal procedure, which was also endorsed by the Malimath Committee on Reforms of the Criminal Justice System in 2003.[697] Finally, the Code of Criminal Procedure was amended in 2005 to add Chapter XXI-A on 'Plea Bargaining' comprising Sections 265 A to 265 L.[698]

While the USA uses the charge bargain method in plea bargaining, the Indian justice system employs sentence plea bargaining in which a concession of a lighter or alternative sentence is given to the accused pleading guilty.

As per the information received from the High Courts, plea bargaining was used in a total of 52,891 cases in 2023, out of which 45% of them were used by district courts in Delhi, as depicted in *Figure 4.8*.[699] This shows that even after 13 years of the amendment, there is still a scanty utilisation of this method in district courts in India.

[696] *Kasambhai Abdulrehmanbhai Sheikh v. State of Gujarat* AIR [1980] SC 854.
[697] Law Commission of India, *Concessional Treatment for Offenders who on their own initiative choose to plead guilty without any Bargaining (Law Com* 142, 1991); Ministry of Home Affairs, Government of India, Committee on Reforms of Criminal Justice System, , (Vol 1, March 2003) <https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf> accessed 17 April 2024.
[698] Corresponds to Bhartiya Nagrik Suraksha Sanhita 2023, Sections 289 to 300.
[699] Annexure M : Use of alternatives to imprisonment and other ADR methods by District Judiciary in 2023.

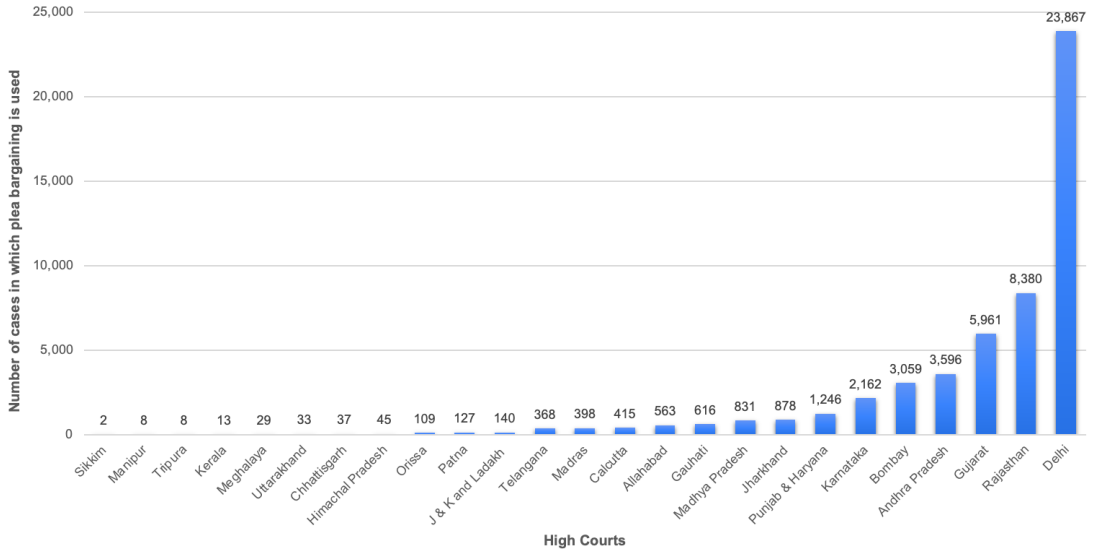


Figure 4.8: Number of cases in which plea bargaining was used in 2023[700]

The above bar graph shows that the top five High Courts in which district courts under their respective jurisdictions have used plea bargaining are Delhi (23,867), Rajasthan (8,380), Gujarat (5,960), Andhra Pradesh (3,596) and Bombay (3,059), whereas, 18 out of 25 High Courts used plea bargaining in less than 1,000 cases.[701]

Plea bargaining, is seen as an expedient means of resolving criminal cases, however, it must be approached cautiously in the Indian context due to its inherently coercive nature.[702] This process operates can be understood through two lenses: hard coercion and soft coercion, none of which allow for free consent.[703]

Free consent is crucial in a criminal trial because the very foundation of justice rests on the accused making voluntary and informed decisions, free from pressure or inducement, especially when their liberty and constitutional rights are at stake.

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[700] *Ibid.*
[701] As data received from High Courts.
[702] Sonam Kathuria, 'The Bargain Has Been Struck: A Case for Plea Bargaining in India' (2007) 19(2) National Law School of India Review 55 https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1059&context=nlsir accessed 4 November 2025.
[703] Conrad G. Brunk, *The Problem of Voluntariness and Coercion in the Negotiated Plea*, 13 Law & Society Review, 527, 533 (1979).

Soft coercion arises from socio-economic vulnerabilities that drive accused persons to plead guilty to avoid financial hardship or prolonged litigation, for example poverty, family expectations, or fear of financial ruin which compel a defendant to accept guilt. These pressures compromise voluntariness, and renders the so-called "choice" illusory.[704] The right against self-incrimination under Article 20(3) of the Constitution cannot be waived, therefore any mechanism premised on compelled admissions of guilt should be violative of this safeguard.[705]

On the other hand, there is hard coercion in this process by way of systemic pressures such as long trials or the threat of severe punishment for the accused persons, which makes the accused person take the blame.[706]

An instance of hard coercion can be seen in *North Carolina v. Alford*,[707] where the accused, facing a potential death sentence for murder, declared, "I am not guilty, yet I plead guilty." This paradoxical statement raises doubts about the voluntariness of such pleas and the fairness of the process itself. Cases like this highlight how strong coercive pressures can shape plea bargains and cast doubt on their legitimacy as a just alternative.

Furthermore, plea bargaining can disproportionately affect marginalised communities, since people from marginalised communities often feel pressured to accept plea deals even when innocent, fearing harsher sentences if they undergo trial.[708] This disproportionate application highlights deeper concerns about systemic injustice which may be exacerbated in instances of plea bargaining.[709]

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[704] Ibid.
[705] Ibid.
[706] Arthad Kurlekar and Sanika Gokhale, 'The Unconstitutionality of Plea Bargaining in the Indian Framework: The Vitiation of the Voluntariness Assumption' (India Law Journal, 2007) https://www.indialawjournal.org/archives/volume7/issue-2/article8.html accessed 4 November 2025.
[707] North Carolina v. Alford, 400 U.S. 25 (1970).
[708] R Priyanka, 'The Impact of Plea Bargaining on the Right to a Fair Trial: A Critical Analysis of its Role in Modern Criminal Justice System' (2025) *Indian Journal of Integrated Research in Law* V(II) 457–470 https://ijirl.com/wp-content/uploads/2025/04/THE-IMPACT-OF-PLEA-BARGAINING-ON-THE-RIGHT-TO-A-FAIR-TRIAL-A-CRITICAL-ANALYSIS-OF-ITS-ROLE-IN-MODERN-CRIMINAL-JUSTICE-SYSTEM.pdf accessed 22 November 2025.
[709] Ibid.

Thus, usage of plea bargaining in the criminal legal system must be viewed with the utmost caution and applied only sparingly.[710]

4.2.3 Community service

When a crime is committed, it is not only committed against an individual alone, but it affects the entire society at large. Section 53 of IPC enlists five types of punishments which may be imposed upon a convicted person - death, life imprisonment, simple or rigorous imprisonment, forfeiture of property and/or fine. While there is ample punitive severity in these forms of punishment, with the evolution of correctional approaches and brimming prisons, it has become imperative to explore the utility of community service as an alternative to imprisonment in suitable cases. Community service not only presents itself as an alternative to the severe nature of incarceration but also allows the offender to give back to the community they wronged.

In 2003, it was in the Committee on Reforms of Criminal Justice System chaired by Dr. Justice V.S. Malimath (Malimath Committee) which endorsed the use of community service as an alternative to custodial punishment in the Indian justice system.[711] Further, in 2012, the Supreme Court in *State Tr. P.S. Lodhi Colony New Delhi v. Sanjeev Nanda*[712] directed the convict to do community service for two years, arranged by the Ministry of Social Justice and Empowerment, along with a compensation of Rs. 50 lakh. It observed that:

> *"60. Community Service for Avoiding Jail Sentence - Convicts in various countries, now, voluntarily come forward to serve the community, especially in crimes relating to motor vehicles. Graver the crime greater the sentence. But, serving the society actually is not a punishment in the real sense where the* ***convicts pay back to the community which he owes****. Conduct of the convicts will not only be appreciated by the community, it*

[710] Albert W Alschuler, 'Plea Bargaining and Its History' (1979) 79 Columbia Law Review 1, 1.
[711] Committee on Reforms of Criminal Justice System, Ministry of Home Affairs<https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf> accessed 25 April 2024.
[712] *State Tr. P.S. Lodhi Colony New Delhi v. Sanjeev Nanda,* 2012 INSC 320.

will also give a lot of solace to him, especially in a case where because of one's action and inaction, human lives have been lost."

This judgment shows that the use of community service in the criminal justice system is not a novelty in India. Section 18 of the Juvenile Justice (Care and Prevention of Children) Act, 2015 empowers the Juvenile Justice Board to order a child to perform community service under the supervision of an organisation/institution/specified person(s) identified by the Board if it finds upon inquiry that the child of any age who has committed a petty or a serious offence, or a child below the age of sixteen years who has committed a heinous offence, or a child above the age of sixteen years who has committed a heinous offence and the Board has, after preliminary assessment under Section 15, disposed of the matter. The MPM 2016 also encourages the use of community service orders as an alternative to imprisonment.[713]

It is the first time that the criminal law has introduced community service as a sixth form of punishment under Section 4 of the Bharatiya Nyaya Sanhita, 2023 (analogous to Section 53 of IPC). As per the new law, community service can be imposed in six kinds of offences as shown below:

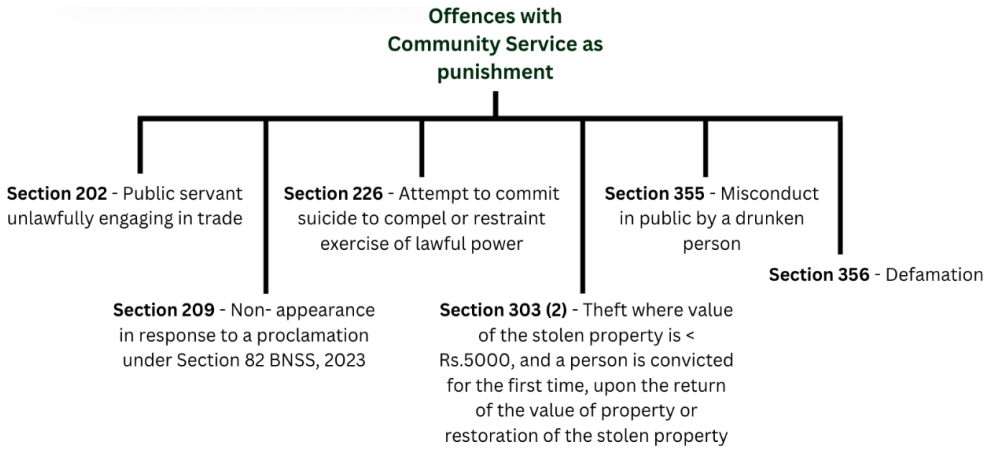

Figure 4.9 - Offences under the BNS 2023 with community service as punishment[714]

[713] Model Prison Manual 2016, Goals and Objectives (vi).
[714] Bhartiya Nyaya Sanhita 2023, Section 4.

In 2024, the Law Commission Report No. 285 acknowledged this addition to the new penal law and observed that by giving an alternate punishment of community service for the offence of defamation, the law now safeguards the interest of the victim as well as mitigates the scope of any misuse.[715]

In addition to being a form of punishment, community service has often been used in India by some of the High Courts as a bail condition and in other orders in the exercise of the inherent power under Section 482 CrPC.[716] Some of the High courts have also resorted to the imposition of community service as a punishment in cases involving ragging[717] and contempt of court.[718] There are also instances where a few High Courts have quashed FIRs based on a compromise between parties but went ahead to pass a community service order.[719]

a. Regulatory Framework for Community Service Orders

Precedential instances show that community service orders (CSO) usually have directions to work in hospitals, educational institutions, charity organisations, places of worship, animal care centres, de-addiction centres, etc. without any remuneration or participate in community service drives like plantation drives for a fixed period and are ordinarily enforced under the supervision of the local authority which submits the status/compliance report to the court.

There have been several occasions where the Supreme Court and High Courts issued guidelines to pass just and fair community service orders/conditions. In *Re Inhuman*

[715] Law Commision of India, *The Law on Criminal Defamation* (Law Com no 285, 2024) ¶ 7.6.
[716] *Aparna Bhat v. State of Madhya Pradesh*, 2021 INSC 192, dated 18 March 2021. Corresponds to Bharatiya Nagarik Suraksha Sanhita 2023, Section 528.
[717] *SB v. State of Madhya Pradesh*, Misc. Criminal Case No. 48759 of 2022, Madhya Pradesh High Court, dated 7 February 2024; see also *Kaniska Roy v. State of West Bengal*, WPA 8784 of 2022, Calcutta High Court, dated 19 May 2022.
[718] *Ratheesh M.N v. The Debt Recovery Tribunal (Kerala & Lakshadweep)*, W.P.(C).No. 30651 of 2017, dated 19 February, 2019.
[719] *Deepak Verma v. State,* 2023 DHC 6985, dated 25 September 2023; see also *Chandan Singh @Chintu v. State,* CRL.M.C. 396/2022, Delhi High Court, 31 January 2022; *Manoj Kumar v. State (Govt. of NCT of Delhi)*, W.P.(CRL) 116/2022, Delhi High court, dated 20 January 2022; *Vikramjeet Singh v. State*, CRL.M.C. 993/2021 & CRL.M.A. 5066/202, Delhi High Court, dated 26 March 2021.

Condition at Quarantine Centres, the Supreme Court stayed an order of the Gujarat High Court as disproportionate as the High Court had directed the State of Gujarat to come up with a policy mandating community service for those who were caught without wearing masks by sending them to contribute in COVID-19 care centres.[720]

Further, in *Aparna Bhat v. State of Madhya Pradesh*,[721] the Supreme Court issued guidelines to prevent any judicial stereotyping in gender-related crimes and held that:

> *"42…imposing conditions that implicitly tend to condone or diminish the harm caused by the accused and have the effect of potentially exposing the survivor to secondary trauma, such as mandating mediation processes in non-compoundable offences,* ***mandating as part of bail conditions, community service (in a manner of speaking with the so-called reformative approach towards the perpetrator of sexual offence)*** *or requiring tendering of apology once or repeatedly, or in any manner getting or being in touch with the survivor, is especially forbidden. "*

Earlier, the Law Commission of India in its 156th Report had also considered the use of community service as an alternate punitive method, however, it raised doubts about the practicability of the implementation of community service as a punishment as it requires constant supervision.[722] To prevent any misuse of judicial discretion in imposing community service and for effective implementation of community service orders, it is necessary for the legislature to enact rules to define community service, the nature of community service work, set a limitation on the duration of work, requirement of consent of the convict, provision in case of non-compliance and modalities for the supervisory authority. In 1978, the IPC Amendment Bill introduced Section 74A which exclusively dealt with the punishment of community service. The Bill was passed by the Rajya Sabha,

[720] *State of Gujarat v. Vishal S. Awtani,* Special Leave to Appeal (C) No(s). 14818/2020, dated 3 December 2020.
[721] *Aparna Bhat v. State of Madhya Pradesh,* 2021 INSC 192.
[722] Law Commission of India, *Report on Indian Penal Code Volume I*, (Law Com No. 156, 1997).

however, it could not be passed by the Lok Sabha due to its dissolution in 1979.[723] The relevant part is reproduced below:

> *"74A. (1) Where any person not under eighteen years of age is convicted of an offence punishable with imprisonment of either description for a* ***term not exceeding three years or with fine, or with both, the court may, instead of punishing him as aforesaid or dealing with him in any other manner, make an order (hereinafter in this section referred to as the Community Service Order) requiring him to perform, without any remuneration,*** *whether in cash or in kind, such work and for such number of hours and subject to such terms and conditions, as may be specified in the said Order:*
>
> *Provided that the number of hours for which any such person shall be required to perform work under a Community Service Order* ***shall be not less than forty hours and not more than one thousand hours:***
> *Provided further that the court shall not make a Community Service Order in respect of any such person, unless—*
>
> *(a)* ***such person consents in writing*** *to perform the work required of him under such Order;*
>
> *(b) the* ***court is satisfied that such persons a suitable person to perform the work required*** *of him and that for the purpose of enabling him to do such and such work under proper supervision, arrangements have been made by the State Government or any local authority in the area in which such person is required to perform such work.*
>
> *(2) Every Community Service Order made under sub-section (1) shall specify the* ***nature of the work to be performed*** *by such person which shall be of general benefit to the community."*

[723] *Ibid.*

Section 74A (3) of the Amendment Bill also contained a provision for modification of revocation of community service order in case of non-compliance or the interests of justice. Clause (4) further provides that in case of two or more CSOs, they will run concurrently subject to the condition that the total number of hours of work shall not exceed 1,000 hours.

In a letter dated 9 May 2011, the MHA lauded the introduction of the 'Andhra Pradesh Community Service of Offenders Act, 2010' which applies to offenders found guilty of offences in which imprisonment is not more than one year.[724] The Ministry also advised all the States/UTs to carry out suitable legislation for providing alternatives to imprisonment in order to reduce overcrowding in prisons.[725]

For framing the guidelines for courts for a CSO, it is also worthwhile taking into consideration the legislations in countries where community service has successfully been used.

The Community Service Act of Uganda provides that community service may be imposed when a person has been convicted of a minor offence after considering the circumstances, character and antecedents of the consensual offender.[726] As per Section 5 of the Act, in case of breach of the requirement of the community service order, the offender may be liable to be sentenced to such imprisonment as the court would have imposed in respect of the offence. Section 10 provides for the establishment of a "National Community Service Committee" which shall monitor the operation of community service orders.

This discussion shows that community service orders must be passed with the consent of the offender. It is also necessary that the nature of the order has a reasonable nexus with the interest of justice and general community interest enough for the reparation for the offender. The BNS 2023 prescribes the punishment of community service only for six offences as shown above. The Malimath Committee 2002 had recommended that

[724] Ministry of Home Affairs, No.17011/2/2010-PR <https://www.mha.gov.in/sites/default/files/2022-09/OvercrowdingPrison09052011%5B1%5D_0.pdf> accessed 3 July 2024.
[725] *Ibid.*
[726] Uganda Legal Information Institute <https://ulii.org/akn/ug/act/2000/5/eng@2000-12-31> accessed 17 April 2024.

community service should also be used as a punishment in default of payment of fine under Sections 64 and 65 of IPC:[727]

> *14.9.4 When a fine is imposed and is not paid the court can prescribe default sentence of imprisonment. This may act harshly in some cases of genuine incapacity to pay. Therefore* ***the Committee suggests that community service may be prescribed as an alternative to default sentence****.*

The Committee also recommended to widen the ambit of community service by covering social welfare offences:[728]

> *15.6.12 A Social welfare offences Code would include offences that are social in origin or nature and cover offences that might be prevented through awareness programmes.* ***For such offences community service is preferred to jail sentences****.*

The addition of community service as a punishment in BNS, 2023 is the first step in the criminal arena to humanise the sentencing jurisprudence aiming at the reform of the offender. In contrast to long incarcerations, offenders who are punished with community service may have a better chance of becoming constructive members of society. Moreover, introducing community service may do away with the stigma appended to the offender and the need for after-care, thereby, making society more compassionate and rehabilitative.[729] With an efficient monitoring mechanism and defined rules in place, community service performed by the convict has a strong potency to deter the potential offenders while being

[727] Corresponds to Bharatiya Nyaya Sanhita 2023, Section 8. Committee on Reforms of Criminal Justice System, Ministry of Home Affairs<https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf> accessed on 25 April, 2024.
[728] *Ibid*.
[729] Adriaan Lanni, 'Community-based and Restorative-Justice Interventions to Reduce Over-Policing' (2022) 2 American Journal of Law and Equality <https://doi.org/10.1162/ajle_a_00040 > accessed 17 November 2025.

a part of society and atone for the crime committed by making up to the community he offended.

4.3 Right to speedy trial

As long back in 1979, a writ of Habeas Corpus was filed on behalf of a large number of undertrials behind bars for years who were awaiting the culmination of their trial, which even upon conviction would not warrant punishment for more than a few months.[730] The Supreme Court in this landmark case held that:[731]

> *"Speedy trial which means reasonably expeditious trial, is an integral part of the fundamental right to life and liberty enshrined in Art. 21."*

However, the malaise of delay and backlog of cases is a reality well reflected on the NJDG platform. As per NJDG, out of 4.6 crore cases that are pending in district courts in India, 75.8% of them are criminal cases, as on 15 July 2024.[732] It is also noteworthy that 28.01% of the total criminal cases are pending for 5 years or more.[733]

Delay in trial not only causes irreversible and immeasurable injustice to the prisoner but also stales the evidence. The right to speedy trial is a dynamic concept, which begins with the arrest of the accused and is vested in the accused at all the stages of investigation, inquiry, trial, appeal and revision.[734] To understand the stage-wise delay in cases where the accused is in prison for more than a year, as of 31 December 2023, information was sought from all the High Courts, which led to the following finding:

[730] *Hussainara Khatoon v. Home Secretary, State of Bihar*, 1979 INSC 34.
[731] *Ibid.*
[732] National Judicial Data Grid <https://njdg.ecourts.gov.in/njdgnew/index.php > accessed on 15 July 2024.
[733] *Ibid.*
[734] *Kartar Singh v. State of Punjab,* 1961 INSC 186.

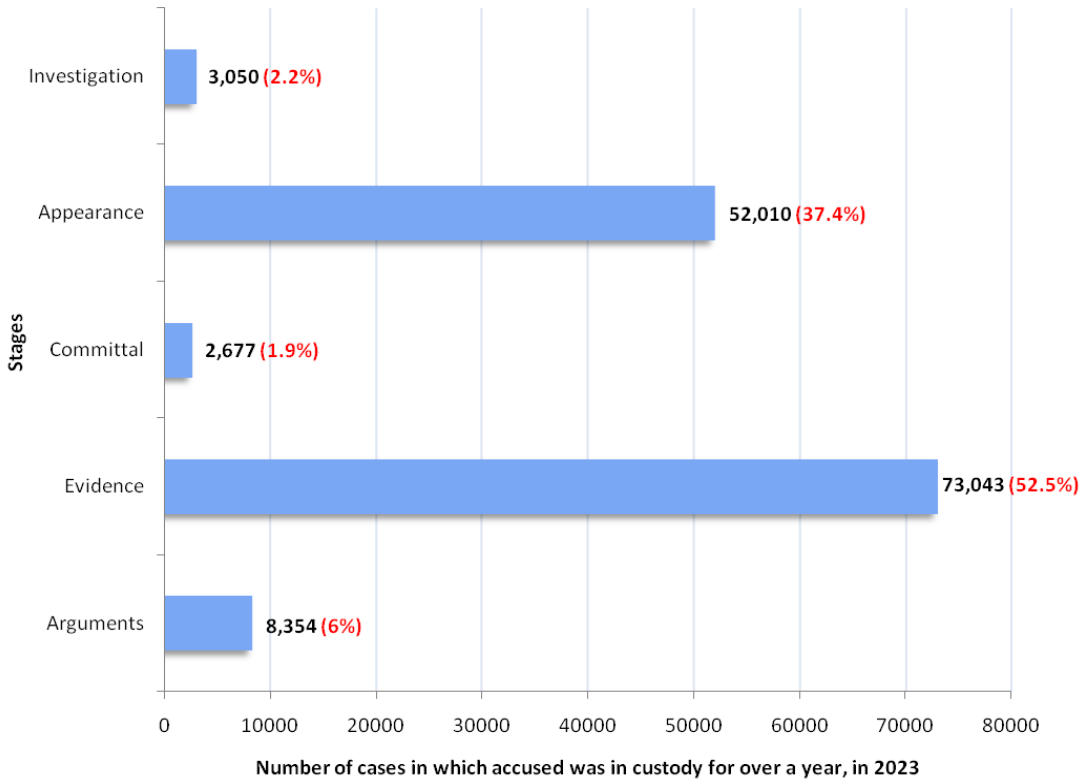

Figure 4.10: Stages in which the accused was in custody for over a year, in 2023[735]

The above graph shows that 52.5% of the cases in which the accused persons are incarcerated for more than a year are pending at the stage of evidence, 37.4% at the stage of appearance and 6% at the stage of arguments.[736] The graph shows that the stage of evidence is a bottleneck in the process of trial, as the inflow of cases from the appearance to the stage of evidence is significantly more than the outflow of cases from the evidence to the arguments stage, impeding the overall trajectory of a case.

The process of trial can be expedited to a great extent by identifying the reasons that cause delays in various stages of trial. The reasons in light of the information submitted by the High Courts are discussed below:

[735] Annexure N : Stage of cases in which the accused is in custody for more than 1 year in 2023.
[736] *Ibid.*

4.3.1 Delay in Securing the Appearance of the Accused

Under Section 204 of CrPC 1973, after taking cognizance of an offence, the judge issues processes like summons, bailable warrant, non-bailable warrant, proclamation of person absconding and attachment of property, to secure the appearance of the accused. The challenges in the issue of processes and receiving the execution reports are perennial, however, when the UTP is already in judicial custody, ideally, this issue ought not to arise.

However, many High Courts have highlighted that cases are pending due to the non-appearance of co-accused persons in the same case.[737] The Rajasthan High Court submitted that in cases where there is more than one accused, bail of the co-accused is forfeited and the arrest warrant of the accused is repeatedly returned unserved.[738] As per Orissa High Court, cases are lingering at the appearance stage due to the absconding of the accused persons.[739]

Another issue pointed out by the High Courts of Gujarat, Chhattisgarh and Bombay is the non-availability and non-appearance of advocates which adds to the delay at the appearance stage.[740] It must be noted that when the accused is in custody, appearance may be secured in court by ordering production of the UTP even without the presence of the concerned lawyer. Further, as per the Gujarat High Court, special effort should be made by police agencies to produce undertrial prisonsers in the court regularly.[741]

The Chhattisgarh High Court underscored the issue of non-appearance of the accused if they are in custody in a different district or State.[742] In *Re: Speedy Trial of Undertrial Prisoners,*[743] a three-judge Bench of the Supreme Court took account of various gaps. Some of the aspects of the Report were also reiterated by the Court, as shown below:

[737] As per information received from High Courts of Uttarakhand, Allahabad, Calcutta, Bombay and Meghalaya.
[738] As per information received from High Court of Rajasthan.
[739] As per information received from High Court of Orissa.
[740] As per information received from the respective High Courts.
[741] As per information received from High Court of Gujarat.
[742] As per information received from High Court of Chhattisgarh.
[743] *In Re: Speedy Trial of Undertrial Prisoners*, Writ Petition(s) (Civil) No(s).749/2018, Order dated 13 July 2018.

"ix) It was observed that in many cases undertrials are facing proceedings in different courts simultaneously and on that account ***there is difficulty in producing them in courts when they are in a prison outside the jurisdiction of the said courts.*** *In such cases, except where identity of the accused is required to be proved, the presence of accused can be dispensed with so as to avoid delay in trial.*

(xi) In some cases it was seen that ***at the fag end of the trial, accused who was earlier absconding is produced along with supplementary chargesheet resulting in de novo trial prejudicing the accused already in custody and who has already faced the trial.*** *If sufficient progress has already been made in the trial, de novo proceedings should not be taken in respect of the accused who was already apprehended so that he does not suffer on account of delayed apprehension of absconding accused.*

...The accused in custody, already facing trial, is at loss. ***Separation of such trial should be considered.***"

In light of the above issues and judicial precedent, where there are several accused in the same case and only some of them have appeared before the court and if the court is satisfied that other accused have absconded, the Trial Court may split up the case if such splitting does not cause any prejudice to the prosecution or accused in attendance.[744]

In case the accused in custody is not able to be produced in court, the attendance may be secured by way of video-conferencing (VC) to prevent the loss of judicial hours or may even be dispensed with if the identity of such a UTP is not in question. In the landmark judgment in *Re: Speedy Trial of Undertrial Prisoners,* the Supreme Court held:[745]

"6) In case, accused in custody is not produced by jail Authorities from any Haryana Jail or any out of other state Jail, for any reason whatsoever, the court should see the feasibility of examining present Pws by ***ensuring***

[744] See also *H. Aarun Basha v. State*, Crl.O.P. No. 28952 of 2018, dated 19 December 2018.
[745] *In Re: Speedy Trial of Undertrial Prisoners*, Writ Petition(s) (Civil) No(s).749/2018, dated 13 July 2018.

presence of accused through Video- conferencing. In case, it is not feasible for any reason whatsoever, witnesses may be examined in presence of defence counsel*, if question of identity is not in dispute or where the concerned witness does not pertain to the identity of accused.*

7) Where accused is absent, present PWs may be examined by ***exempting the presence of accused, in presence of defence counsel.*** *Exemption application may be allowed only with conditions that accused will not dispute his identity and that evidence recorded in his absence but in presence of his counsel, will be binding on him."*

Since COVID-19, the production of accused in most of the district courts is done by way of VC unless physical presence is required. The utilisation of the VC facility may be maximised to produce the accused persons before the court in case they are detained in other districts. While this is a viable option, the Gujarat High Court has highlighted the issue of having to wait for a long time for the appearance of the accused using VC due to lack of proper connectivity.[746] The use of VC in the process of trial has been discussed elaborately later in Part IV of the Report.

4.3.2 Delay at the stage of evidence

After securing the attendance of the accused, charges are framed and explained to the accused and the recording of evidence begins. Section 137 of the Indian Evidence Act 1872[747] provides that firstly the witnesses are examined by the party who calls him, are then cross-examined by the adverse party, and may also be subjected to re-examination.

Highlighting the reasons for delay at the evidence stage, most of the High Courts have submitted that the non-appearance of witnesses on the due date delays the recording of evidence. This non-appearance is mostly due to the difficulty in securing the presence of the witnesses and the accused.[748] Many times, a change in the address of the witness makes

[746] *Ibid.*
[747] Corresponds to Bharatiya Sakshya Adhiniyam 2023, Section 142.
[748] As per information received from the High Courts.

it difficult to serve the summons/notices.[749] As per the Meghalaya High Court, witnesses face difficulty in travelling to courts due to financial problems, and poor weather conditions.[750] The Gujarat High Court has also highlighted that witnesses often migrate for work, especially in tribal areas.[751]

Another major issue faced by district courts is that official witnesses like investigating officers (IO), medical officers, forensic experts, and judicial officers are unable to turn up due to their transfers and retirement.[752] The Allahabad High Court also reiterated that witnesses of the police and medical department who get transferred to other districts are unable to get permission to come to the court concerned for the recording of their evidence.[753]

Successful recording of evidence is the collective responsibility of the presiding officer, the prosecution and the lawyers. Some of the High Courts have submitted that often counsels don't appear in court on dates for cross-examination and seek unnecessary adjournments, thereby delaying the recording of evidence.[754] In *Vinod Kumar v. State of Punjab,*[755] the cross-examination took place after a year and 8 months, allowing ample time to pressurise the witness and gain over him. The Supreme Court took into account the disquieting practice of granting easy adjournments by trial courts for conducting cross-examination. The Court held that:[756]

> *"41. It is imperative if the examination-in-chief is over,* ***the cross-examination should be completed on the same day****. If the examination of a witness continues till late hours* ***the trial can be adjourned to the next day for cross-examination****. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the*

[749] *Ibid.*
[750] *Ibid.*
[751] *Ibid.*
[752] *Ibid.*
[753] *Ibid.*
[754] *Ibid.*
[755] [2015] 3 SCC 220, see also *Mukesh Singh v. State of Uttar Pradesh*, Criminal Appeal No. 1554 of 2015, dated 30 September 2022.
[756] *Vinod Kumar v. State of Punjab,* [2015] 3 SCC 220,

> *concept of proper and fair trial. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safe-guarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues."*

It must be strictly ensured by the trial courts that no witness should be returned unexamined. In *Re: Speedy Trial of Undertrial Prisoners,*[757] the Supreme Court held that*:*

> *"4) Examination of all the Prosecution Witnesses, present in the court, must be ensured. Other cases may be adjourned.* ***District Judge/ Hon'ble High Court should obtain certificate from judicial officers to the effect that no present PW was sent unexamined, unless reasons in writing are recorded for non-examination.*** *Non availability of defence counsel or 'court time is over' should not be the reasons for sending Pws unexamined."*

Besides, it is a time honoured principle that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact.[758] However, as per the information received from the High Courts, lengthy cross-examinations, voluminous evidence, large number of witnesses are the reasons why the examination of prosecution witnesses is not closed on time, thereby protracting the trial.[759] The Kerala High Court submitted that in many cases there are more than 100 witnesses. When witnesses are greater in number, it is more difficult to procure the presence of all of them.

In this regard, the Orissa High Court suggested that the number of charge-sheeted witnesses should be minimised for speedy disposal of cases.[760] The Gujarat High Court, on the other hand, suggested that a time limit should be prescribed to the prosecution for submitting muddamal articles and short adjournments should be granted for recording depositions.[761]

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[757] *In Re: Speedy Trial of Undertrial Prisoners*, Writ Petition(s) (Civil) No(s).749/2018, dated 13 July 2018.
[758] *Gulam Sarbar v. State of Bihar,* [2014] 3 SCC 401.
[759] As per information received from the High Courts.
[760] *Ibid.*
[761] *Ibid.*

The Gauhati High Court also made a valuable suggestion that district courts should record evidence every week.

Delay of even a single day in the recording of evidence compounds the agony of the undertrial prisonsers awaiting for the trial to conclude. According due priority to custody cases is therefore of paramount importance. To secure the presence of the witnesses in cases in which the accused is in custody, the process can be marked as 'URGENT CASES' on the top before forwarding the same to the serving authority. Accountability can even be fixed in such cases on the IO, in case of non-attendance of witnesses without proper reasons.[762] In addition, if the witness does not appear despite the service of summons/process being proved, courts may be given the power to impose a proper fine upon such witness, instead of a nominal Rs. 100/- as prescribed under Section 350 CrPC.[763]

The process of securing the appearance of the accused is the same as for securing the presence of witnesses. There should be proper mention of the address and contact number of the witnesses in the chargesheet for timely procurement of their attendance.

For procuring the presence of official witnesses, the Patna High Court suggested that there may be a dedicated portal for witnesses who are involved in government services.[764] Moreover, the supervisory authority of the government witness may be contacted for effective service of summons and receiving the service report. With respect to police witnesses, it has been suggested by the Orissa High Court that a list of police personnel along with addresses and phone numbers should be provided to all courts by the Superintendent of Police for quick service of summons. This way service of court processes can be done through Whatsapp on the mobile numbers of the police witnesses.[765] Software may also be developed to update the whereabouts/new place of posting of the police witnesses. Preference should be given to recording the evidence of official witnesses using

[762] As per information received from Rajasthan High Court.
[763] As per information received from Uttarakhand High Court. Corresponds to Bharatiya Nagarik Suraksha Sanhita 2023, Section 389.
[764] As per information received from Patna High Court.
[765] As per information received from Orissa High Court.

VC to avoid any inordinate delay in trial and prevent loss of official time of the government servant.

The Madhya Pradesh High Court also suggested the creation of an altogether separate agency for the issuance of service and warrants, to overcome the challenge faced in execution of the processes. Besides, the National Service and Tracking of Electronic Processes (NSTEP) which is an application developed for hassle free and transparent service and delivery of court processes can also be used for securing the presence of accused and witnesses in criminal cases.[766]

A speedy trial can be ensured when the justice system is working with the requisite workforce. The Jharkhand High Court also recommended that the number of courts, judicial officers and staff be increased and more Public Prosecutors and Assistant Public Prosecutors should be posted in district courts to rule out any delay caused due to their non-availability.[767] In 2014, the Delhi High Court also observed that:[768]

> "*14. One of the predominant cause for delay in disposal of criminal case is due to shortage of public prosecutors. It is quite shocking to learn that* ***some of the public prosecutors have been burdened to take care of the work of two criminal courts****. This lackadaisical and apathy of the Government in not filling up of the vacancies on the posts of Assistant Public Prosecutors/Additional Public Prosecutors is quite intriguing and appalling.*"

[766] e-committee, Supreme Court of India, Information and Communication Technology in Indian Judiciary, <https://doj.gov.in/national-service-and-tracking-of-electronic-processes-nstep/> accessed 4 July 2024.
[767] As per information received from the High Court of Jharkhand.
[768] *Court on its Own Motion v. State,* 2012 INSC 593, dated 14 March 2014.

4.3.3 Use of VC

The advent of technology has made the delivery of justice more accessible. The Model Rules for Video Conferencing enables the use of Video Conferencing (VC) at all stages of judicial proceedings and proceedings conducted by the Court.[769] However, the data received from all the High Courts in India (*refer figure 4.11*) shows that in 86% of cases, video conferencing has been used to secure the appearance of the accused in District Courts and only in 8% and 3% of cases, it is used for recording evidence and framing of charges respectively in the year 2023.

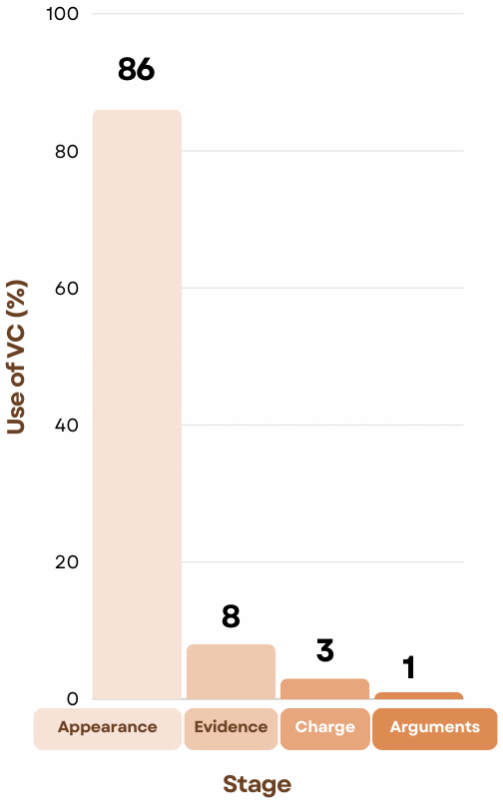

Figure 4.11 - Stages at which video conferencing was used in 2023

District Courts under the jurisdiction of the Delhi High Court have utilised VC in the maximum number of cases (6,04,317) in 2023, followed by the High Court of Punjab and Haryana (407,895) and the High Court of Allahabad (113,180).[770]

Earlier, undertrial prisonsers were produced physically in court for further remand or as required by the courts, however, after COVID-19, VC has become a mainstay for securing the appearance of the accused in courts. In this regard, the Madhya Pradesh High Court has pointed out that due to change in employees on duty while conducting jail video conferencing, a lot of time is wasted.[771] In some District Courts, there is a duty roster of judicial officers who are deputed to conduct VC appearances of undertrial prisonsers of all the courts.

[769] Video Conferencing Rules, Rule 3(i) <https://ecommitteesci.gov.in/document/model-rules-for-video-conferencing-for-courts-2/> accessed 15 April 2024.
[770] Annexure O : Use of Video Conferencing in District Judiciary.
[771] *Ibid.*

Many High Courts have given reasons for the sparing use of VC for recording of evidence in district courts (8%). For instance, the Calcutta High Court has submitted that the option to digitally sign the electronic documents is missing in the VC software.[772] Further, the Gujarat High Court pointed out that VC sometimes leads to difficulty in verifying the documents of the case during cross-examination and also increases the chances of manipulation of the witness in answering any question posed in cross-examination.[773] In this regard, the Orissa High Court suggested that for easy access to documents during video conferencing, there is a need to supply a document visualiser to each court. The Allahabad High Court, on the other hand, raised the issue of storage of evidence through video conferencing.[774]

There is also a need for a uniform video conferencing platform to avoid yearly purchase of third party applications like Zoom, Webex, etc as Orissa High Court has submitted that there is an issue with the licence version of Zoom application not being provided to the District Judiciary.[775] There is a need for one dedicated VC room with official links/contact details in all the courts and jails manned by permanent employees available during court hours.

Many High Courts have also raised the concern that slow and poor network connectivity and lack of adequate infrastructure and IT equipment such as cameras and other peripherals cause hurdles in the effective use of VC in judicial proceedings. As per data from *'iJuris'*, only 57.4% of courtrooms in the District Judiciary in India have VC enabled computers on the judge's dais and 86.7% of district courtrooms have a working internet connection as of 25 September 2023.[776] As a broad guideline, the Supreme Court has also published an SOP on VC to assist both the parties and the registry in effectively navigating the process.[777]

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[772] *Ibid.*
[773] *Ibid.*
[774] *Ibid.*
[775] As per information received from the Orissa High Court.
[776] National Judicial Data Grid, *iJuris*(as on 25 September 2023).
[777] Supreme Court of India, *Standard Operating Procedure for Party-In-Person and The Registry for Hearing of Matters through Video Conferencing/Tele Conferencing before the Ld. Registrars*, <https://main.sci.gov.in/pdf/LU/11072020_111721.pdf> accessed 26 April 2024.

Cases of undertrial prisonsers in custody for more than 1 year are pending mostly at the stage of evidence. Recording of evidence in such cases by way of VC can obviate the difficulty of witnesses in travelling to court and expedite the trial of undertrial prisonsers. In *Re Children in Street Situations*,[778] the Supreme Court also directed that testimony of children who are victims of inter-State/inter-district child trafficking should be recorded by way of VC. For this purpose, the Chairman of DLSA, if considered necessary, may appoint a retired judicial officer as a Remote Point Coordinator (RPC). The draft SOP as furthered by the Court provides that:

> *"8. Copy of documents, if any, required to be marked or shown to the witness may be transmitted by the Court electronically to the RPC. The* ***RPC at the Remote Point*** *would assist in examination of the witness and* ***ensure that no tutoring takes place*** *and no unauthorized person or recording device is present in the room."*

The High Courts of Orissa, Calcutta and Gujarat have also suggested that courts may explore examining the official witnesses like IOs, judges, etc who have been transferred or are retired through the VC facility.[779]

4.3.4 Timely investigation

Speedy trial engulfs within its ambit timely investigations. Section 167(2) of CrPC[780] accrues the right of default bail in the favour of the accused where the investigation is not complete and the chargesheet is not submitted within 60 or 90 days, as the case may be. As per some of the High Courts, the primary reason for delay at the stage of investigation is the frequent transfers of IOs and delayed filing of charge sheets.[781]

As per the data received from High Courts, a total of 14,785 default bails were granted by the district courts under Section 167(2) CrPC[782], as on 31 December 2023.[783] The following

[778] SMW (C) No(s). 6/2021, dated 1 February 2022.
[779] *Ibid.*
[780] Corresponds to Bharatiya Nagarik Suraksha Sanhita 2023, Section 187.
[781] As per data received from High Courts of Delhi, Calcutta, Gauhati and Tripura.
[782] Corresponds to Bharatiya Nagarik Suraksha Sanhita 2023, Section 187.
[783] Annexure H : Data with respect to bail.

graph shows the High Court-wise breakup of grant of default bails in district courts under their respective jurisdictions.[784]

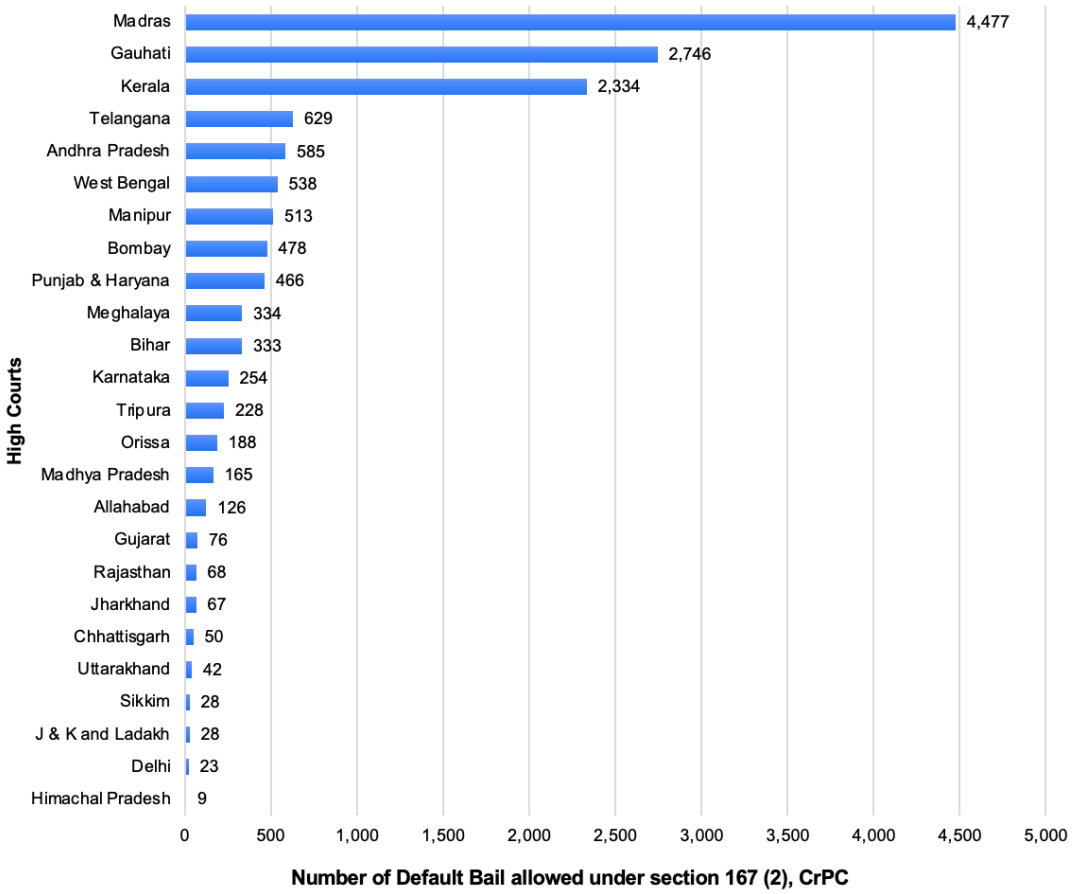

Figure 4.12: Number of cases in which default bails were granted in 2023[785]

The above figure shows that 30% (4,477) of all the default bails were granted in Tamil Nadu. It is a stark finding that the District Judiciary in Assam accounts for only 1% of the total pendency of criminal cases in India, nevertheless, it has granted 19% (2,746) of the total default bails in the year 2023.[786] In contrast, district courts under the jurisdiction of the Allahabad High Court have granted only 126 default bails in 2023.

[784] *Ibid.*
[785] *Ibid.*
[786] As per information received from the Information and Statistics Secretariat, Supreme Court of India. In 2023, total criminal cases pending in District Courts were 3,32,66,642 cases. Assam had 3,44,000 pending criminal cases.

While it is a statutory right of the UTP to be released on bail if the chargesheet is not filed in the stipulated period, it is also a mandate of the State to ensure that the UTP is not detained beyond 60 or 90 days if the chargesheet is not filed. The Supreme Court has also directed that magistrates should decide the application for statutory bail on the same day when it is filed as any delay in action in matters of liberty is against the ideals of justice, equity and constitutionalism.[787] Further, in *Satender Kumar Antil v. Central Bureau of Investigation,*[788] the Supreme Court also observed that:

> *"47. We do feel that* ***there is not even a need for a bail application in a case of this nature*** *particularly when the reasons for delay are not attributable against the accused."*

Para 3.3.7 of the SOP for UTRCs also provides that the UTRC may recommend that the trial court consider the release of the accused in cases where the chargesheet is not submitted within the statutory time frame. In *Suresh Chandra Sahoo @ Sura @ Sarat Chandra Sahoo @ Somanath v. State of Odisha,*[789] the Orissa High Court highlighted that judges must apply their judicial mind while denying bail to the accused where the chargesheet has not been submitted within the prescribed period.

The investigation authorities are legally bound to submit complete chargesheets within the prescribed time period. In *Avinash Jain v. CBI*,[790] the Delhi High Court clarified that an incomplete charge sheet filed without completing the investigation cannot be used to defeat the right of statutory bail under Section 167(2) of CrPC 1973:

> *"120…****The investigating agency cannot circumvent Section 167(2) of the Code by filing incomplete charge-sheet*** *and cannot be filed within the meaning of Section 173(2) till the investigation is completed and any report sent before the investigation is completed will not be a police report within the meaning of Section 173(2) of the Code."*

[787] *Union of India v. Nirala Yadav*, 9 SCC 457.
[788] 2022 INSC 690.
[789] CRLMC No. 1500 of 2023, dated 19 May 2023.
[790] 2023 DHC 3429.

The number of default bails in a State mirrors the efficiency of the police administration. The order of default bail is also communicated to the concerned Superintendent of Police to fix the responsibility of the concerned IO. Timely investigation and submission of the chargesheet is a pre-requisite for an efficient criminal justice system which does not undermine the liberty of the accused, being the keystone for prison reforms.

4.3.5 Role of Forensic Science Laboratories

Investigating authorities evaluate a myriad range of crime exhibits which are scientifically examined by forensic science laboratories (FSLs). The timely submission of expert evidence in the form of scientific reports like ballistic reports, DNA reports, viscera reports is crucial for proper investigation. FSL reports also play a significant role in conducting an effective magisterial inquiry into the custodial death of persons in custody under Section 176 (1A) of CrPC 1973.

The forensic setup in India comprises the Central Forensic Science Laboratories (CFSLs) under the administrative control of the Directorate of Forensic Science Services (DFSS), State Forensic Science Laboratories (SFSLs), Regional Forensic Science Laboratories (RFSLs) and mobile forensic science units.[791]

As per the information received from the High Courts, there is a substantial delay caused in the submission of the final report, material objects, mudammal property, chemical examination and FSL reports.[792] This delay has been attributed by many High Courts to the inadequate workforce at various SFSLs.[793] Moreover, the information received from the High Courts shows that there have been 1,696 and 1,754 custodial deaths in prisons in 2022 and 2023 respectively, however, a total of 1,145 and 760 custodial death inquiries were completed in the two years respectively.[794]

[791] Directorate of Forensic Science Services, *DFSS Brochure*, <http://dfs.nic.in/pdfs/Final%20brochure%2024%20Jan%202023.pdf> accessed 19 July 2024.
[792] As per information received from High Courts.
[793] *Ibid.*
[794] *Ibid.*

In 2001, the NHRC issued a letter to the Home Secretaries of all States and UTs, Director Generals (DGs) of prisons and DGs of police, instructing that reports including post-mortem, videograph and magisterial inquiry reports must be sent within two months of the incident, irrespective of the non-receipt of the viscera report:[795]

> *"Further in every case of custodial death, Magisterial Inquiry has also to be done as directed by the Commission and it should be completed as soon as possible but in such a way that* ***within the two months' deadline this report is also made available****.*
>
> *...In some cases of custodial death, after post-mortem the viscera is sent for examination and viscera report is called for. However, the viscera report takes some time in coming and therefore the Commission has clarified that the post-mortem reports and* ***other documents should be sent to the commission without waiting for the viscera report, which should be sent subsequently as soon as it was received****."*

Despite the NHRC guidelines, in 2022, 625 jail custodial death inquiries took more than 6 months to be concluded.[796] Further, as of 31 December 2023, 1,237 inquiries were pending in district courts for more than one year.[797] Most of the High Courts have submitted that this delay in completion of custodial death inquiries is due to the delayed receipt of FSL reports.[798]

In *Re: Speedy Trial of Undertrial***,**[799] the Supreme Court took notice of the unnecessary delay caused in the trial of undertrial prisonsers and issued several directions including *inter alia* the filling of vacancies in FSLs. Further, in 2022, the Delhi High Court in *Manoj Kumar Garg v. State of NCT of Delhi*[800] also held that:

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[795] National Human Rights Commission, *NHRC issues fresh guidelines regarding intimation of Custodial Death*<https://nhrc.nic.in/press-release/nhrc-issues-fresh-guidelines-regarding-intimation-custodial-death> accessed 19 July 2024.
[796] As per information received from the High Courts.
[797] *Ibid.*
[798] *Ibid.*
[799] Writ Petition(s) (Civil) No(s).749/2018, dated 22 October 2018.
[800] *Shri Manoj Kumar Garg v. State of NCT of Delhi*, W.P.(CRL) 200/2022, dated 14 September 2022.

> *"5. The delay in getting the scientific reports not only has a high social cost, but leads to extreme suffering by the victim's family being unaware as to the exact cause of death.* ***The delay for whatever reason cannot be countenanced under law and at times may also lead to degradation or putrefaction of the samples negating the very purpose of examination****…The investigating agency is expected to ensure that rights of victims are duly safeguarded by conduct of speedy and fair investigation in accordance with law and resolve administrative bottlenecks, if any, at the level of DCP concerned at the earliest opportunity."*

The Supreme Court and High Courts have time and again notified the Central and State governments to fill up the vacancies in FSLs.[801] In response to a questionnaire sent to the forensic science laboratories, as of 31 December 2023, the SFSLs in India are running on less than half the strength of the workforce (5,240) out of a sanctioned strength of 10,903 FSL staff.[802]

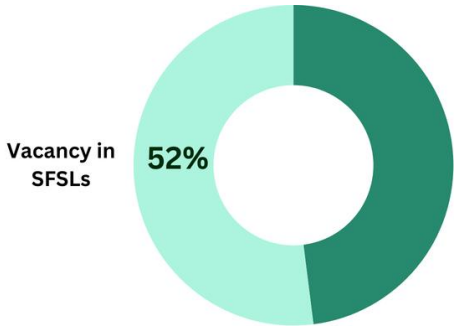

Fig 4.13: Vacancies in State FSLs in 2023[803]

Some of the High Courts have suggested that there is a need for training of the laboratory staff for timely submission of medical reports.[804] However, the first solution seems to be that of an urgent augmentation in human resources in FSLs up to the requisite sanctioned strength to strengthen the forensic facilities in India.

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[801] *Sri Naveen Kumar v. State of Karnataka*, Criminal Petition No. 7019 of 2020, Karnataka High Court; see also *R.K. Joysana v. Union of India*, PIL No. 15 of 2020, Manipur High Court.
[802] Annexure P : Strength of State Forensic Science Laboratories (SFSLs) in India. As on 31st December, 2023.
[803] *Ibid.*
[804] As per data received from High Courts of MP, Rajasthan and Uttarakhand.

Prisons in India cannot be reformed if they lodge prisoners who should not be confined in the first place. In this regard, prisons, courts and legal-aid institutions deal with the most sensitive right, the right to personal liberty.

A burdened criminal justice system cannot be the reason for prolonged incarceration. In a catena of cases, the highest court in India has laid down that gross delay in disposal of cases in which the accused has suffered a significant period of incarceration, would justify the invocation of Article 21 of the Constitution and consequential necessity to release the undertrial on bail.[805] The mounting backlog of cases cannot be shed in a day. The judiciary performs the adjudicatory function of determining whether the person charged is guilty beyond a reasonable doubt. However, the pendency of cases being a ground reality, delivery of justice lies in deciding whether the undertrial who is in custody for a considerable period of the maximum sentence, should be released if a timely conclusion of trial is not likely. Regarding Section 479(3) of the BNSS 2023, proper implementation of this provision by the Superintendent of Prisons could redefine the meaning of justice in terms of liberty. Judges may also ensure that the cases of incarcerated undertrials are listed first in the daily cause-list and every adjournment order in such cases is a speaking order.

[805] *Angela Harish Sontakke v. State of Maharashtra,* SLP (Crl.) No. 6888 of 2015, dated 04.05.2016; see also *Sagar Tatyaram Gorkhe v. State of Maharashtra*, SLP (Crl.) No. 7947 of 2015, dated 03.01.2017; *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India,* (1994) 6 SCC 731.

Part V: UTILISING TECHNOLOGY FOR PRISON REFORMS

No aspect of life in the 21st century has remained untouched by the great leaps and strides of technology. Notably, various dimensions of the criminal justice system are also advancing with the innovative use of technology. For instance, with electronic filing and appearance and hearing via video conferencing in courts, live streaming has evolved a concept of digital justice which is more transparent and accessible. Artificial intelligence has also percolated in the judicial system with the pioneering initiatives of the Supreme Court like the Supreme Court Vidhik Anuvaad Software (SUVAS) for translation of judgments in regional languages[806] and Supreme Court Portal for Assistance in Court's Efficiency (SUPACE) which is a method for cataloguing relevant information for legal research.[807] Similarly, various repositories and data platforms like NJDG, Interoperable Criminal Justice System (ICJS) and digitisation of court records further solidify the foundation of technologically equipped justice administration in India.

There is no reason why the correctional system should also not leverage technological advancements to improve its overall efficiency and bring about prison reforms. The development of ICJS is in the process of integrating all the pillars of the criminal justice system on a single platform to achieve 'one data one entry', where data once entered will reflect to other pillars. [808]

E-prisons is the data face of the prison system in India which interacts with other stakeholders of the justice system. Further, the pursuit of exploration for alternatives to

[806] Supreme Court of India, Press Release (25 November 2019) <https://main.sci.gov.in/pdf/Press/press%20release%20for%20law%20day%20celebratoin.pdf > accessed on 6 June 2024.
[807] Supreme Court of India, Launching of AI Portal - SUPACE <https://webcast.gov.in/events/MTI1MQ--/session/MzE1MA--> accessed on 6 June 2024.
[808] <https://icjs.gov.in/ICJS/> accessed on 20 July 2024.

imprisonment has led the legislature to introduce a provision for electronic monitoring of prisoners,[809] which is being used in various foreign jurisdictions.

This Part will therefore delve into the use of e-Prisons and discuss challenges faced by various prison departments in India. It will also undergo analytical research from an international perspective into the use of electronic tracking of prisoners to contain the population explosion in prisons in India.

5.1 Electronic Tracking of Prisoners: Whether Constitutional?

Human dignity is the foundation of all fundamental rights, and any State measure that restricts liberty must be evaluated within a constitutional framework. In recent years, certain jurisdictions have adopted electronic monitoring technologies as alternatives to custodial detention, primarily for curfew enforcement, location-based tracking and managing prison overcrowding. Although presented as reform-oriented tools abroad, these technologies raise complex questions about autonomy, privacy and the nature of State surveillance when transposed into the Indian context.

Given that prisons fall within the legislative and administrative domain of the States under List II of the Seventh Schedule, the Union Government has been offering guidance to States on reforms. As part of this effort, the Ministry of Home Affairs has circulated the Model Prisons and Correctional Services Act, 2023 ("**Model Prison Act**") to all States and UTs for adoption in their respective jurisdictions.[810] . While the Act contains several constructive provisions on welfare, rehabilitation and reintegration, it also proposes, by Section 29, the introduction of electronic tracking devices for prisoners, a form of Electronic Monitoring ("**EM"**). This provision marks a significant shift in the philosophy of prison administration and requires careful constitutional scrutiny.

The provision is reproduced as follows:

[809] Model Prisons and Correctional Services Act 2023, Section 29.
[810] https://www.pib.gov.in/PressReleseDetailm.aspx?PRID=1923682

> "*Use of electronic tracking devices on prisoners* - ***Prisoners may be granted prison leave on the condition of their willingness to wear electronic tracking devices*** *for monitoring the movement and activities of such prisoners. Any violation by the prisoner shall attract cancellation of prison leave, in addition to disqualification from any prison leave being granted in future, as may be prescribed under the Rules.*"

Despite the fact that the Model Act is just instructive for the States and has no statutory effect as prison management is a State subject and states are at liberty to incorporate the provisions of the Model Act in their jurisdictions and repeal the existing the Prisons Act, 1894, the Prisoners Act, 1900 and the Transfer of Prisoners Act, 1950. However, this particular provision of EM is problematic.

While the measure appears to promote relaxation for prisoners and decongestion in prisons, it raises grave constitutional concerns. The introduction of continuous electronic surveillance risks transforming the rehabilitative purpose of parole and furlough, and statutory right of bail into a regime of 'digital imprisonment.'[811] Furthermore, this provision also appears to be in contravention of the Supreme Court's judgments in *K.S. Puttaswamy v. Union of India*[812] and *Frank Vitus v. Narcotics Control Bureau*.[813] But before delving into this discussion, it is apposite to understand the standing of the judiciary and other legal bodies in India concerning tracking incarcerated individuals and the foreign legal jurisprudence on electronic monitoring.

5.1.1 Status quo in India

Cyber techniques of cell tower triangulation, International Mobile Equipment Identity (IMEI) tracker, Global Positioning System (GPS) integration and IP address geolocation have been utilised by the law enforcement agencies in India in tracing the estimated location of devices which can help in ascertaining the location of an individual. These

[811] Weisburd, Kate, et al. "Electronic prisons: The operation of ankle monitoring in the criminal legal system." GWU Legal Studies Research Paper 2021-41 (2021).
[812] 2017) 10 SCC 1.
[813] 2024 INSC 479.

technologies are used after obtaining due permissions from appropriate authorities, as warranted by law to facilitate investigations.

Electronic tracking of prisoners involves use of the GPS technology to track the real time geographical location of the prisoner. The position of the Law Commission of India in using this technology in matters of bail can be deciphered in its 268th Report on *'Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail'* in 2017:[814]

> *"11.26* ***Electronic tagging has the potential to reduce both fugitive rates*** *(by allowing the defendant to be easily located)* ***and government expenditures*** *(by reducing the number of defendants detained at state expense). Electronic tagging or monitoring is defined in legislation of New Zealand. It states that, "Electronically monitored bail (EM bail) is a restrictive form of bail. A person on EM bail must remain at a specified residence at all times unless special permission to leave is granted for an approved purpose (such as work). Compliance is monitored via an electronically monitored anklet that must be worn 24 hours a day… EM Bail is available in New Zealand for suitable defendants and young people (12- 17 years of age) who would otherwise continue to be held in custody, in prison, or in the instance of a young person in a youth residence, while they wait for a court hearing. The defendant and young person are considered innocent until found guilty at a trial."*
>
> *11.27 The Law Commission the grave and significant impact* [sic] *on constitutional rights of electronic monitoring system and it is of the opinion that such system,* ***if used, must be implemented with highest degree of caution. Such monitoring must be used only in grave and heinous crimes, where the accused person has a prior conviction in similar offences.*** *This may be done by amending the appropriate legislations to restrict the*

[814] Law Commission of India, *Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail* (Law Comm No. 268, 2017).

application of electronic tagging to hardened criminals, and any Court order under the specified legislation must contain reasons for the same."

Further in May 2020, the Delhi High Court in *State (NCT of Delhi) v. Sanjeev Kumar Chawla*[815] while dismissing a petition for cancellation of bail, suggested introducing a tracking system to monitor the location of the accused who is granted bail:

> *"42. In an aside, this case brings to the fore the need for investigative agencies and the Government to consider the use of advances in technology to track under-trials in cases of this nature where the State may fear that an accused may flee from trial.* ***Digital and electronic equipment, as presently used in America, ought to be introduced in India, so that a tracking system similar to the GPS Tracking System, can be used to monitor the movement of the accused released on bail,*** *allowing the authorities to gather information all the time while permitting the accused to undertake the usual and ordinary activities of normal life."*

In the absence of this technology, the next best course of action considered by the Delhi High Court was to keep the mobile phone operational at all times.[816] It was in May 2023 that the MHA finalised the Model Act which, as discussed above, introduced the use of electronic monitoring technology as a condition for prisoners who are granted prison leaves. Three months later, in August 2023, Odisha pioneered as the first State in India to send a proposal to the Government for the use of tamper proof electronic tracker upon undertrials accused of non-heinous offences to reduce the congestion in jails.[817]

The Punjab Prison Department has also submitted that the use of these bracelets has not been implemented yet, but the department is examining this matter for prisoners released on parole. Further, the Himachal Pradesh Prison Department stated that there must be a compulsion for wearing a bracelet/anklet tracker for the prisoners to be released on

[815] Crl. M.C. No. 1468/2020, dated 6 May 2020, Delhi High Court.
[816] *Ibid.*
[817] As per information received from Directorate of Prisons and Correctional Services, Odisha. See also Sujit Bisoyi, 'Why Odisha wants to attach tracking devices on undertrial prisoners', *Indian Expres*s (6 September 2023) <https://indianexpress.com/article/explained/explained-law/odisha-tracking-undertrial-prisoners-8927148/?> accessed 20 July 2024.

parole/furlough and engaged in daily routine work in jail premises to track their status.[818] Likewise, the prison departments of Bihar, Madhya Pradesh, and Rajasthan also stated they are exploring the use of electronic trackers in case of release on parole or court/hospital visits for better observation.[819]

Furthermore, in September 2023, a Parliamentary Standing Committee in its report on *'Prison – Conditions, Infrastructure and Reforms'* reiterated the need to explore this technology in matters of bail:[820]

> "*3.4.10 The Committee notes that most of the time bail is denied on three counts i.e. the undertrial prisoner may influence or intimidate the witness(es); will try to leave country or commit another crime. The Committee in its meeting was informed about the bracelet/anklet tracker by the State Government of Odisha. The Committee is of the view that* ***technology can be explored to produce cost effective bracelet or anklet tracker that can be worn by the prisoners who have procured bail and are out of prison on bail.*** *Through the use of these kinds of trackers, administrative machinery or human resources staff involved in keeping track of prisoners who are out on bail can be reduced and it could be a cost-effective method for keeping track of such prisoner without the involvement of large administrative staff strength.* ***At the same time, it must be ensured that to avoid any kind of human rights violation this scheme or method should be used on voluntary basis after procuring the consent of inmates.*** *The Committee is of the opinion that it can also minimize the problem of overcrowding in prison to some extent*."

[818] As per information received from Himachal Pradesh Prison Department.
[819] As per information received from prison departments.
[820] Department-Related Parliamentary Standing Committee on Home Affairs, *Prison – Conditions, Infrastructure and Reforms* (Report No. 245, 2023) <https://sansad.in/getFile/rsnew/Committee_site/Committee_File/ReportFile/15/188/245_2023_9_12.pdf?source=rajyasabha> accessed 10 February 2024.

Besides these reports, the Indian judiciary has also been imposing the condition of location sharing using various technologies. Some of them are listed hereinunder:

1. **July 2022, Delhi High Court** - The Court passed a bail order with one of the bail conditions upon the applicant accused of offences related to forgery and cheating, to drop his live location every week on Google Maps to ensure that his location is available to the IO concerned.[821]
2. **November 2023, Supreme Court** - In *Puranmal Jat v. State of Rajasthan,*[822] the Supreme Court enlarged a person accused under the NDPS Act, 1985 on bail, subject to the conditions that the accused shall not go beyond the Alwar district of Rajasthan and shall make available his location through mobile phone by pairing it with the mobile phone of the IO round the clock.

3. **November 2023, Special NIA Court of J&K** - The Special NIA Court of Jammu & Kashmir granted bail to a person accused of offences under the Unlawful Assembly (Prevention) Act, 1967 on the condition of wearing a GPS tracker anklet for monitoring his movements.[823]

Similarly, the Supreme Court on another occasion[824] and various High Courts[825] have imposed similar bail conditions of sharing Google pin location with the concerned IO of the case.

Moreover, as per the information received from the Prison Department, DNH & DD, real time location tracking will enable quick identification of an individual's whereabouts, thereby, enhancing personal and public safety by allowing authorities to monitor and

[821] *Raghu Menon v. State (NCT of Delhi)*, Bail Appln. 563/2022 & Crl.M.A. 10696/2022, dated 7 July 2022.
[822] SLP (Crl.) No. 10670/2023, dated 2 November 2023.
[823] Bashaarat Masood, 'On bail, tracked by satellite: How GPS Anklets work', *The Indian Express* (Srinagar, 14 November 2023) <https://indianexpress.com/article/explained/how-gps-anklets-work-9025226/> accessed 10 February 2024.
[824] *Directorate of Enforcement v. Raman Bhuraria,* SLP (Crl.) No. 9047/2023 dated 12 December 2023.
[825] *Anita v. State (NCT of Delhi), 2023 SCC OnLine Del 4178; Vivek Kumar Gupta v. State (NCT of Delhi), 2023 SCC OnLine Del 4424; Sameer Mahandru v. Enforcement Directorate, [2023] 2 HCC [Del] 722.*

respond promptly in case of emergencies or incidents. Therefore, this technology may act as a deterrent, as individuals wearing the trackers are aware that their movements can be monitored. However, the prison department suggested that one should be wary of the following aspects:[826]

1. *"Constant tracking may infringe upon personal freedom and raise ethical questions.*
2. *There is always a* ***possibility of data breaches*** *or unauthorised access to the tracking information, leading to potential misuse or compromise of sensitive data.*
3. ***Limited battery life*** *can be a constraint requiring frequent recharging/replacement.*
4. *Initial setup costs and ongoing subscription fees may pose financial challenges, especially for large scale deployments.*
5. ***Signal disruptions*** *or inaccuracies in tracking may occur in certain environments due to poor GPS reception.*
6. *Some individuals may resist wearing tracking devices due to concerns about social stigma or a perception of invasive surveillance."*

The above discussion shows that the use of location tracking technology in India is at a very nascent stage. While the Model Prison Act enables the tracking of prisoners in case of prison leaves, the Law Commission of India and the Department-Related Parliamentary Standing Committee on Home Affairs have recommended the use of bracelets in matters of bail as well. The Supreme Court has in *Frank Vitus* case however disapproved of imposing the bail condition of location sharing with the IO and declared it unconstitutional.[827]

5.1.2 Use of electronic tracking: An International Perspective

In 1977, a Spiderman comic in which the villain attached a bracelet on Spiderman to locate his location, inspired Arizona District Judge Jack L. Love to explore the monitoring

[826] As per information received from the Prison Department of DNH & DD.
[827] *Frank Vitus v. Narcotics Control Bureau,* 2024 INSC 479.

technology to deal with the problems of overcrowding and escape in prisons.[828] In 1983, for the first time, three low risk employed probationers were put on monitored curfew for three months in Arizona.[829] This marked the beginning of electronic tracking of offenders in the world. The shift in penological theories from retribution to reform and now from physical incarceration to surveillance has led to tremendous evolution in both law and technology in this regard in the last 45 years.

. As per the recommendations adopted by the Committee of Ministers of the Council of Europe in 2014, EM may be used in the following ways:[830]

1. *"as a condition for suspending or of executing a prison sentence;*
2. *as a stand-alone means of supervising the execution of a criminal sanction or measure in the community;*
3. *in combination with other probation interventions;*
4. *as a pre-release measure for those in prison;*
5. *in the framework of conditional release from prison;*
6. *as an intensive guidance and supervision measure for certain types of offenders after release from prison;*
7. *as a means of monitoring the internal movements of offenders in prison and/or within the perimeters of open prisons;*
8. *as a means for protecting specific crime victims from individual suspects or offenders."*

The legal framework of some of the countries which use an electronic monitoring program to lighten the burden on correctional institutions is discussed below:

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[828] Robert S. Gable, 'The Ankle Bracelet Is History: An Informal Review of the Birth and Death of a Monitoring Technology' The Journal of Offender Monitoring, 2015 Civil Research Institute <https://www.civicresearchinstitute.com/online/PDF/The%20Ankle%20Bracelet%20Is%20History.pdf> accessed 22 July 2024.

[829] *Ibid.*

[830] Appendix to Recommendation CM/Rec(2014)4, of the Committee of Ministers to Member States concerning dangerous offenders, Adopted by the Committee of Ministers on 19 February 2014 at the 1192nd meeting of the Ministers' Deputies, Council of Europe.

A. **United States of America** - There are different local laws and State laws with respect to electronic monitoring programs in the US. For instance, Section 950 of Public Safety Realignment of 2011 of the State of California provides that the Sheriff, as the correctional administrator of the county jails and inmates, may offer an electronic monitoring program to inmates being held **in lieu of bail** in a county jail or other county correctional facility.[831] Similarly, Section 3010 of the California Penal Code provides that the Department of Corrections and Rehabilitation may utilise continuous electronic monitoring to electronically monitor the whereabouts of persons on **parole**.[832]

The Supreme Court of North Carolina, United States in *State of North Carolina v. Torrey Grady*[833] has held that **States cannot subject convicted sex offenders to lifetime electronic monitoring** because the surveillance violates the individual's Fourth Amendment rights against unreasonable search.

B. **Canada** - Section 57.1(1) of the Corrections and Conditional Release Act in Canada provides that probation service may demand that an offender wears a monitoring device to monitor their compliance with a condition of a temporary absence, work release, **parole, statutory release or long-term supervision** that restricts their access to a person or a geographical area or requires them to be in a geographical area.[834] Clause 2 of the Act further gives reasonable opportunities to such an offender to make representation in relation to the monitoring duration.

C. **United Kingdom** - Section 305 (1) read with Section 215 of the Criminal Justice Act of 2003 provides electronic monitoring requirement, in relation to a **community order, custody plus order, intermittent custody order or suspended sentence order**. Section 3AB of the Bail Act of 1976 also provides that one of the conditions for the imposition of electronic monitoring requirements on a person who has attained the age of 18 years is that the court is satisfied that without

[831] Public Safety Realignment of 2011, Article LXIII, California.
[832] Electronic Monitoring [3010–3010.10] California Penal Code, Article 2.
[833] 372 N.C. 509, 831 S.E.2d 542 (2019).
[834] The Corrections and Conditional Release Act S.C. 1992, Section 57.1(1), Canada.

the electronic monitoring requirements, the person would not be granted bail. The Act also lays down the conditions to be met for electronic monitoring of children and young persons.[835]

Moreover, the judiciary in the UK within its sentencing power can also impose an Alcohol Maintenance Monitoring Requirement (AAMR) in which an alcohol tag is fitted upon the offender for a maximum period of 120 days.[836] The device measures the offender's sweat every 30 minutes a day to measure the level of alcohol.[837]

Moreover, Section 24 (2AA) of the Bail and Release from Custody (Scotland) Act 2023 provides that the court is duty bound to record the following reasons in case of refusal of bail:

i. *"the grounds on which it determines, in accordance with section 23B(1A), that there is good reason for refusing bail;*
ii. *if refusing bail solely on the ground specified in section 23C(1)(a) (substantial* ***risk of absconding*** *or failing to appear), its reasons for considering under section 23B(1A)(b) that it is necessary to do so, and*
iii. *its reasons for considering under section 23B(1A)(b) and (2) that either* ***it would not be appropriate to impose on the accused bail conditions subject to a requirement to submit to monitoring*** *in accordance with Part 1 of the Management of Offenders (Scotland) Act 2019 (electronic monitoring) or that doing so would not adequately safeguard the interests of public safety or justice…"*

[835] Bail Act 1976, Sections 3AA and 3AAA.
[836] Sentencing Act 2020, Section 26, United Kingdom.
[837] Explanatory Memorandum to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 <https://www.legislation.gov.uk/uksi/2020/478/pdfs/uksiem_20200478_en.pdf> accessed 23 July 2024.

This shows that in Scotland, the court has to give reasons in every case of rejection of bail as to why it is not appropriate to impose the bail condition of electronic monitoring upon the accused.

D. **Malaysia** - Section 7 of the Security Offences (Special Measures) Bill, 2012 deals with the special procedures relating to electronic monitoring devices. According to this, the Court may order an individual to wear an electronic monitoring device for **investigation purposes** where the individual is released but is still needed to assist the investigation.[838] Failure to comply with the terms and conditions can result in up to three years of imprisonment.[839]

E. **Australia** - Section 30A of the Bail Act 2013 provides that **bail conditions** requiring an accused to be subjected to electronic monitoring may be imposed provided that the bail authority is satisfied that the electronic monitoring fulfils the minimum standards prescribed in the Bail Amendment Regulation 2022 under the Bail Act of 2013. The Regulation prescribes the minimum standards required for the hardware of the electronic device like a device which provides reports regarding the status of the device's battery charge.

F. **New Zealand** - Section 30D of the Bail Amendment Act 2013 enables a defendant to apply for an electronic monitoring (EM) condition (called the EM bail) which the court may grant if the defendant is eligible for **EM bail**. Provided the court must not grant bail with an EM condition if it considers that a less restrictive condition or combination of conditions would be sufficient to ensure the outcomes set out in Section 30A(a) to (c). Before allowing an application of EM bail, the judge also has to consider the advice of the probation officer and assess whether the applicant may be of flight risk or interfere with witnesses/evidence or may re-offend.[840]

[838] Security Offences (Special Measures) Bill 2012, Illustration to Section 7, Malaysia.
[839] Security Offences (Special Measures) Bill 2012, Section 7 (6), Malaysia.
[840] Department of Corrections, New Zealand, 'Electronic Monitoring on Bail (EM Bail)'<https://www.corrections.govt.nz/our_work/courts_and_pre-sentencing/em_bail#:~:text=For%20an%20EM%20bail%20application,the%20defendant%20or%20young%20person> accessed 16 July 2024.

G. **Denmark** - In Denmark, interestingly, EM is also used as an alternative to short custodial sentences.[841] The offender punished with a sentence of six months or less may apply for permission to serve the sentence in his or her home carrying an electronic tag.[842]

In many countries, electronic monitoring requirements are applicable not only for adults but also for young offenders.[843] In the United States, sex offenders undergoing community supervision wear electronic bracelets which generate alerts in case they enter the exclusion zone which is the area of the victim.[844] In a few countries, prisoners convicted of substance and alcohol abuse are monitored using alcohol tags.[845]

In 2014, the Committee of Ministers to Member States on electronic monitoring, Council of Europe attempted to provide an ethical framework for the use of EM. It recommended that:[846]

> *"Reiterating that prison overcrowding and prison population growth are a major challenge to prison administrations and the criminal justice system as a whole, both in terms of human rights and of the efficient management of penal institutions;*
>
> *Recognising that* ***electronic monitoring used in the framework of the criminal justice process can help reduce resorting to deprivation of liberty****, while ensuring effective supervision of suspects and offenders in the community, and thus helping prevent crime;*

[841] Extract from Rigsrevisionen's report submitted to the Public Accounts Committee, 'The services provided by the Danish Prison and Probation Service to convicted offenders inside and outside prison', March 2019 <https://www.uk.rigsrevisionen.dk/Media/0/3/13-2018.pdf> accessed 23 July 2024; see also Anette Storgaard and Lene Skov, 'Probation in Europe Denmark', Confederation of European Probation, December 2017, Para 4.2.1.
[842] *Ibid.*
[843] The Youth Justice Act 1992, Section 52AA, Queensland State, Australia.
[844] Massachusetts G.L. c. 265, §47: GPS Monitoring of Persons Convicted of Sex Offences.
[845] Sentencing Act 2020, Section 26, United Kingdom.
[846] Recommendation CM/Rec(2014)3 of the Committee of Ministers to Member States on Electronic Monitoring, Adopted by the Committee of Ministers on 19 February 2014 at the 1192nd meeting of the Ministers' Deputies.

*Recognising at the same time that **electronic monitoring technologies should be used in a well-regulated and proportionate manner** in order to reduce their potential negative effects on the private and family life of a person under electronic monitoring and of concerned third parties;*

Agreeing therefore that rules about limits, types and modalities of provision of electronic monitoring technologies need to be defined in order to guide the governments of the members States in their legislation, policies and practice in this area;

Agreeing further that ethical and professional standards need to be developed regarding the effective use of electronic monitoring in order to guide the national authorities, including judges, prosecutors, prison administrations, probation agencies, police and agencies providing equipment or supervising suspects and offenders;"

The above discussion shows that the modalities of use of EM upon prisoners vary with some countries using EM programme as a condition for bail, while others, as a condition in probation and parole and some also use it as a substitute for imprisonment in prison.

5.1.3 Critical Perspectives from Foreign Jurisdictions on Electronic Monitoring

As seen above, the introduction of electronic monitoring, or "*tagging*" has been often hailed as a more humane alternative to incarceration. However, EM is increasingly critiqued as a "*failed reform*" resulting in "*mass e-carceration*".[847] The fundamental issue is the clash of primary interests between the state's power to maintain security and the serious infringement of fundamental liberties, including human dignity and privacy. This technological expansion raises serious civil liberty and ethical concerns. Some of the criticisms which have been pointed out are discussed below.

[847] Am. C.L. Union, *Rethinking Electronic Monitoring: A Harm-Reduction Guide* (Sept. 22, 2022), https://www.aclu.org/wp-content/uploads/publications/2022-09-22-electronicmonitoring.pdf.

a. EM Leading to E-Carceration and "Net widening"

E-carceration is a conceptual framework popularised by activist and writer Malikia Devich-Cyril.[848] It suggests that technological advancements in criminal justice, such as electronic monitoring, replace the physical boundaries of a prison with digital mechanisms of behavioral and location control, thereby keeping the punitive nature of incarceration intact.[849] EM devices, such as GPS-based ankle monitors and smartphone applications, create "*digital prisons*"[850] or a concept of "*prison without walls*"[851] replacing the traditional "walls" of a prison with "digital prisons". The concept of "*digital prisons*" describes a regime where the physical confinement of the body is replaced with technology led devices, such as digital surveillance and behavioral control, while keeping the punitive nature of incarceration intact.[852] EM devices, often GPS trackers, are described as a "*digital shackle*" or a "*satellite prison*".[853] Furthermore, the *technological omnipresence* ensured by EM ensures continuous, hyper-technical control.

Technologies like GPS tracking and geofencing are utilised to enforce digital boundaries and monitor real-time movement.[854] Parole and probation officers, and pretrial officials, function similar to prison guards, regulating when people can leave their monitored space and having complete access to their home. This capability allows authorities to use EM devices like a "mobile watchtower",[855] eliminating the traditional limitation of physical

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[848] Ibid

[849] Haidar Dziyaudin, Che Audah Hassan & Nadzriah Ahmad, *Electronic Tagging of Offenders and Human Rights: A Clash of Primary Interests*, in *The European Proceedings of Social & Behavioural Sciences* 301 (2018), https://www.europeanproceedings.com/article/10.15405/epsbs.2018.12.03.33.

[850] Syed Shaharyar Ahmed, Sundus Rauf & Hadia Ashraf, *Human Rights Risks in Tech-Enhanced Incarceration: A Comparative Analysis*, Int'l J. Human. & Soc. Sci. (2023), https://ijhs.com.pk/index.php/IJHS/article/view/872/669.

[851] Eugenia Zivanai & Gilbert Mahlangu, *Digital Prison Rehabilitation and Successful Re-Entry into a Digital Society: A Systematic Literature Review on the New Reality on Prison Rehabilitation*, 8 *Cogent Soc. Sci.* 2116809 (2022), https://doi.org/10.1080/23311886.2022.2116809.

[852] Syed Shaharyar Ahmed, Sundus Rauf & Hadia Ashraf, *Human Rights Risks in Tech-Enhanced Incarceration: A Comparative Analysis*, Int'l J. Human. & Soc. Sci. (2023), https://ijhs.com.pk/index.php/IJHS/article/view/872/669.

[853] Kate Weisburd, *Sentenced to Surveillance: Fourth Amendment Limits on Electronic Monitoring*, 98 N.C. L. Rev. 717 (2020), https://scholarship.law.gwu.edu/faculty_publications/1486/.

[854] Prithika Balakrishnan, *Mass Surveillance as Racialized Control*, 71 U.C.L.A. L. Rev. 1 (2024), https://www.uclalawreview.org/wp-content/uploads/securepdfs/2024/07/01-Balakrishnan-No-Bleed.pdf.

[855] Authorities use EM devices like a mobile watchtower, allowing government authorities and private entities to "see" where people go and invade their private lives. Parole and probation officers, pretrial officials, and police function similar to prison guards in that they have complete control over people on EM, regulating

boundaries and effectively penetrating homes, neighborhoods, and the digital cyberspace. This leads the "victims" of EM to have the same effect as the traditional incarceration. Therefore, the EM of convicts released on bail and undertrial prisoners essentially fits into the e-carceration framework popularised by Devich-Cyril.

Further, it is also important to notice that the EM as a mechanism is often not used as a true alternative to detention but rather as an "*additional form of incarceration*". Operating contrary to the goal of decarceration, EM is often imposed in cases where individuals would have otherwise been released on less restrictive or no conditions. This practice, known as *net widening,* expands the reach of the carceral state to a growing proportion of the presumed innocent. This expansion is empirically evident through the research done in the United States of America. The use of electronic monitoring in the U.S. criminal legal system dramatically rose by **140 percent** between 2005 and 2015, increasing from approximately 53,000 to more than 125,000 individuals.[856] Regionally, in Los Angeles County, the number of people on pretrial surveillance ballooned from only 24 people in 2015 to 1,284 people in 2021. In Houston, the use of monitors increased from 13 in 2015 to more than 500 in 2019, and then further surged to over 4,000 in late 2021. This expansion occurred even in jurisdictions focused on bail reform. The same is evident in San Francisco where the number of people released from jail on EM tripled in the year following the *Humphrey bail ruling,*[857] yet the average daily jail population only grew **3 percent.**[858]

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when people can leave their monitored space, where they can go, and having complete access to their home. *See* Kate Weisburd, *Sentenced to Surveillance: Fourth Amendment Limits on Electronic Monitoring*, 98 N.C. L. Rev. 717 (2020), https://scholarship.law.gwu.edu/faculty_publications/1486/.

[856] Sara Zampierin, *Mass E-Carceration: Electronic Monitoring as a Bail Condition*, Tex. A&M L. Rev. (2024), https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=2802&context=facschola

[857] The California Supreme Court in *In re Humphrey*, fundamentally altered California bail practice by holding that detaining a person solely because they cannot afford bail is unconstitutional. The court clarified that while public safety and flight risk remain paramount concerns, judges must conduct an individualized assessment and consider a defendant's ability to pay, implementing the *least restrictive non-monetary conditions* necessary to ensure court appearance and public safety before resorting to unaffordable cash bail. This decision does not eliminate cash bail entirely but requires a nuanced, individualized approach to pretrial release that moves away from automatic reliance on uniform bail schedules, representing a significant victory for racial and economic justice advocates. *See* Re Humphrey, 11 Cal. 5th 1033, 482 P.3d 988 (2021).

[858] Sara Zampierin, *Mass E-Carceration: Electronic Monitoring as a Bail Condition*, Tex. A&M L. Rev. (2024), https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=2802&context=facschola

b. EM Leading to Infringement of Human Dignity and Liberty

The application of EM to undertrial prisoners and convicts seem to present a significant attack on the human dignity and personal liberty of the individual being monitored. Electronic tagging, which refers to a device fitted on the body of an offender in the form of an anklet or bracelet, may raise serious issues regarding fundamental liberties such as the right to live, freedom of movement, liberty of person, and privacy.[859] Haidar Dziyaudin, Che Audah Hassan, and Nadzriah Ahmad argue that this constant surveillance is one form of method utilised in enabling the authority to control and monitor an offender's activities. EM is characterised as a "digital shackle" and is considered to be a "*greater affront to dignity, more restrictive, and more invasive of privacy*" than any other alternatives to detention.[860] Individuals subjected to EM experience the "*pains of imprisonment*" described by Gresham Sykes,[861] specifically the deprivation of liberty and deprivation of autonomy.

Further, the practical requirements of EM are inherently degrading. As *Professor Fatma E. Marouf*[862] notes, the GPS device must be charged for several hours a day, meaning participants "*have to plug themselves into the wall, constraining their movement for hours at a time,*" which she deems a "*degrading and dehumanising experience*".

It is also important to note that for undertrial prisoners, the expanded use of pretrial GPS surveillance is

> "*fundamentally changing the nature of the presumption of innocence by*

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[859] Haidar Dziyaudin, Che Audah Hassan & Nadzriah Ahmad, *Electronic Tagging of Offenders and Human Rights: A Clash of Primary Interests*, in *The European Proceedings of Social & Behavioural Sciences* 301 (2018), https://www.europeanproceedings.com/article/10.15405/epsbs.2018.12.03.33.

[860] Eric Maes, Benjamin Mine, Caroline De Man & Rosamunde Van Brakel, *Thinking About Electronic Monitoring in the Context of Pre-Trial Detention in Belgium: A Solution to Prison Overcrowding?*, 4 *Eur. J. Probation* 3 (2012), https://doi.org/10.1177/206622031200400202.

[861] In a now-classic ethnographic study of New Jersey State Prison, Gresham M. Sykes (1958/2007) argued that five fundamental deprivations characterized daily prison life, known collectively as the "pains of imprisonment." These were the loss of liberty, desirable goods and services, heterosexual relationships, autonomy, and security. *See Victor L. Shammas, Pains of Imprisonment, in The Wiley Blackwell Encyclopedia of Consumption and Consumer Studies(Daniel Thomas Cook ed., 2017),* https://doi.org/10.1002/9781118845387.wbeoc020.

[862] Lauren Angelica Kilgour, *Designed to Shame: Electronic Ankle Monitors and the Politics of Carceral Technology* (Aug. 2021) (Ph.D. dissertation, Cornell Univ.), https://ecommons.cornell.edu/items/59089a06-24d4-497a-9984-47fe92f170e7.

allowing for the imposition of punitive measures absent due process and other procedural protections on those who have yet to be convicted of a crime".[863]

Professor Sara Zampierin similarly concludes that electronic monitoring must be considered a form of carceral punishment that constitutes a significant deprivation of liberty.[864]

Furthermore, human dignity is intricately linked to constitutional guarantees of liberty. Human dignity, in itself, is a basic human right as established by the international covenants like the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). This is adopted nationally as well. For instance, Dziyaudin, Hassan, and Ahmad[865] assert that human dignity is part of the fundamental liberties in Article 5(1) of the Federal Constitution.[866] This broad view aligns with the interpretation of Article 21 of the Indian Constitution[867] which is *in pari materia* with Article 5(1) of the Malaysian Constitution[868] where the Supreme Court, in *Maneka Gandhi v. Union of India,*[869] viewed that the words "'*life' and 'liberty' be given extended meaning and inclusive of the right to human dignity and the right to privacy*". Furthermore, the Court in *Francis Coralie v Administrator, Union Territory of Delhi*[870] stated that "*'life' in Article 21 does not mean merely 'animal existence' but living with 'human dignity*'. Similarly, Justice Raja Azlan Shah (as he then was) in *Dato Menteri Othman bin Baginda*

[863] Sara Zampierin, *Mass E-Carceration: Electronic Monitoring as a Bail Condition*, Tex. A&M L. Rev. (2024), https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=2802&context=facschola
[864] Prithika Balakrishnan, *Mass Surveillance as Racialized Control*, 71 U.C.L.A. L. Rev. 1 (2024), https://www.uclalawreview.org/wp-content/uploads/securepdfs/2024/07/01-Balakrishnan-No-Bleed.pdf.
[865] Haidar Dziyaudin, Che Audah Hassan & Nadzriah Ahmad, *Electronic Tagging of Offenders and Human Rights: A Clash of Primary Interests*, in *The European Proceedings of Social & Behavioural Sciences* 301 (2018), https://www.europeanproceedings.com/article/10.15405/epsbs.2018.12.03.33.
[866] No person shall be deprived of his life or personal liberty save in accordance with law. *See* Fed. Const. art. 5(1) (Malay.).
[867] Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law. *See* India Const. art. 21.
[868] No person shall be deprived of his life or personal liberty save in accordance with law. *See* Fed. Const. art. 5(1) (Malay.).
[869] Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248 (India).
[870] Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 S.C.C. 608 (India).

& Anor v Dato Ombi Syed Alwi bin Syed Idrus advocated that the constitution "*should be interpreted broadly*".[871]

Against this backdrop, the most explicit violation of human dignity perpetrated by EM the imposition of indelible social stigma, a phenomenon often referred to metaphorically as the "scarlet phenomena".[872]

EM devices, typically visible ankle bracelets or anklets, function as a powerful and inescapable public marker that labels the wearer as having criminal status. Fernanda Analú Marcolla and Maiquel Ângelo Dezordi Wermuth argue that EM contributes to the creation of what is called the "*stigmatised bodies*'" in society.[873] It was also noted that, historically, the term "stigma" was used in ancient Greece to describe bodily signs intended to communicate something negative about the moral status of the marked individual, such as being a criminal or a slave, indicating they were "*ritually impure and should be avoided*".[874] Today, the EM fulfills this same function.

EM as a form of social stigma is evidenced through the fact that EM originated at Harvard University to observe individuals with mental disorders. The Behavior Transmitter-Reinforcer (BT-R) identified location and enabled two-way communication between the monitored person and the base station[875]. Proponents claimed it could reduce crime among chronic reoffenders and enhance societal security.

Electronic monitoring represents a contemporary form of bodily control, which Foucault would categorise as a manifestation of "*biopolitics*".[876] In this context, the state, through

[871] Dato' Menteri Othman Bin Baginda & Anor v Dato' Ombi Syed Alwi Bin Syed Idrus [1981] 1 MLJ 29.
[872] Justice Keith in his dissenting opinion in *Doe v. Bredesen* noted that "*the electronic monitoring device will not prevent an individual from committing crime, and instead may cause panic, assaults, harassment, and humiliation by functioning as a 'modern day scarlet lette*r'". *See* Doe v. Bredesen, 507 F.3d 998, 1012 (6th Cir. 2007).
[873] Fernanda Analú Marcolla & Maiquel Ângelo Dezordi Wermuth, Electronic Surveillance and Social Stigma: Perspectives on People Monitoring in Brazil, 14 UKRAINIAN POL'YMAKER 68 (2024), https://doi.org/10.29202/up/14/7.
[874] Erving Goffman, Stigma: Notes on the Management of Spoiled Identity (Márcia Bandeira de Mello Leite Nunes, trans., 4th ed. LTC 2017) (Braz.).
[875] Fernanda Analú Marcolla & Maiquel Ângelo Dezordi Wermuth, Electronic Surveillance and Social Stigma: Perspectives on People Monitoring in Brazil, 14 UKRAINIAN POL'YMAKER 68 (2024), https://doi.org/10.29202/up/14/7.
[876] Michel Foucault defined biopolitics as a modern form of power focused on managing populations, not just individuals. It is the political regulation of life itself, using controls over health, sexuality, birth rates,

its institutions, regulates and monitors certain social groups. According to Foucault, such control practices are integrated into the "*disciplines of the body*", which involve training, intensification and distribution of forces, adjustment, and conservation of energy.[877]

The stigmatisation of individuals subjected to electronic monitoring stems from the control exerted over their bodies through a mobile device attached to the ankle, marking them as symbols of indignity and reducing their fullness as subjects of rights. Campelo describes the electronic control system as a mechanism that promotes the dismantling of the individual, transforming them into a piece, fragment, or point of conjunction within the sociotechnical composition that constitutes the monitoring device, dependent on their body as an essential link in the circuit.[878] Simply put, this mechanism fragments individuality, rendering the person a component of a sociotechnical circuit dependent on their body as a node in penal surveillance. The monitored person becomes a "*prison agent of themselves*," living under constant observation that erodes personal autonomy.[879] Goffman similarly notes that the mortification of the "*self*" is standardised in total institutions, and surveillance-driven environments replicate this dehumanization in less restrictive settings. Electronic monitoring, while ostensibly granting freedom, sustains carceral power in social life.[880]

The stigma attached to monitored individuals translates into exclusion and discrimination. Their presence often elicits suspicion, undermining efforts to reintegrate into society. Goffman illustrates how stigmatised identities elicit disbelief and alienation, where even ordinary activities like reading are met with surprise.[881] The stigma results in exclusion from normal social relationships. The discriminations are so extensive that he states that

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and mortality to optimize the "life" of the population as a whole. *See* 1 MICHEL FOUCAULT, THE HISTORY OF SEXUALITY: AN INTRODUCTION 45 (Robert Hurley trans., Vintage Books 1990).

[877] Ibid

[878] Campelo's work and thoughts on electronic monitoring and surveillance as translated by Fernanda Analú Marcolla & Maiquel Ângelo Dezordi Wermuth. *See* Fernanda Analú Marcolla & Maiquel Ângelo Dezordi Wermuth, Electronic Surveillance and Social Stigma: Perspectives on People Monitoring in Brazil, 14 UKRAINIAN POL'YMAKER 68 (2024), https://doi.org/10.29202/up/14/7.

[879] *Id.*

[880] ERVING GOFFMAN, ASYLUMS, PRISONS, AND CONVENTS (Dante Moreira Leite trans., Perspectiva 2015).

[881] Fernanda Analú Marcolla & Maiquel Ângelo Dezordi Wermuth, Electronic Surveillance and Social Stigma: Perspectives on People Monitoring in Brazil, 14 UKRAINIAN POL'YMAKER 68 (2024), https://doi.org/10.29202/up/14/7.

such situations can reduce the life of a stigmatised person. The violence experienced by people with stigmas is both physical and symbolic. For instance, symbolic[882] violence occurs when the stigmatised individual suffers social discrimination due to their condition. It emerges as subtle yet persistent social rejection, visible in cases where monitored individuals struggle to secure employment as evidenced by Diario do Estado.[883] The stigma also affects their families, as evident in testimonies of spouses facing workplace discrimination.

Studies also emphasise that the ankle monitor, rather than being a purely technical innovation, reinforces a symbolic order of exclusion. It perpetuates the neoliberal ideal of social "*cleansing*," legitimising punitive control while ignoring the violence it breeds. Women under monitoring face compounding stigma, including eviction and threats from criminal networks.[884]. Thus, the device becomes both a physical shackle and a social signifier of danger.

Monitored individuals often face violence or even death due to the label the device imposes, illustrating the argument that stigmatised bodies are deemed disposable.[885] Foucault interprets such penalties as mechanisms that confiscate mobility and impose behavioral conformity.[886] The resulting invisibility produces a slow social death,

[882] For Bourdieu, symbolic violence is a gentle violence, insensitive to its own victims, that is exercised primarily through the purely symbolic means of communication and knowledge. *See* PIERRBOURDIEU, MALE DOMINATION: THE FEMALE CONDITION AND SYMBOLIC VIOLENCE 21 (Matia Helena Kühner trans., 19th ed., Beltrand Brasil 2021).
[883] Couple reveals difficulties with reintegration and prejudice due to ankle monitor use in Goiânia, DIÁRIO DO ESTADO (2021), https://www.policiacivil.go.gov.br/noticias/casal-que-usava-tornozeleira-por-crime-de-trafico-e-preso-novamente-em-goiania/. Also *See* Fernanda Analú Marcolla & Maiquel Ângelo Dezordi Wermuth, Electronic Surveillance and Social Stigma: Perspectives on People Monitoring in Brazil, 14 UKRAINIAN POL'YMAKER 68 (2024), https://doi.org/10.29202/up/14/7.
[884] With electronic ankle monitors, women are expelled from places where they live in Bahia, CORREIO (2022), https://www.correio24horas.com.br/noticia/nid/com-tornozeleira-eletronica-mulheres-sao-expulsas-de-lugares-onde-moram-na-bahia/.
[885] Fernanda Analú Marcolla & Maiquel Ângelo Dezordi Wermuth, Electronic Surveillance and Social Stigma: Perspectives on People Monitoring in Brazil, 14 UKRAINIAN POL'YMAKER 68 (2024), https://doi.org/10.29202/up/14/7.
[886]MICHEL FOUCAULT, ALTERNATIVES TO PRISON: A MEETING WITH JEAN-PAUL BRODEUR 10 (Maria Ferreira trans., Vozes 2022). Also *See* Fernanda Analú Marcolla & Maiquel Ângelo Dezordi Wermuth, Electronic Surveillance and Social Stigma: Perspectives on People Monitoring in Brazil, 14 UKRAINIAN POL'YMAKER 68 (2024), https://doi.org/10.29202/up/14/7.

transforming the marginalised into "*human rags*."[887] Thus, even under "supervised freedom," monitored individuals remain controlled by norms of obedience.[888]

Ultimately, electronic monitoring extends the carceral logic beyond prison walls. By marking and tracking bodies, the state continues to possess and discipline them. In Foucault's terms, punishment seizes the body, asserts authority through surveillance, and normalises dependence.[889] Electronic monitoring thus emerges not as reform but as a renewed strategy of bodily control and social exclusion.

c. EM as Pervasive Infringement of Privacy and Data Control

The use of GPS technology in EM results in an unprecedented level of surveillance, directly infringing upon the informational and physical privacy of the individual, transforming the home into a monitored space. The GPS technology facilitates "*near perfect surveillance*".[890] The continuous tracking generates an "*all-encompassing record*" of a person's movements. As Justice Sotomayor stated in her concurrence in *United States v. Jones*, GPS monitoring

> "*generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations. This practice may alter the relationship between citizen and government in a way that is inimical to democratic society*"".[891]

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[887] Ana Luiza Pinheiro Flauzina, Black body lying on the ground: the penal system and the genocidal project of the brazilian state, REPOSITÓRIO UNB (2006), https://repositorio.unb.br/bitstream/10482/5117/1/2006_AnaLuizaPinheiroFlauzina.pdf.

[888] ERVING GOFFMAN, ASYLUMS, PRISONS, AND CONVENTS (Dante Moreira Leite trans., Perspectiva 2015).

[889] MICHEL FOUCAULT, ALTERNATIVES TO PRISON: A MEETING WITH JEAN-PAUL BRODEUR 10 (Maria Ferreira trans., Vozes 2022). Also SEE: Fernanda Analú Marcolla & Maiquel Ângelo Dezordi Wermuth, Electronic Surveillance and Social Stigma: Perspectives on People Monitoring in Brazil, 14 UKRAINIAN POL'YMAKER 68 (2024), https://doi.org/10.29202/up/14/7.

[890] I*n Carpenter v. United States,* the Court expressed similar concerns with respect to the privacy implications of searching historic cell phone location data. The Court observed that when the government tracks the location of a cell phone, "it achieves near perfect surveillance, as if it had attached an ankle monitor to the phone's user.*" See*
Carpenter v. United States is 585 U.S. 296 (2018).

[891] United States v. Jones, 565 U.S. 400 (2012).

The right to privacy is recognised internationally under *Article 12*[892] of the Universal Declaration of Human Rights (UDHR) and Article 17[893] of the International Covenant on Civil and Political Rights (ICCPR). Further, it is granted constitutional status in various jurisdictions[894], recognised as "*implicit to the right to life and liberty guaranteed to the citizen"*.

In *K.S. Puttaswamy v Union of India,*[895] the Supreme Court unanimously agreed that privacy is a constitutional right under articles 14,[896] 19,[897] and 21.[898] This landmark decision explicitly overruled the previous precedents in *M.P Sharma v. Satish Chandra*[899] and *Kharak Singh v. State of Uttar Pradesh.*[900] Justice Subba Rao, in his minority opinion in the earlier *Kharak Singh* case, had already argued that the right to privacy was an "*essential ingredient of personal liberty".*[901]

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[892] No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. *See* G.A. Res. 217 A (III), Universal Declaration of Human Rights, U.N. Doc. A/810, art. 12 (Dec. 10, 1948).

[893] 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks. *See* International Covenant on Civil and Political Rights, art. 17, opened for signature Dec. 16, 1966, S. Exec. Doc. No. E, 95-2, 999 U.N.T.S. 17 (entered into force Mar. 23, 1976).

[894] See, e.g., *K.S. Puttaswamy v. Union of India*, A.I.R. 2017 S.C. 4161 (India) (holding that the right to privacy is a fundamental right guaranteed under the Constitution of India); GRUNDGESETZ [GG] [BASIC LAW], art. 2 (F.R.G.) (interpreting the right to free development of personality as encompassing a right to informational self-determination); Convention for the Protection of Human Rights and Fundamental Freedoms, art. 8, Nov. 4, 1950, 213 U.N.T.S. 222 (protecting the right to respect for private and family life, home and correspondence across the European continent).

[895] *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1 (India).

[896] Equality before law- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. *See* India Const. art. 14.

[897] Protection of certain rights regarding freedom of speech, etc.
(1) All citizens shall have the right-
(a) to freedom of speech and expression;
(b) to assemble peaceably and without arms;
(c) to form associations or unions or co-operative societies;
(d) to move freely throughout the territory of India;
(e) to reside and settle in any part of the territory of India;and
(f) sub-clause (f) shall be omitted;
(g) to practise any profession, or to carry on any occupation, trade or business. *See* India Const. art. 19.

[898] Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law. *See* India Const. art. 21.

[899] M.P Sharma v. Satish Chandra (1954) 1 SCR 1077.

[900] Kharak Singh v. State of Uttar Pradesh, A.I.R. 1963 S.C. 1295 (India).

[901] Ibid

Against that backdrop, EM technology, particularly GPS-equipped ankle monitors and smartphone applications (like SmartLINK), grants authorities and private entities the power to track location 24 hours a day, 7 days a week, achieving "*near perfect surveillance*".[902] This results in an unprecedented intrusion into private life. The location tracking generates a "*precise, comprehensive record*" of a person's public movements, which the US Supreme Court noted provides an "*intimate window*" into a person's life.[903] This amassed data reveals sensitive details about an individual's associations, including familial, political, professional, religious, and sexual affiliations as observed by Justice Sotomayer in her concurrent opinion in *United States v. Jones.*[904] Moreover, modern monitoring apps can collect and share significantly more data than traditional ankle monitors.[905]

Further, the core infringement on data control rests on the lack of transparency and regulation surrounding the immense volume of personal data collected. *Informational privacy,* defined as the ability to control the conditions under which personal data is released, is consistently violated by current EM practices.[906]

It is also important to notice that the National legal systems often do not possess adequate measures for regulating carceral technologies. For instance, in the United States and Australia, the use of EM is regulated through some administrative rules and court orders, mostly with minimal oversight and lack of independent audits. Data obtained through ankle monitors and algorithms is often outsourced to private bodies, which leads to exploitation of user data. Furthermore, several states have not even reformed the existing criminal mechanisms or privacy laws for addressing the consequences of digital

[902] Carpenter v. United States is 585 U.S. 296 (2018).
[903] Carpenter v. United States is 585 U.S. 296 (2018).
[904] United States v. Jones, 565 U.S. 400 (2012).
[905] Sara Zampierin, *Mass E-Carceration: Electronic Monitoring as a Bail Condition*, Tex. A&M L. Rev. (2024), https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=2802&context=facschola
[906] Haidar Dziyaudin, Che Audah Hassan & Nadzriah Ahmad, *Electronic Tagging of Offenders and Human Rights: A Clash of Primary Interests*, in *The European Proceedings of Social & Behavioural Sciences* 301 (2018), https://www.europeanproceedings.com/article/10.15405/epsbs.2018.12.03.33.

punishment.[907] This legal dilemma creates an environment where surveillance could be misused and people are prone to penal control without adequate remedy.[908]

Further, this sensitive data is often stored and retained by private companies that contract with the government.No electronic monitoring contracts inform the individuals monitored exactly how long their data will be preserved. At least "t*wo companies, Attenti (formerly 3M) and Satellite Tracking of People, have contracts that specify the data will be kept a minimum of seven years, often long after the person is off the monitor*."[909] There is often a lack of transparency regarding how long the data will be preserved or shared, infringing upon the autonomy of the individual. The data collected through monitoring, even if initially intended only for supervising the accused, may be used for other unnecessary purposes. Authorities or private companies may use the information for general law enforcement purposes or to conduct "c*rime scene correlation*", identifying monitored individuals near a specific location at a specific time, often without judicial oversight.[910] The SmartLINK app, in particular, has come under fire for failing to release information on what data it tracks, retains, and reports to ICE, and the government currently faces a lawsuit over its failure to disclose this information.[911] This lack of transparency regarding data sharing, collection, and security severely violates data protection rights.

5.1.4 Is EM Systematically Ineffective and Fails to Meet the Stated Objectives?

The use of electronic monitoring (EM) devices has been stated to be demonstrably and systematically ineffective, often failing to achieve its stated objectives of enhancing public safety, ensuring court attendance, facilitating rehabilitation, or providing a cost-effective

[907] Syed Shaharyar Ahmed, Sundus Rauf & Hadia Ashraf, *Human Rights Risks in Tech-Enhanced Incarceration: A Comparative Analysis*, Int'l J. Human. & Soc. Sci. (2023), https://ijhs.com.pk/index.php/IJHS/article/view/872/669.
[908] A. De Zayas, Human rights and indefinite detention, INT'L REV. RED CROSS (2005), https://doi.org/10.1017/s1816383100181172.
[909] Prithika Balakrishnan, *Mass Surveillance as Racialized Control*, 71 U.C.L.A. L. Rev. 1 (2024), https://www.uclalawreview.org/wp-content/uploads/securepdfs/2024/07/01-Balakrishnan-No-Bleed.pdf.

[910]Prithika Balakrishnan, *Mass Surveillance as Racialized Control*, 71 U.C.L.A. L. Rev. 1 (2024), https://www.uclalawreview.org/wp-content/uploads/securepdfs/2024/07/01-Balakrishnan-No-Bleed.pdf.

[911] Sara Zampierin, *Mass E-Carceration: Electronic Monitoring as a Bail Condition*, Tex. A&M L. Rev. (2024), https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=2802&context=facschola

alternative to incarceration. Instead, EM expands the punitive reach of the state, contradicting the very notion of criminal justice reform.

EM often fails to secure governmental interests related to public safety and court appearance, which are the main justifications for its imposition. Scholars emphasise that data does not show that electronic monitoring successfully mitigates the risks of flight or threats to public safety.[912] A study of four jurisdictions show that EM has "*little impact on pretrial misconduct*," which includes new criminal activity.[913] One study[914], for instance, found that EM had no statistically significant effect on outcomes such as the commission of new crimes. The study of the federal pretrial defendants in New Jersey noted that those on GPS location monitors experienced a significant increase in technical violations. Similarly, the *Illinois Sentencing Policy Advisory Council* found that EM can increase the risk of technical violations and returns to prison, especially for low or moderate risk offenders.[915] Furthermore, less restrictive alternatives, such as court date reminders, are often more effective at securing court attendance. Even the government's own data may not support the notion that monitoring is effective at preventing flight.[916] The inherent limitations of the technology itself contribute to ineffectiveness, as individuals who intend to abscond can often cut off the electronic monitor.

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[912] Ibid

[913] Evan M. Lowder and Chelsea M.A. Foudray, "Use of Risk Assessments in Pretrial Supervision Decision-Making and Associated Outcomes," Crime & Delinquency 63, no. 11 (2021), 1765-91 (the authors found no evidence that the use of EM was associated with significantly higher or lower odds of pretrial failure, with failure defined as new criminal activity, failure to appear, or committing a technical violation). *See* Am. C.L. Union, *Rethinking Electronic Monitoring: A Harm-Reduction Guide* (Sept. 22, 2022), https://www.aclu.org/wp-content/uploads/publications/2022-09-22-electronicmonitoring.pdf.

[914] *Ibid*

[915] Jessica Reichert and Alysson Gatens, "An Examination of Illinois and National Pretrial Practices, Detention, and Reform Efforts," Illinois Criminal Justice Information Authority, July 2018, https://icjia.illinois.gov/researchhub/articles/an-examination-of-illinois-and-national-pretrial-practices-detention-
and-reform-efforts ("Little is known about the effectiveness of EM at pretrial as most studies focus on EM use after conviction. A 2017 study of federal pretrial defendants in New Jersey found reduced likelihood of new arrest but no difference in failure to appear compared to defendants with similar risk characteristics. To date, effectiveness of EM to reduce failure to appear or new criminal arrest pending case disposition is inconclusive"). Am. C.L. Union, *Rethinking Electronic Monitoring: A Harm-Reduction Guide* (Sept. 22, 2022), https://www.aclu.org/wp-content/uploads/publications/2022-09-22-electronicmonitoring.pdf.

[916] Sara Zampierin, *Mass E-Carceration: Electronic Monitoring as a Bail Condition*, Tex. A&M L. Rev. (2024), https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=2802&context=facschola

The system of EM is inherently flawed due to technological unreliability and rigid requirements, leading to failure and unnecessary detention. Failure to comply with the numerous, detailed rules of monitoring, or technical issues with the device, frequently result in individuals being incarcerated for technical violations. The risk of an erroneous deprivation of liberty is high under the current system. Yazmine Nichols detailed the story of Kevin Jones, who was sent back to prison because his electronic monitor had a faulty battery.[917] Furthermore, EM often imposes strict requirements such as ensuring the device is charged for several hours daily which individuals must comply with, a burden that is often impossible for the economically disadvantaged or those who lack housing or access to a charging port.[918] This process leads to highly intrusive and burdensome conditions being imposed, frequently leading to detention, even for offenses that are less severe.

EM also severely undermines the stability and dignity necessary for successful reentry. The highly restrictive nature of EM, which includes specific curfews and designated movement areas, greatly curtails the freedom of movement. This severely limits the individual's ability to find or maintain employment, or even manage basic life activities like caretaking, voting, family events, or medical care. The mandatory use of a GPS device is an affront to dignity and a greater affront to dignity than alternatives to detention.[919] In contrast, in jurisdictions where EM has shown positive outcomes, such as in a *Swedish EM reform study*, the success was linked to its use as a rehabilitative intervention replacing short prison sentences, which helped individuals sustain their labor market attachment.[920] However, this success was limited to those already possessing stable employment prior to sentencing, highlighting that the benefits are not universally achievable.

Finally, EM is not a cost-effective measure. Although often promoted as a way to save public funds compared to physical incarceration, the imposition of EM often includes steep

[917] Yazmine Nichols, Jailed For a Faulty Battery and Left to Catch COVID-19, ACLU (June 2021), https://www.aclu.org/news/criminal-law-reform/jailed-for-a-faulty-battery-and-left-to-catch-covid-19/.
[918] Am. C.L. Union, *Rethinking Electronic Monitoring: A Harm-Reduction Guide* (Sept. 22, 2022), https://www.aclu.org/wp-content/uploads/publications/2022-09-22-electronicmonitoring.pdf.
[919] Haidar Dziyaudin, Che Audah Hassan & Nadzriah Ahmad, *Electronic Tagging of Offenders and Human Rights: A Clash of Primary Interests*, in *The European Proceedings of Social & Behavioural Sciences* 301 (2018), https://www.europeanproceedings.com/article/10.15405/epsbs.2018.12.03.33.
[920] Enes Al Weswasi & Olof Bäckman, The Effects of Replacing Incarceration with Electronic Monitoring on Crime, Mortality, and Labor Market Exclusion, 41 J. QUANT. CRIMINOL. 135, 140 (2025).

fees charged directly to the monitored individual. In the U.S., these fees have been observed ranging from the lowest amount for monitoring ($1.50 per day) in Nebraska to the highest amount ($47 per day) in California for self-employed individuals.[921] This system imposes a financial crisis, penalising individuals for their poverty, and threatening them with incarceration if they fall behind on payments. Moreover, the tendency of EM to drive re-incarceration for technical violations means that the system often increases the cost of punishing offenders, rather than reducing it.

d. EM Leads to Racial Profiling, Racialised Surveillance and Perpetuates Inequality

The implementation of electronic monitoring (EM) devices, characterised as "*mass e-carceration*"[922] and "*digital prisons*",[923] serves as a powerful mechanism of racialised control within the criminal justice framework. This technological form of surveillance disproportionately targets and punishes marginalised communities, amplifying existing systemic biases and ensuring that control continues to operate along racial and socioeconomic lines.

This reality is based on several interconnected factors such as the racially biased imposition of EM, the reinforcement of systemic inequalities through financial burden, and the continuation of historical practices of racialising surveillance.

The statistical evidence clearly demonstrates the disproportionate imposition of EM on communities of colour, particularly Black and Latinx individuals. This disparity is rooted in systemic biases prevalent throughout the criminal legal process. In numerous jurisdictions, Black defendants are placed on EM at rates far exceeding their proportion in

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[921] Kate Weisburd et al., Electronic Prisons: The Operation of Ankle Monitoring in the Criminal Legal System, GEORGE WASH. U. L. FAC. PUB. (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3930296. Also *See* Am. C.L. Union, *Rethinking Electronic Monitoring: A Harm-Reduction Guide* (Sept. 22, 2022), https://www.aclu.org/wp-content/uploads/publications/2022-09-22-electronicmonitoring.pdf.

[922] *See* Sara Zampierin, *Mass E-Carceration: Electronic Monitoring as a Bail Condition*, Tex. A&M L. Rev. (2024), https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=2802&context=facschola

[923] Syed Shaharyar Ahmed, Sundus Rauf & Hadia Ashraf, *Human Rights Risks in Tech-Enhanced Incarceration: A Comparative Analysis*, Int'l J. Human. & Soc. Sci. (2023), https://ijhs.com.pk/index.php/IJHS/article/view/872/669.

the general population. For example, in Cook County, Illinois, Black individuals constitute only *23 percent* of the total population, yet they represent *74 percent* of those placed on electronic monitoring. Similarly, in Los Angeles County, Black people accounted for *31 percent* of defendants placed on EM, while making up only *9 percent* of the general population.[924]

This imbalance is intensified by the widespread use of pretrial risk assessment instruments (RAIs). These tools utilise data inputs, such as prior convictions and past failures to appear in court, which are highly correlated with racially biased policing.[925] Because Black people are subjected to higher rates of police contact, stop and frisk, and arrest for the same low-level crimes, the resulting algorithms generate racially biased predictions. For instance, drug offenses are committed at approximately equal rates by white and Black people, but Black people are arrested at significantly higher rates for the same activity, leading to higher risk scores.[926] These predictions are often based solely on "*carceral data*"[927], resulting in algorithms predicting new arrests rather than actual new crimes.[928] Studies found Black defendants were twice as likely to be misclassified as higher risk than white

[924] *See* Sara Zampierin, *Mass E-Carceration: Electronic Monitoring as a Bail Condition*, Tex. A&M L. Rev. (2024), https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=2802&context=facschola
[925] Prithika Balakrishnan, *Mass Surveillance as Racialized Control*, 71 U.C.L.A. L. Rev. 1 (2024), https://www.uclalawreview.org/wp-content/uploads/securepdfs/2024/07/01-Balakrishnan-No-Bleed.pdf.
[926] Tess Borden, Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States, HUM. RTS. WATCH (Oct. 12, 2016), https://www.hrw.org/report/2016/10/12/every-25-seconds/human-toll-criminalizing-drug-use-in-the-united-states [https://perma.cc/9BR4-AV35]. *See* Prithika Balakrishnan, *Mass Surveillance as Racialized Control*, 71 U.C.L.A. L. Rev. 1 (2024), https://www.uclalawreview.org/wp-content/uploads/securepdfs/2024/07/01-Balakrishnan-No-Bleed.pdf.
[927] It is not simply that the algorithms use carceral data, generating racially biased predictions. It is that the algorithms use only carceral data.As argued by Professor Ngozi Okidegbe, the bias in the algorithms is further amplified because they are tethered to data solely "from the very same institutions responsible for the current bail crisis" to the exclusion of knowledge produced by those most affected by the criminal justice system, such as community members of highly policed neighborhoods, thereby limiting "the capacity for algorithms to redress historical and current inequities in the pretrial system." *See* Balakrishnan, Prithika Balakrishnan, *Mass Surveillance as Racialized Control*, 71 U.C.L.A. L. Rev. 1 (2024), https://www.uclalawreview.org/wp-content/uploads/securepdfs/2024/07/01-Balakrishnan-No-Bleed.pdf.
[928] The NCA and FTA indexes churned out by the Arnold Foundation algorithm "do not really predict new crime—they predict new arrest." Q & A: Profile Based Risk Assessment for US Pretrial Incarceration, Release Decisions, HUM. RTS. WATCH (June 1, 2018, 7:00 AM), https://www.hrw.org/news/2018/06/01/q-profile-based-risk-assessment-us-pretrial-incarceration-release-decisions#_ftnref4 [https://perma.cc/E7D6-NC8Y]. *See* Prithika Balakrishnan, *Mass Surveillance as Racialized Control*, 71 U.C.L.A. L. Rev. 1 (2024), https://www.uclalawreview.org/wp-content/uploads/securepdfs/2024/07/01-Balakrishnan-No-Bleed.pdf.

defendants.[929] This process is viewed as the "*Newest Jim Crow*", a continuation of racialised social control throughout American history, moving from slavery and Jim Crow to mass incarceration, and now to e-carceration.[930] Further, judges' decision-making, which can also be affected by implicit bias and racial stereotypes often leads them to impose overly restrictive surveillance measures even where the risk of flight or harm is remote.

This focus on "*future dangerousness*" as a rationale for pretrial restraint, particularly in light of increasingly sophisticated surveillance technology, is highly problematic because the concept is inherently racialised.

Furthermore, racialised control is sustained through the imposition of onerous conditions that individuals from marginalised groups are less equipped to meet, deepening existing inequalities. It is evident from the fact that the monitoring often includes exorbitantly high fees, with daily charges ranging from $1.50 to $47 in the United States of America.[931]

This "*pay-to-be-free*" dynamic creates insurmountable debt and forces people, predominantly those from low-income communities of colour, to choose between compliance costs and basic necessities.[932] Failure to pay these fees can result in re-incarceration.[933] It is also important to take into account that compliance with EM rules requires resources such as stable housing, internet access, and constant electricity for charging the device. Authorities are instructed to end technical violations grounded in material access and housing status, such as failure to charge the device when people lack

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[929] In a 2016 study of more than 7000 defendants arrested in Broward County, Florida was done. *See* Julia Angwin, Jeff Larson, Surya Mattu & Lauren Kirchner, Machine Bias, PROPUBLICA (May 23, 2016), https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing [https://perma.cc/928M-8ZQU].; Prithika Balakrishnan, *Mass Surveillance as Racialized Control*, 71 U.C.L.A. L. Rev. 1 (2024), https://www.uclalawreview.org/wp-content/uploads/securepdfs/2024/07/01-Balakrishnan-No-Bleed.pdf.

[930] *See* Prithika Balakrishnan, *Mass Surveillance as Racialized Control*, 71 U.C.L.A. L. Rev. 1 (2024), https://www.uclalawreview.org/wp-content/uploads/securepdfs/2024/07/01-Balakrishnan-No-Bleed.pdf.

[931] Kate Weisburd et al., Electronic Prisons: The Operation of Ankle Monitoring in the Criminal Legal System, GEORGE WASH. U. L. FAC. PUB. (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3930296.

[932] Syed Shaharyar Ahmed, Sundus Rauf & Hadia Ashraf, *Human Rights Risks in Tech-Enhanced Incarceration: A Comparative Analysis*, Int'l J. Human. & Soc. Sci. (2023), https://ijhs.com.pk/index.php/IJHS/article/view/872/669.

[933] Am. C.L. Union, *Rethinking Electronic Monitoring: A Harm-Reduction Guide* (Sept. 22, 2022), https://www.aclu.org/wp-content/uploads/publications/2022-09-22-electronicmonitoring.pdf.

housing or access to a charging port. However, the failure to comply with these rules, whether due to lack of funds or lack of a charging port, results in the individual being punished with jail time.[934] Also, the authorities are more likely to cite Black and Latinx people for technical rule violations, such as a dead monitor battery or failure to comply with rigid schedules, leading to re-arrest and incarceration.[935] This punitive surveillance subjects communities of colour to higher degrees of mass surveillance.

The visible device itself is described as an "*identification mark*" linked to the body and a "s*ign of an old slave shackle*"[936], further subjecting the wearers to social stigma and discrimination in the job market and housing. Thus, EM functions as a system of "*racialising surveillance*", which can be understood as a technology of social control where practices and policies concern the "*production of norms pertaining to race*" and exercise a power to define who is "*in or out of place*".[937] Therefore, the EM regime functions as a tool for "*aggregate control and system management"*[938] over specific populations, demonstrating how the state continues to enforce social order and racial hierarchies through technologically advanced surveillance.

Therefore, EM is not a neutral technology. It leverages surveillance to expand mass incarceration and control, particularly over communities of colour in the American context. It subjects individuals to continuous, intrusive monitoring absent adequate constitutional protections, eroding civil liberties and resulting in immense harm at all stages of the criminal process and just leads to e-incarceration.

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[934] Kate Weisburd et al., Electronic Prisons: The Operation of Ankle Monitoring in the Criminal Legal System, GEORGE WASH. U. L. FAC. PUB. (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3930296.

[935] Prithika Balakrishnan, *Mass Surveillance as Racialized Control*, 71 U.C.L.A. L. Rev. 1 (2024), https://www.uclalawreview.org/wp-content/uploads/securepdfs/2024/07/01-Balakrishnan-No-Bleed.pdf.

[936] Syed Shaharyar Ahmed, Sundus Rauf & Hadia Ashraf, *Human Rights Risks in Tech-Enhanced Incarceration: A Comparative Analysis*, Int'l J. Human. & Soc. Sci. (2023), https://ijhs.com.pk/index.php/IJHS/article/view/872/669.

[937] Prithika Balakrishnan, *Mass Surveillance as Racialized Control*, 71 U.C.L.A. L. Rev. 1 (2024), https://www.uclalawreview.org/wp-content/uploads/securepdfs/2024/07/01-Balakrishnan-No-Bleed.pdf.

[938] Weisburd, Kate, Sentenced to Surveillance: Fourth Amendment Limits on Electronic Monitoring (2020). 98 N.C.L. Rev. 717 (2020), GWU Legal Studies Research Paper No. 2020-31, GWU Law School Public Law Research Paper No. 2020-31, Available at SSRN: https://ssrn.com/abstract=3604391

5.1.5 Would an Electronic Monitoring Program in India be Constitutionally Valid?

Proponents of EM offer four general benefits to using this technology to monitor individuals released on bail: (i) satisfying government interests in court appearance and public safety; (ii) satisfying goals of decarceration; (iii) saving money compared to detention; and (iv) providing a more humane alternative to detention.[939] For some of them, it is a triangular debate which involves issues of liberty, privacy and prosecutorial interests. In the Indian context, the support for the electronic monitoring also gets bolstered by the issue of burdened prison infrastructure with an average of 131.4% occupancy rate and 75.8% of undertrial prisonsers who bear the maximum brunt of delayed trial.[940] They also point out that expenses on a tracker for one prisoner are lesser than that spent on incarceration.[941] As per the DG Prisons of Odisha, the State Government spends around Rs 1 lakh annually on one UTP inside the jail. On the other hand, a tracker would cost around Rs. 10,000 to 15,000.[942] This cost-efficiency appears crucial, especially since overall, **only 0.13 per cent** of total expenditure was used for vocational and educational facilities of inmates.[943]

However, despite all the proposed beneficial nature of the electronic monitoring technology in India , none of the instrumentalities of the state have done a deep analysis of concerns of privacy which this technology is prone to violate. The above discussion has shown that electronic monitoring has been employed by the courts as a bail condition and some governmental bodies have also proposed its institutionalised use. Furthermore, Section 29 of the Model Act has also introduced the use of electronic tracking devices on

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[939] Zampierin, Sara. "Mass E-Carceration: Electronic Monitoring as a Bail Condition." Utah L. Rev. (2023): 589. Available at <https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=2802&context=facscholar>

[940] Prison Statistics India 2022, NCRB, MHA, Government of India. National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs 2023).

[941] Doris Wells,NIJ Update, 'GPS Monitoring: An Effective, Cost-Saving Option', (NIJ Update, Office of Justice Program), <https://www.ojp.gov/pdffiles1/nij/244914.pdf> accessed 03 October 2024

[942] Sujit Bisoyi, 'Why Odisha wants to attach tracking devices on undertrial prisoners' *The Indian Express* (Bhubaneshwar, 6 September 2023) <https://indianexpress.com/article/explained/explained-law/odisha-tracking-undertrial-prisoners-8927148/> accessed 13 January 2024.

[943] India Justice Report, 2025 <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://indiajusticereport.org/files/IJR%204_Full%20Report_English%20(1).pdf>

prisoners in order to grant them prison leave on the condition of their willingness to wear electronic tracking devices. The following discussion addresses the pitfalls of electronic monitoring in India.

a. EM Would Contravene Frank Vitus

The Supreme Court in *Frank Vitus v. Narcotics Control Bureau*,[944] while determining the legality validity of the bail condition of dropping a PIN on Google Maps, held that 'the object of the bail condition cannot be to keep a constant vigil on the movements of the accused enlarged on bail. The investigating agency cannot be permitted to continuously peep into the private life of the accused enlarged on bail, by imposing arbitrary conditions since that will violate the right of privacy of the accused, as guaranteed by Article 21. If a constant vigil is kept on every movement of the accused released on bail by the use of technology or otherwise, it will infringe the rights of the accused guaranteed under Article 21, including the right to privacy."

> *"7.1 Therefore, while granting bail, the Courts can curtail the freedom of the accused only to the extent required for imposing the bail conditions warranted by law…*
>
> *10.2…In this case,* ***the condition of dropping a PIN on Google Maps has been incorporated without even considering the technical effect of dropping a PIN and the relevance of the said condition as a condition of bail.*** *This cannot be a condition of bail. The condition deserves to be deleted and ordered accordingly. In some cases, this Court may have imposed a similar condition. But in those cases, this Court was not called upon to decide the issue of the effect and legality of such a condition."*

Further, the Court observed the effect of keeping such constant vigil *"will amount to keeping the accused in some kind of confinement even after he is released on bail. Such a condition cannot be a condition of bail"*.

[944] 2024 INSC 479.

Moreover, the Court found a lack of technical understanding in placing electronic monitoring through dropping a PIN on Google Maps as a condition for bail. Based on the affidavit from Google LLC, the Court found the condition completely redundant because dropping a PIN marks a "static location pinned by the user" and "does not enable real−time tracking of the user or the user's device". Thus, the Court ruled that the condition was imposed *"without even considering the technical effect of dropping a PIN and the relevance of the said condition as a condition of bail".*

More importantly, the Court has categorically held that in some cases, it may have imposed a similar condition of electronic monitoring. But in those cases, it reasoned, the Court was not called upon to decide the issue of the effect and legality of such a condition.[945]

b. Violation of the Proportionality Test Laid Down in the Puttaswamy Judgement?

The Supreme Court's landmark decision in *Justice K.S. Puttaswamy (Retd.) v. Union of India*[946] fundamentally reconfigured Indian privacy jurisprudence. The nine-judge bench unanimously held that "*privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.*"

Justice Chandrachud, writing the plurality opinion, articulated a three-pronged proportionality test that has become the standard for evaluating privacy intrusions namely: legality, which postulates the existence of law; need, defined in terms of a legitimate state aim; and proportionality which ensures a rational nexus between the objects and the means adopted to achieve them. Justice S.K Kaul added a fourth prong to this test which mandated "procedural guarantees against abuse of such interference. The practice of EM as a bail condition violates the abovementioned test.

[945] 2024 INSC 479 ¶10
[946] *Justice K.S. Puttaswamy (Retd.) &Anr. v. Union of India &Ors.* (2017) 10 SCC 1.

Firstly, the courts impose the electronic monitoring conditions under general bail powers rather than under a comprehensive statute specifically authorising such surveillance. Electronic monitoring conditions are imposed under Section 437(3)[947] or 439(1)[948] CrPC (now Section 482(3) and 485(1) BNSS). These provisions merely authorise courts to impose "*any such condition as it considers necessary in the interests of justice*" without expressly contemplating technological surveillance. This broad phraseology lacks the specificity required by the "legality" prong of Puttaswamy.

Secondly, the supposed legitimate aims namely ensuring trial attendance, preventing absconding, and facilitating bail compliance verification, are facially legitimate. However, they do not necessitate constant surveillance. Simply put, legitimacy alone cannot authorise sweeping intrusion. Courts can achieve these objectives through traditional bail conditions.[949]

Thirdly, even accepting the legitimacy of preventing absconding, EM often fails the necessity and least intrusive means test. The Law Commission and courts have enumerated alternatives: custodial remand where risk is high, but also sureties, reporting conditions, travel restrictions, surrender of passport, electronic check-ins, police reporting, supervised

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[947] (3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), [the Court shall impose the conditions,-

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,
(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and
(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence,and may also impose, in the interests of justice, such other conditions as it considers necessary.] *See* § 437(3), Code of Criminal Procedure, 1973 (India).

[948] Section 439(1) of the Code of Criminal Procedure empowers the High Court and Court of Session to grant bail in non-bailable offences, with wider discretion than that vested in Magistrates under Section 437.[1] This jurisdiction is exercised to safeguard personal liberty and to intervene **in the interest of justice** where continued detention would be oppressive or unwarranted. *See §* 439(1). Code of Criminal Procedure, 1973, § 439(1) (India).

[949]e Law Commission of India, Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail, Report No. 268, at 7 (2017),https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/20220816371.pdf (last visited Nov. 2, 2025).

release via community organisations, or limited curfew hours.[950] These measures restrict freedom less invasively than 24-hour GPS tracking. In *Frank Vitus,*[951] the Supreme Court emphasised that the specific technological condition was redundant. Where courts do not require the prosecution to demonstrate that less intrusive measures were tried and failed, EM becomes an unnecessary intrusion violating Puttaswamy's proportionality mandate.

Lastly, a critical constitutional problem is the legal vacuum surrounding EM. The Law Commission recommended caution and statutory authorisation. At present, India has no central statute that comprehensively regulates EM for bail. Further, the current practices lack the procedural safeguards necessary to protect against state abuse.

There are no statutory limitations on monitoring duration, requirements for periodic judicial review of necessity or standards specifying which offenses warrant EM. Furthermore, there is absence of technical standards for data encryption and access controls, lack of independent oversight mechanisms and data retention and destruction protocols. who may be monitored, for how long, what data can be collected, who controls access, and what remedies exist for misuse. Under *Puttaswamy,*[952] any intrusion into privacy must be "by law." Ad-hoc judicial orders or executive pilot schemes do not fulfil the clarity and foreseeability required by that limb. Without a legislative framework containing procedural safeguards and redress mechanisms, routine imposition of EM may be unconstitutional.

c. EM Contradicts Judicial Restraint and the Principle of Minimum Curtailment

The constraints on EM are amplified by the requirement that judicial power must be used to protect the presumption of innocence applicable to the accused whose "*guilt is yet to be*

[950]e Law Commission of India, Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail, Report No. 268, at 7 (2017),https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/20220816371.pdf (last visited Nov. 2, 2025).
[951] Frank Vitus v. Narcotics Control Bureau, 2024 INSC 479.
[952]Justice K.S. Puttaswamy (Retd.) &Anr. v. Union of India &Ors. (2017) 10 SCC 1.

established". Conditions cannot be "*so onerous as to frustrate the order of bail itself*"[953]. As held in *Kunal Kumar Tiwari v. State of Bihar*[954] (cited in *Frank Vitus*), this phrase means "good administration of justice" or "advancing the trial process" and that "i*nclusion of broader meaning should be shunned because of purposive interpretation"*. EM, which mandates constant tracking, extends "beyond the ends of the provision". Further, emphasising the *minimum curtailment principle,* Justice Oka articulated a strict constraint on bail conditions:

"*For example, the Court may impose a condition of periodically reporting to the police station/Court or not travelling abroad without prior permission".* These conditions are temporary and discrete. In contrast, the express prohibition against compelling the accused *"to keep the Police constantly informed about his movement from one place to another"* directly sets aside the core function of EM.

It is also pertinent to note that the imposition of EM on undertrial prisonsers is deemed arbitrary because it is "*not warranted by law*". The 268th report of Law Commission of India concluded that EM systems require statutory amendments to restrict application "to hardened criminals".[955]

d. EM Imposes Disproportionate Restrictions and Psychological Harm

The use of EM fails the constitutional test because it imposes a restriction on liberty that is not proportionate to the alleged offense or necessary for the ends of justice. The detention of an accused, particularly when trial is delayed, must be proportionate to the alleged offense. The Supreme Court in *Shoma Kanti Sen v. The State of Maharashtra*[956] emphasised that

[953]Frank Vitus v. Narcotics Control Bureau, 2024 INSC 479.ˈFrank Vitus v. Narcotics Control Bureau, 2024 INSC 479.
[954] Kunal Kumar Tiwari v. State of Bihar (2018) 16 SCC 74.
[955]e Law Commission of India, Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail, Report No. 268, at 7 (2017),ˇ˘https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/20220816371.pdf (last visited Nov. 2, 2025).
[956]Shoma Kanti Sen v. The State of Maharashtra2024 INSC 269.

"any form of deprival of liberty results in breach of Article 21 of the Constitution of India and must be justified on the ground of being reasonable, following a just and fair procedure and such deprival must be proportionate in the facts of a given case"

Further, in *Selvi v. State of Karnataka,*[957] the Supreme Court recognised "mental privacy" as distinct from physical privacy and observed that compelling individuals to surrender control over their mental processes constitutes testimonial compulsion and infringes the "inviolability of mental privacy." While EM does not directly access mental states, the existing literature in criminology identifies parallel privacy violations.

EM subjects individuals to continuous psychological surveillance. This awareness of being constantly watched creates what Kirk-Werner terms "carceral practices" that reproduce the "pains of imprisonment" in non-custodial settings through privacy intrusions and infringements to the self.[958]

Research reveals that **90 percent** of individuals subjected to EM by immigration authorities experienced physical health harm, while the stigma of wearing visible tracking devices leads to social isolation, depression, and even suicidal ideation.[959] The Public Law Project's study on GPS tagging in the UK immigration system found that monitored individuals frequently isolated themselves, avoided public places,and experienced profound difficulties in parenting and unable to explain tags to children or participate in activities like swimming. Parents reported feeling "less able to care for their children in the way that they wanted to." The stigmatization effect is particularly acute in India's social context. As noted by the Australian Association of Social Workers, tracking devices associate wearers with serious sex offenders, compounding feelings of "anger, isolation and despair."[960] This stigma undermines the very purpose of bail which is reintegration into society by marking

[957]Selvi v. State of Karnataka (2010) 7 SCC 263.
[958] Gabriela Kirk-Werner, *Pains of Privacy: Mapping Carceral Practices onto Electronic Monitoring*, 29 Theoretical Criminology (2) 179 (2025), https://doi.org/10.1177/13624806241257187.
[959]Ibid
[960] Gabriela Kirk-Werner, Pains of Privacy: Mapping Carceral Practices onto Electronic Monitoring, 29 Theoretical Criminology (2) 179 (2025), https://doi.org/10.1177/13624806241257187.

individuals as inherently untrustworthy despite the presumption of innocence. The indefinite nature of monitoring exacerbates anxiety, as individuals lack certainty about when surveillance will end, creating what clinicians describe as conditions that both "*exacerbate psychological illness and impede recovery.*"[961]

e. EM might perpetuate Socio-Economic Discrimination and Inequality

Mandatory EM risks reinforcing the existing financial and social biases within the correctional system, violating the principle of equality before the law. If the costs of EM are transferred to the accused, it becomes another financial barrier to release. The data shows that **38.3% of prisoners** have an **annual family income of less than Rs. 30,000**. Consequently, **24,879 accused** granted bail continued to be in custody in 2023 due to the **"*inability to furnish bail bond*".**[962] EM would compound this injustice, making release impossible for the poor, a situation condemned by the Supreme Court in *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India*.[963]

Further, the imposition of EM based on arbitrary risk assessments linked to social status violates the principle that "all men whether poor or rich are created equal".[964] In *Rakesh Kaushik v. B. L. Vig,*[965] the Court condemned the classification of prisoners, noting that

"*Equality before the law cannot co-exist with affluent backgrounds being looked after with luxury and solicitude and lowly indigents being treated as paraicha inside the prison"*.

[961]Nicolas Marioru, Adrien Brossard & Renaud Foucart, *The effects of electronic monitoring on offenders and their labor market outcomes*, Journal of Public and Economics (2024), https://pdf.sciencedirectassets.com/271705/1-s2.0-S0047272723X00139/1-s2.0-S0047272723002335/main.pdf (last visited Nov. 3, 2025).
[962]Centre for Research & Planning, *Prisons in India 2024* (Supreme Court of India 2024), https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024110677.pdf (last visited Nov. 3, 2025).
[963]Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, (1994) 6 SCC 731.
[964]State of Punjab v. Nihal Singh 2002 INSC 397.
[965]Rakesh Kaushik v. B. L. Vig 1980 INSC 101.

5.2 E-Prisons

The criminal justice system is steadily moving towards administering digital justice in courts by utilising technological developments in judicial operations. Facilities like e-filing and video conferencing are doing away with the territorial barriers to access to justice. It is time that the management of prisons and its interface with the judiciary is also digitised for a faster and more effective justice ecosystem in India.

Law is set into motion when the police personnel register FIR, followed by the apprehension of the alleged wrongdoers as per the factual and legal matrix of the case, and thereafter, conducting investigations. The fate of such an apprehended accused lies in the hands of the courts which ultimately decide upon the liberty and innocence of the accused. Prisons, occupying the last end of the justice delivery system, house those undertrials and convicts who are sent by the trial courts upon the order of remand, rejection of bail, or the order of sentencing. This shows that the functions of the three pillars of the justice administration system are intricately interlinked and therefore, they cannot perform efficiently in data silos.

The integration of these pillars has become possible through the introduction of a centralised data repository called the 'Interoperable Criminal Justice System' (ICJS) under the e-courts project, which brings together information from participating systems like CCTNS (police application), e-Prisons (prison application), CIS (Court Information System) on a single virtual platform. This segment of Part V throws light on the working of e-Prisons and its role in prison management and decongesting.

The e-Prisons module is an application suite developed by the National Informatics Centre (NIC) to computerise and integrate all activities related to prison and prisoner management in correctional institutions across India. Its primary objective is to create an end-to-end solution to automate prison operations and connect with other justice delivery systems. e-Prisons consists of three main components:[966]

[966] e-Prisons, e-Committee, Supreme Court of India <https://ecommitteesci.gov.in/e-prison/> accessed 7 February 2024.

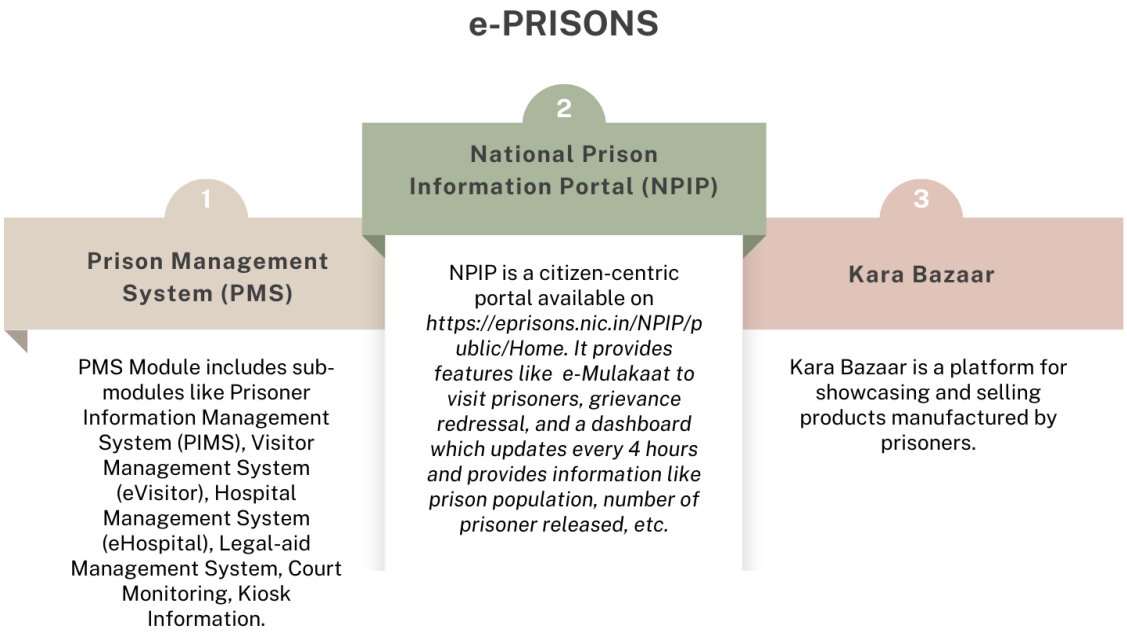


Fig. 5.1 - Components of e-Prisons[967]

As per the National Prison Information Portal (NPIP), as of 30 September 2024, 1,321 prisons are on board the e-Prisons application suite with a total of 2,00,36,184 prisoner records across India.[968] The dashboard on NPIP looks like:

[967] *Ibid.*
[968] National Prison Information Portal, as on 30 September 2024 <https://eprisons.nic.in/NPIP/public/Home> accessed 30 September 2024.

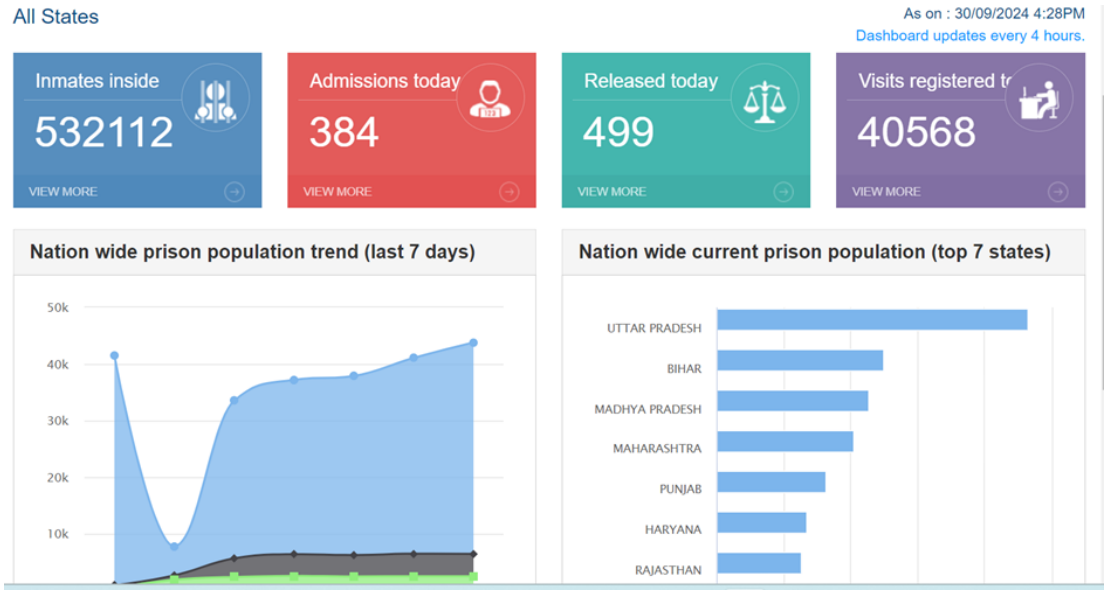


Fig. 5.2 - Dashboard of e-Prisons[969]

The dashboard primarily shows the State-wise number of inmates inside prisons, along with the number of admissions and releases of prisoners, which updates every four hours. The NPIP also provides for an important feature of *eMulakat* which facilitates meeting of prisoners with their family members and other visitors electronically through video conferencing.[970] Any visitor can register online to pay a visit to a prisoner.

As per the *eMulakat* statistics, in the year 2023, there have been 2,73,181 visits through VC, 3,98,407 physical visits online and 46,72,631 physical visits offline in Indian prisons.[971] Delhi (74,702), Gujarat (47,916) and Rajasthan (35,131) have made the most use of video conferencing for prisoner's visits.[972] It is important to point out that *eMulakat* using VC has not yet started in prisons of Uttar Pradesh, Punjab & Haryana, Andhra

[969] *Ibid.*
[970] *Ibid.*
[971] National Prisons Information Portal, National Informatics Centre, Ministry of Electronics & Information Technology, Mulakat Statistics <https://eprisons.nic.in/NPIP/public/ePrisonsLiveVisitorsStatus> accessed 10 February 2024.
[972] *Ibid.*

Pradesh, and of North-Eastern States of Manipur, Meghalaya, Mizoram, Sikkim and Nagaland as of 31 December 2023.[973]

5.2.1 Working of e-Prisons

The e-Prison software consolidates all the details of prisoners like the name of the jail, their basic information, and specific details pertaining to their case. This centralised repository of data enables the law enforcement authorities to access and manage all the essential information related to a prisoner from a single platform.

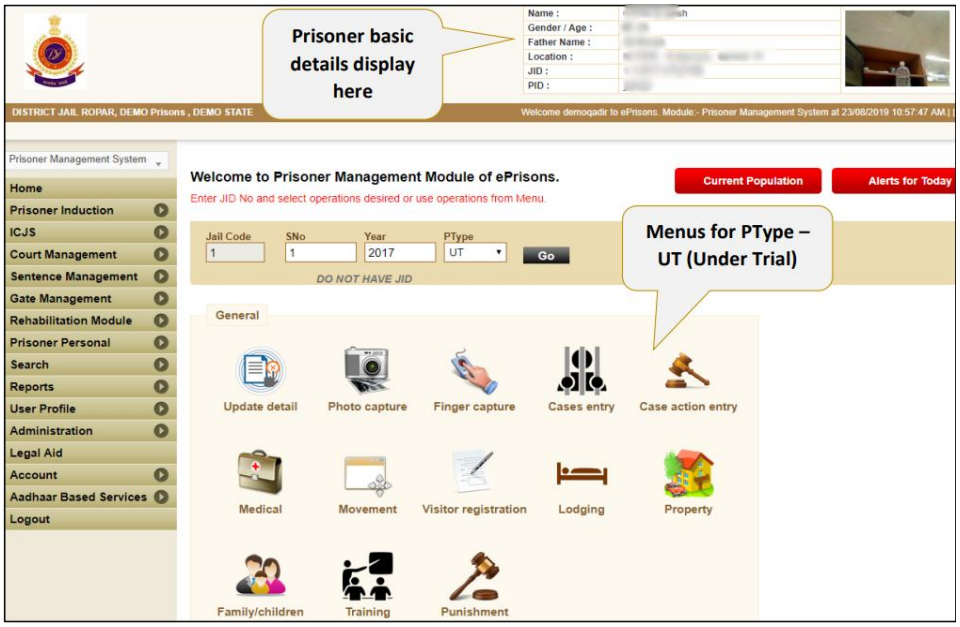


Fig 5.3 - General information of a UTP in the e-Prisons module[974]

As shown above, the e-Prisons module encompasses 13 entries for undertrials covering various aspects such as fingerprint capture, case entry, visitor registration, lodging of prisoners, movement, and medical details including mental and psychological status. For

[973] *Ibid.*
[974] e-Prisons Division, National Informatics Centre, Ministry of Electronics & Information Technology, *User Manual of Prison Management System (PMS)*, (26 August 2019), <https://eprisons.nic.in/downloads/ePrisonsUM.pdf> accessed 20 February 2024.

convicts, it has five additional entries like details of parole, wages, remission, appeals and conviction details.[975]

Figure 5.4 further shows the option to fill in the father's/husband's name along with the mother's name and identification marks of the prisoner in the Prisoner Master Details. However, as per the information received from the Delhi Prison Department, it has been pointed out that the e-Prison system repeats *the* husband's name as the father's name and doesn't provide an entry for the mother's name. The Delhi Prison Department further stated that the module lacks an entry for recording identification marks, such as distinctive scars, tattoos, or other unique physical characteristics.[976]

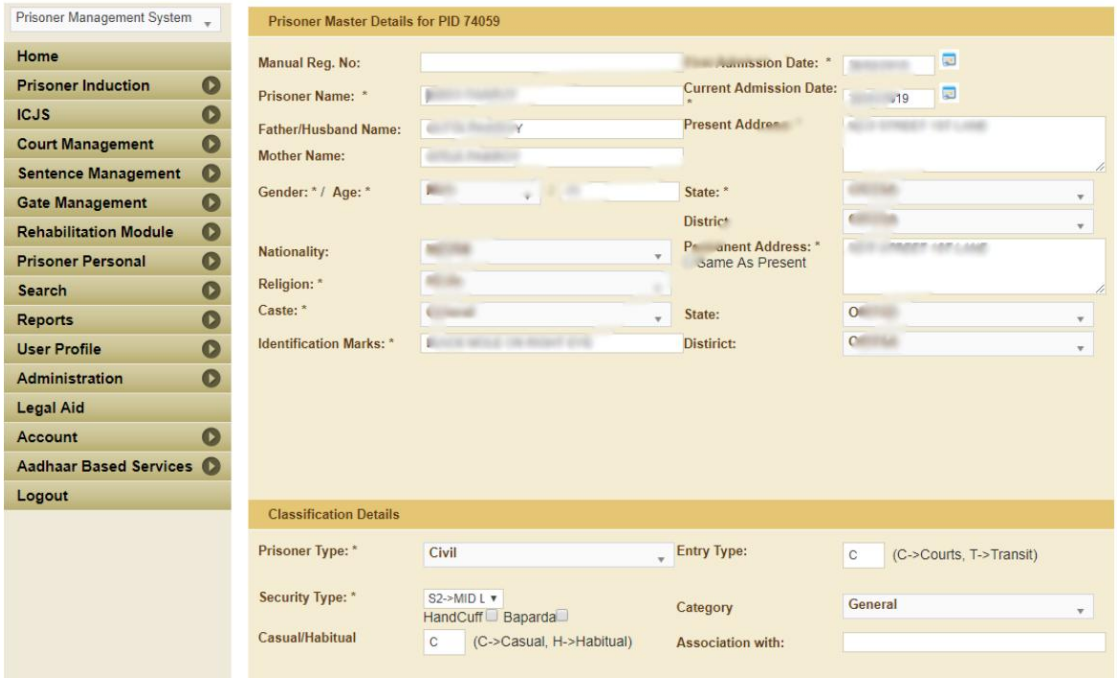


Fig 5.4 - Prisoner Master Details in the e-Prisons module[977]

[975] *Ibid.*
[976] As per information received from prison departments.
[977] e-Prisons Division, National Informatics Centre, Ministry of Electronics & Information Technology, *User Manual of Prison Management System (PMS)*, (26 August 2019),<https://eprisons.nic.in/downloads/ePrisonsUM.pdf> accessed 20 February 2024.

Figure 5.5 further shows that the head 'Other Details' also provides an entry for the income category of the prisoner, however, many prison departments have raised the concern that prisoners are not categorised based on their income.[978]

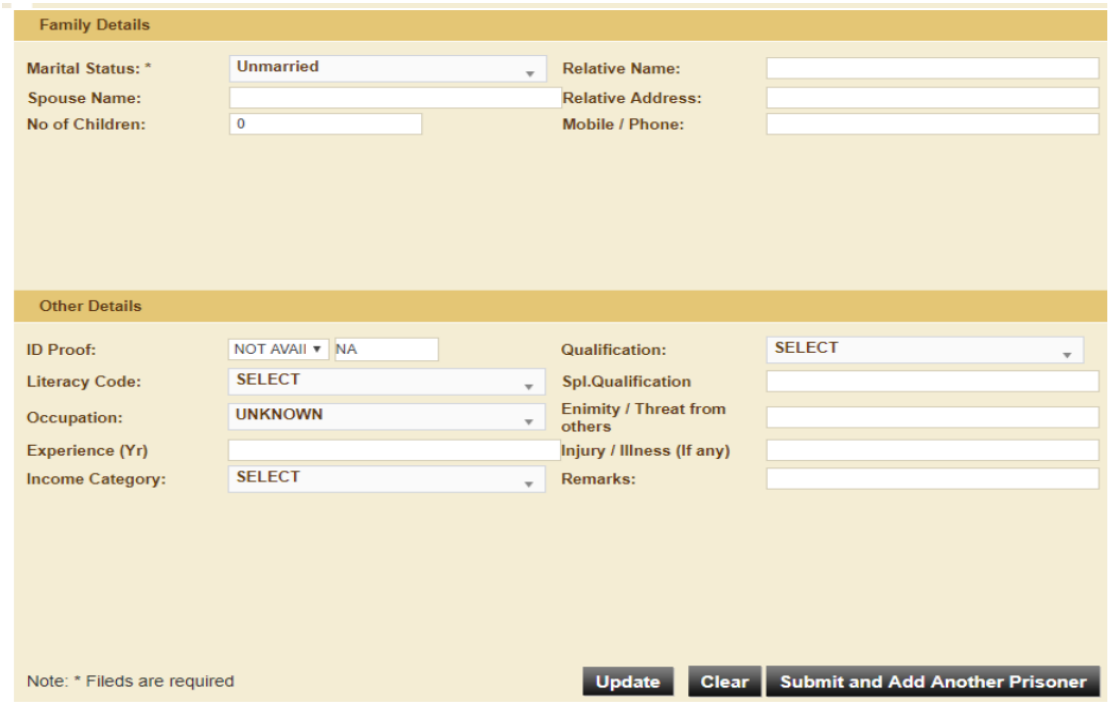


Fig 5.5 - Further general information of a UTP in the e-Prisons module[979]

The above figure shows the details of prisoners like their occupation, experience in years, and educational and special qualifications which can also be used for assignment of work to convicts and volunteering undertrial prisonsers.

Alerts for Jail

One of the most important features of the dashboard of the e-Prison module is alerts for jail (*refer figure 5.6*). It generates alerts for the authorities in cases where bail has been granted but the prisoner is still in custody due to inability to furnish bail bond. It also flags cases where undertrials have served a substantial portion of their sentence, making them eligible for release under Section 436A CrPC,[980] to ensure that they are not detained beyond

[978] *Ibid.*
[979] *Ibid.*
[980] Corresponds to Bharartiya Nagarik Suraksha Sanhita 2023, Section 479.

prescribed limits. This automated system when integrated with CIS (*as discussed later*) can also aid the judiciary in making faster informed decisions and upholding the rights of the undertrial prisonsers in prisons.

Fig 5.6 - Alerts for Jail in the e-Prisons module[981]

The e-Prison database in the Court Cases List tab also provides *'the maximum possible sentence'* for the offence, along with the date of arrest of the prisoner and the name and type (legal-aid or private) of the advocate (*refer figure 5.7 below*).

[981] e-Prisons Division, National Informatics Centre, Ministry of Electronics & Information Technology, *User Manual of Prison Management System (PMS)*, (26 August 2019), <https://eprisons.nic.in/downloads/ePrisonsUM.pdf> accessed 20 February 2024.

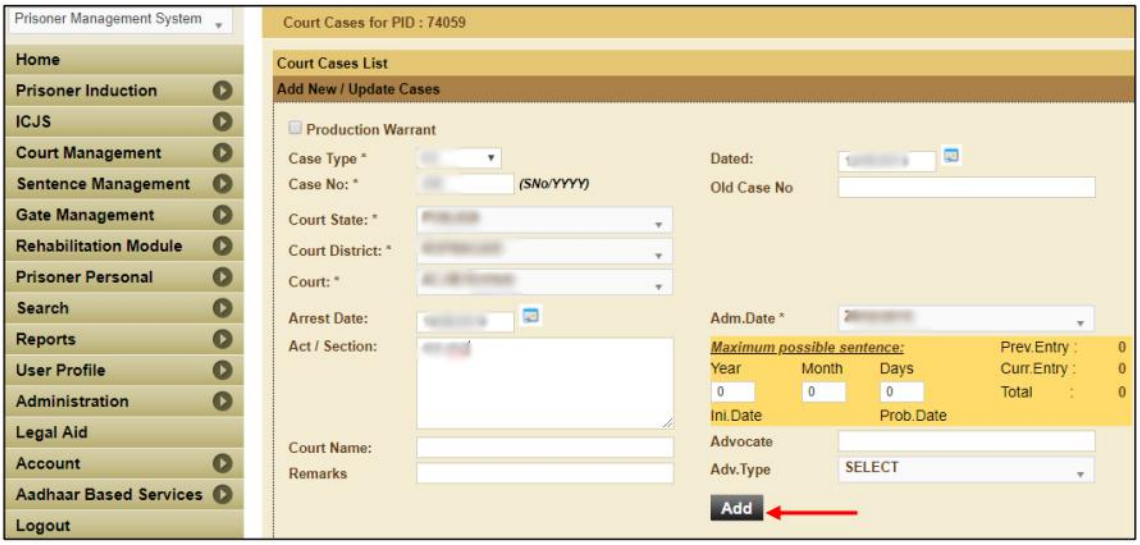


Fig 5.7 - Court Cases List on the e-Prisons module[982]

The figure below shows the details of the payment of wages to the convicts for the work done inside the prison.

[982] *Ibid.*

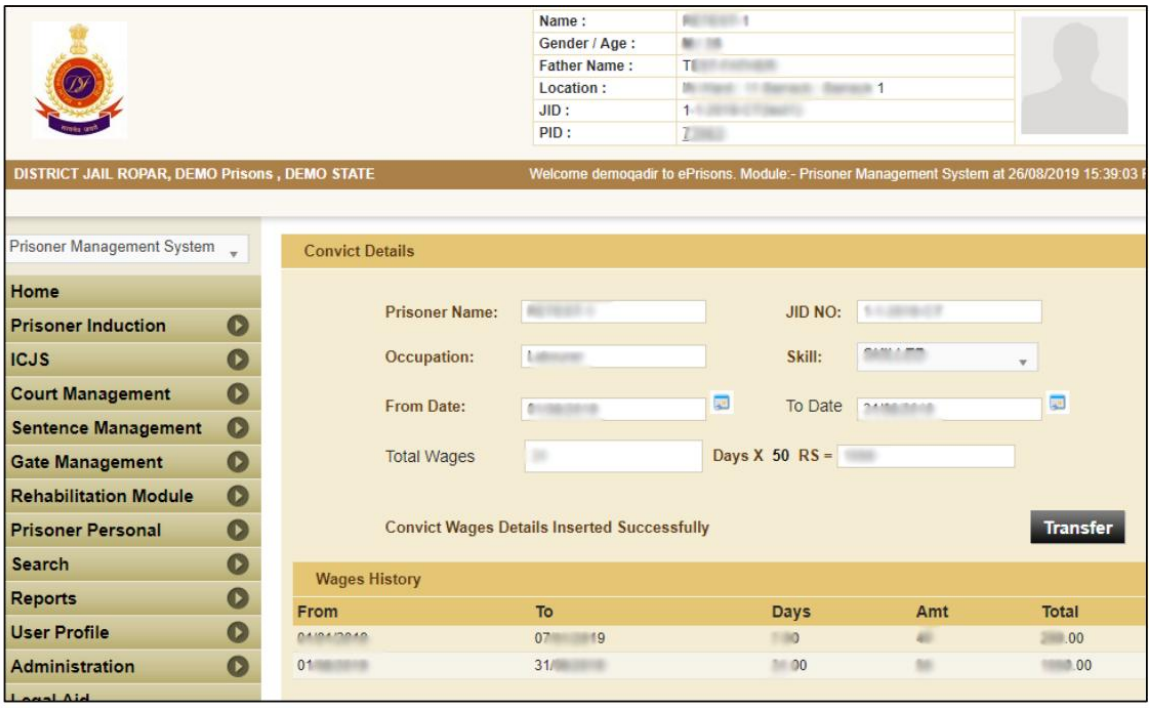


Fig 5.8 - Convict Details in the e-Prisons module[983]

The Supreme Court in *Re Policy Strategy for Grant of Bail*,[984] directed the NIC to create dedicated fields within the e-Prison software where the prison department can enter the date of grant of bail and the date of release for each prisoner to enable automatic email notifications to be sent to the Secretary, DLSA, in cases where a prisoner is not released within seven days of being granted bail. The NIC has accordingly created such fields and now, automatic email alerts are sent to the Secretary, DLSA to identify such cases of undertrial prisonsers.[985]

5.2.2 E-Custody Certificate

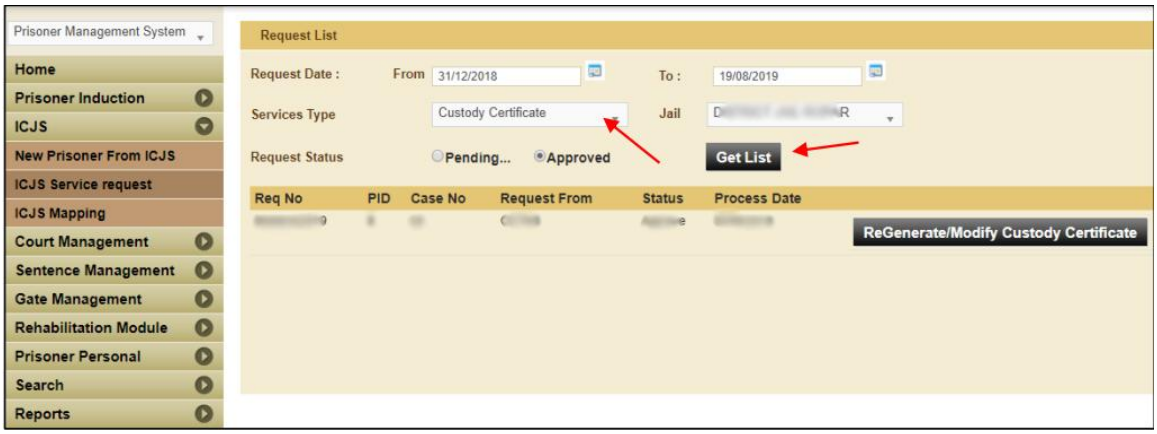
The ICJS portal provides three kinds of service requests:[986] 1. History of prisoners 2. Alerts 3. Custody Certificate. The e-custody certificate system is designed to create a

[983] *Ibid.*
[984] *In Re Policy Strategy for Grant of Bail*, Suo Motu Writ Petition (Crl.) No. 4/2021, dated 31 January 2023.
[985] *In Re Policy Strategy for Grant of Bail*, Suo Motu Writ Petition (Crl.) No. 4/2021, dated 25 July 2023.
[986] e-Prisons Division, National Informatics Centre, Ministry of Electronics & Information Technology, *User Manual of Prison Management System (PMS)*, (26 August 2019),<https://eprisons.nic.in/downloads/ePrisonsUM.pdf> accessed 20 February 2024.

comprehensive record of the prisoner for the period undergone in custody, as required by the court. It facilitates easy access to the antecedents of the accused for deciding bail and other applications.[987] The certificate is signed by the concerned Superintendent of Police.[988] The format of the custody certificate also includes information about the trial court, the status of bail application, and details of acquittals and convictions in other cases.[989]

Under *ICJS service request*, the custody certificate of a prisoner can be generated (*refer figure 5.9 below)*.

Fig 5.9 - ICJS Service Request of e-custody certificate[990]



[987] Orissa High Court, E-Custody certificates, Annual Report 2021, <https://ohcar.co.in/advocate-general/> accessed 20 March 2024.
[988] e-Prisons Division, National Informatics Centre, Ministry of Electronics & Information Technology, *User Manual of Prison Management System (PMS)* (26 August 2019), <https://eprisons.nic.in/downloads/ePrisonsUM.pdf> accessed 20 February 2024.
[989] Annexure R : Custody Certificate.
[990] e-Prisons Division, National Informatics Centre, Ministry of Electronics & Information Technology, *User Manual of Prison Management System (PMS)*, (26 August 2019), <https://eprisons.nic.in/downloads/ePrisonsUM.pdf> accessed 20 February 2024.

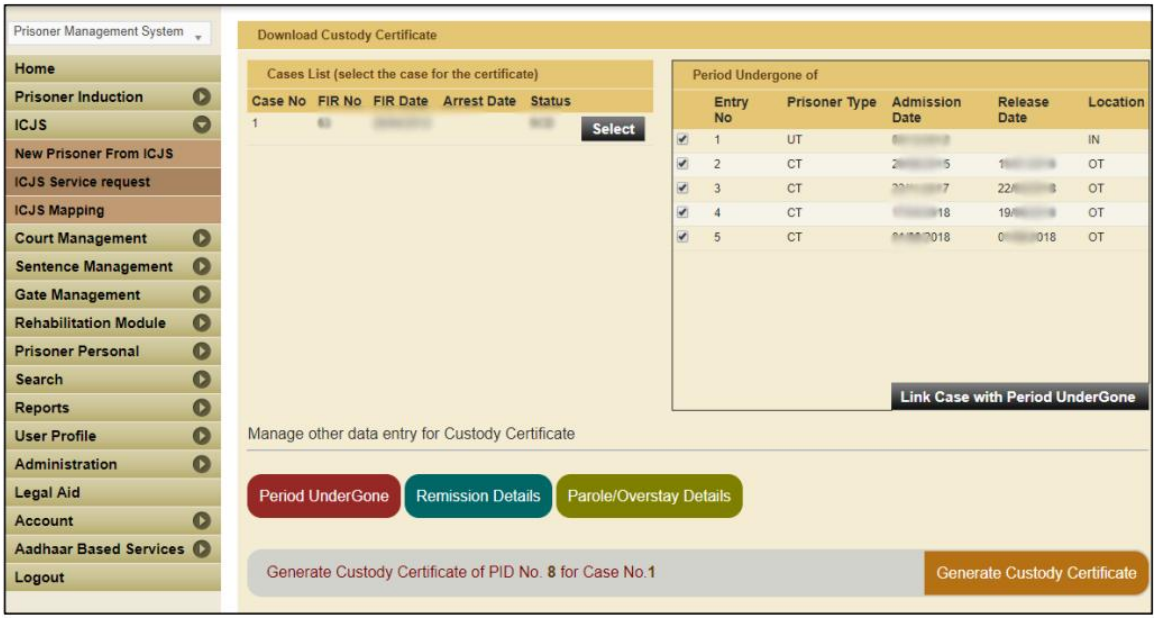


Fig 5.10 - Generating custody certificate in ICJS[991]

Haryana was the first State in India to start an online custody certificate system in prisons in 2017.[992] Likewise, Punjab & Haryana High Court in *Sodhi Ram v. State of Punjab*[993] directed the Prison Department of Punjab to initiate the process of activation of e-Custody Certificate module of e-Prisons on the pattern of Phoenix application of Haryana prisons, to provide correct and complete details of all the pending cases of convicts/undertrials. The Court observed that:

> *"It is also stated that sometimes* ***when an undertrial is admitted in jail and after sometime, he gets bail or gets an order of acquittal or undergone or order of undergoing sentence, the information regarding the acquittal is not made available to the Jail Authorities from the concerned Court*** *and therefore, the same could not be recorded in the jail record.*

[991] *Ibid.*
[992] 'Haryana begins roll-out of 'e-custody' system', *The Indian Express* (Chandigarh, 10 October 2024) <https://indianexpress.com/article/cities/chandigarh/haryana-begins-roll-out-of-e-custody-system-4882755/> accessed 20 March 2024.
[993] CRM-M No.6711 of 2021, Order dated 16 September 2021.

> *In terms of the affidavit of the Additional Director General of Police, Prisons Department, Punjab, it is* ***directed to initiate process of activation of e-Custody Certificate module of e-prisons*** *on the pattern of Phoenix application of Haryana prisons, in order to provide correct and complete details of all the pending cases of a convict/undertrial within a period of 01 month."*

Similarly, e-custody certificates should be activated in all the States to facilitate the courts of necessary details of the undertrial prisonsers and convicts without delay. In this regard, an SOP to request e-Custody Certificate for stakeholders within and outside the system may also be developed.

5.2.3 Integration of e-Prisons and CIS 4.0

ICJS aims to synchronise all the database platforms of agencies of the criminal justice systems. Earlier, the e-Prison API was not integrated with the court application of CIS. To facilitate this, the Supreme Court has launched CIS 4.0, the upgraded version of the Case Information System. As per information received from the Technology, Innovation and Planning Section of the Supreme Court, CIS 4.0 is under process to be rolled out in all the district courts which will be integrated with e-Prison API. The first target of CIS 4.0 is to have a centralised prisoner ID of a prisoner which will be used to fetch prisoner details anywhere across India.[994] The integration of e-Prison with CIS 4.0 will give the district courts access to essential information on pre-trial prisoners, under-trial prisoners, and convicts from the e-Prison database. The working of CIS 4.0 is shown below:

[994] As per information provided from the Registry, Supreme Court of India, as on 31 May 2024.

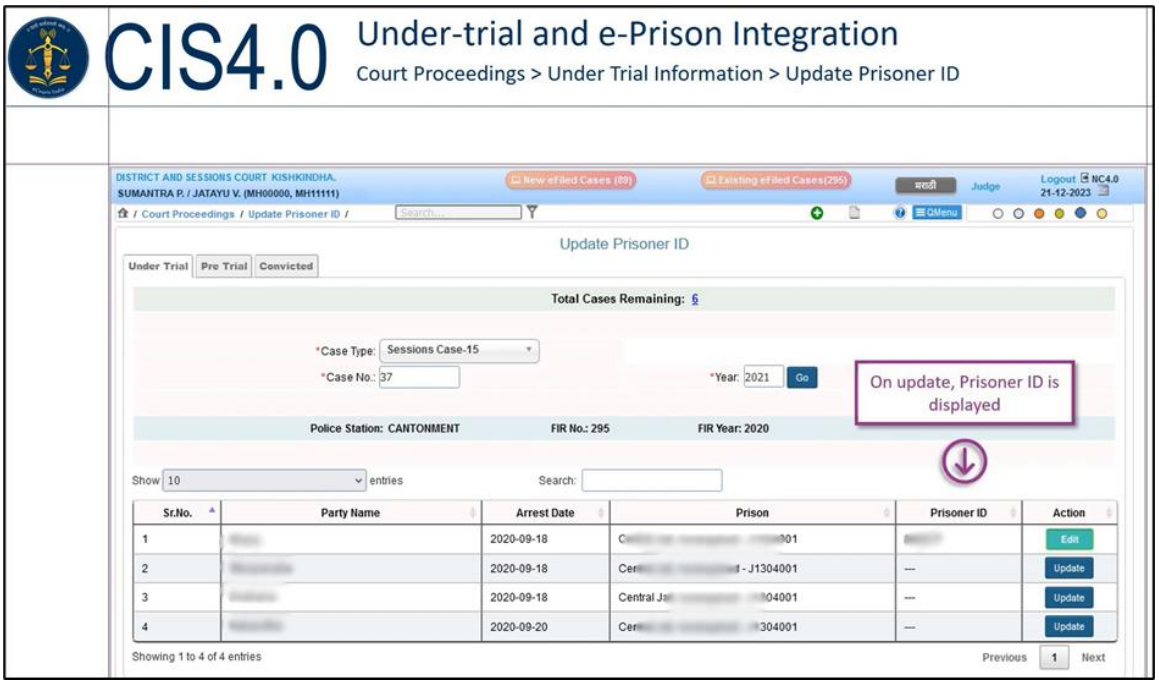


Fig 5.11 - Updating Prisoner ID on CIS 4.0[995]

[995] Ecourtstelangana, CIS 4.0 Under trial e Prison Integration <https://www.youtube.com/watch?v=9msTLkkeJCw&list=PLe9KZ5I7LPGYfWzGZfLv6BgKRGLH2ZMM4&index=6> accessed 29 May 2024.

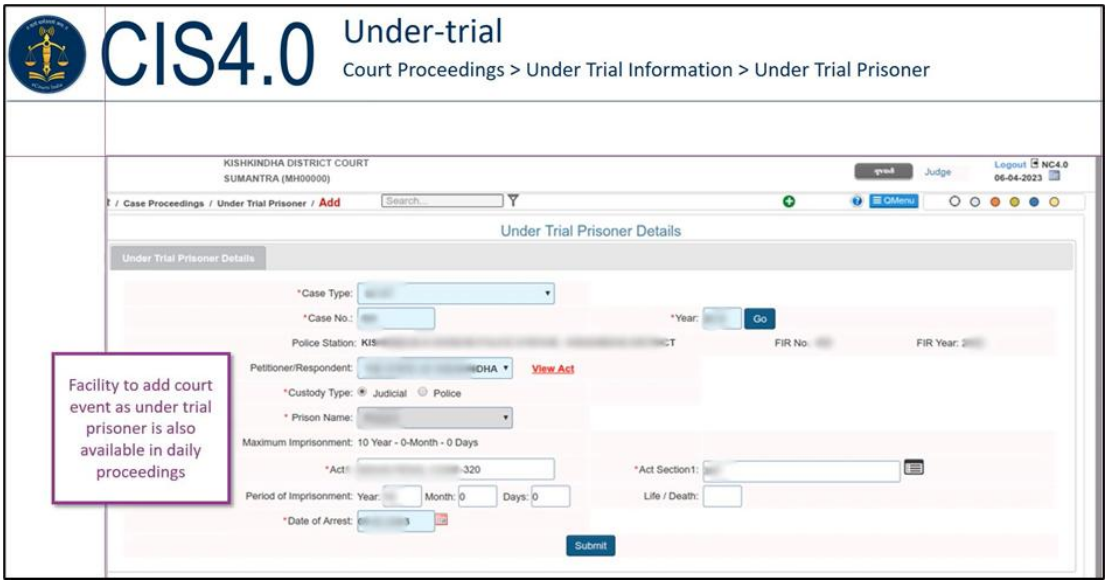


Fig 5.12 - UTP details as shown on CIS 4.0[996]

Figure 5.12 above shows that CIS 4.0 provides specific fields for the date of arrest, maximum imprisonment and period of imprisonment served by the UTP in a case. Based on this information, the system can generate alerts for the concerned trial court, LSAs and the UTRCs, which will assist the District Judiciary in ensuring that there is no prolonged detention of undertrial prisonsers. It will also save the time of UTRCs in identifying eligible prisoners for release.

For instance, a UTP who has served half of the maximum period of sentence will be eligible for being released under Section 436A CrPC. An alert reflecting in the CIS software as visible to the concerned court will help flag the case of the UTP enabling the judges to take appropriate action. Similarly, an alert can be pushed for courts if the chargesheet is not filed within 60 or 90 days, as the case may be and the UTP becomes eligible for default bail. Likewise, the CIS 4.0 also auto-fetches details of convicted persons serving sentence in prison.

[996] *Ibid.*

5.2.4 Challenges faced by prison authorities in using the e-Prison Module

The ICJS is currently in Phase III of the e-Courts Project[997] and the process of integration of CIS with the e-Prisons module is underway. This is the first time that the correctional infrastructure is moving towards digitising the prison administration. In response to the effective use of e-prisons software, the prison departments in India submitted various concerns, some of which are discussed hereunder.

The two major challenges faced by the prison departments are the non-updation of data regularly by the police and the lack of infrastructure and technical human resources.[998] For instance, as per the Prison Department of Chandigarh, many prisoners are brought to the prison by police officers without updating data in CCTNS.[999] Police officers, however, reported that they have updated the data, but the same is not updated on the ICJS portal.[1000] The Himachal Pradesh Prison Department also states that the data uploaded by the police stations is incomplete and data uploaded by the court is not getting properly fetched. Bihar Prison Department also submits that the e-Prison module is unable to fetch the data from CCTNS.[1001]

The Telangana and Chhattisgarh Prison Departments further submitted that there is a data gap with respect to the names of some of the police stations and Section Number of small offences like 107, 116, 151 of IPC respectively. The Odisha Prison Department also states that many police/excise/forest stations and court names are missing in the New Admission tab within the ICJS section of the e-Prison MIS software.[1002] For a comprehensive platform, e-Prisons should also add relevant fields for imprisonment related to civil cases, under special acts like Prevention of Money Laundering Act, 2002, Customs Act, 1962 and Forest

[997] eCommittee, Supreme Court of India, Vision document for Phase III of eCourts Project <https://ecommitteesci.gov.in/document/vision-document-for-phase-iii-of-ecourts-project/> accessed 3 July 2024.
[998] As per information received from prison departments.
[999] Crime and Criminal Tracking Network and Systems (CCTNS) aims to inter-link all police stations under a common application software for the purpose of investigation, data analytics, research, and providing citizen services, such as reporting & tracking of complaints, request for antecedent verifications by police.
[1000] As per information received from Chandigarh Prison Departments.
[1001] As per information received from Bihar Prison Department.
[1002] As per information received from Odisha Prison Department.

Act, 1927 and arrest by investigation agencies such as National Investigation Agency/Narcotics Control Bureau.[1003]

As per the Prison Department of Madhya Pradesh, due to lack of the option of additional case entry when more than one case is filed on a single person, case entry has to be done manually. Also, when a prisoner entry is done through ICJS and later, he is released on bail and comes to jail again in the same case, then after entering his details through ICJS, two entries of the same case start appearing. Non-linkage of the CNR number of the prisoner is also a common issue in some of the prison departments.[1004] Tamil Nadu Prison Department also faced similar difficulty in identifying the CNR and FIR number of prisoners.[1005]

Madhya Pradesh Prison Department also raised the concern of non-availability of interstate transfer facility on e-Prisons.[1006] The Odisha Prison Department further ventilated the concern of exclusion of numerous cases (excluding non-police records) from integration into the ICJS. Besides, interim order/bail orders before framing of charges are not made available on the e-prisons platform.[1007]

There is also a lack of ability to determine the total number of records integrated into the ICJS site for current inmates housed in jails, as the Prison Dashboard does not offer this provision.[1008] A persistent inconsistency exists between the inmate count displayed in the ICJS portal's Prison Dashboard and the current prison population figure in the e-Prison portal.[1009]

As per the Karnataka Prison Department, the NIC should develop parole and premature release modules as per State's specific requirements in e-prisons.[1010] The Odisha Prison Department further submitted that there is a need to incorporate a dedicated tab or provision

[1003] Demonstration of e-Prisons at Supreme Court of India.
[1004] As per information received from Madhya Pradesh Prison Department.
[1005] As per information received from Tamil Nadu Prison Department.
[1006] As per information received from Madhya Pradesh Prison Department.
[1007] As per information received from Odisha Prison Department.
[1008] *Ibid.*
[1009] *Ibid.*
[1010] Information received from Karnataka Prison Department.

within the e-Prison software to enable viewing of case information linked to the entered FIR details directly on the data entry screen. This would allow real-time validation of data accuracy during entry.[1011]

5.2.5 Utility of ICJS

Delay in communication of bail orders from courts to prison has been successfully resolved by the introduction of the FASTER system by the Supreme Court, wherein the bail orders are now sent electronically on the mail address of the nodal officer, ensuring the timely release of prisoners.[1012] Similarly, integration of e-Prisons with other platforms like CIS and CCTNS will not only streamline all the prisoner information, accessible by automatic retrieval by the concerned authorities but also reduce the delay caused due to physical correspondence of information.

While the rolling of CIS 4.0 is underway, there is a need for periodic audits and review meetings involving stakeholders from prisons, courts and police administration where challenges faced by the authorities can be addressed and resolved proactively.

In *Sonadhar v. State of Chhattisgarh,*[1013] the Karnataka SLSA informed the court that the e-Prison module has been implemented in all 52 prisons in Karnataka but the 'legal-aid information module' was not enabled in Karnataka prisons to categorise prisoners requiring legal-aid. In 2023, the Parliamentary Standing Committee on Home Affairs also acknowledged that all the modules under e-Prisons MIS have not been activated by all the State prison departments.[1014] It is therefore important that other sub-modules of the e-Prison software like the Legal-aid Information module, Hospital Management System are enabled in all the States.

[1011] Information received from Odisha Prison Department.
[1012] FASTER 2.0 has also been launched by the Supreme Court on the Constitution Day 2023. See Supreme Court Chronicle, Issue II, Constitution Day Edition, December 2023 <https://main.sci.gov.in/Chronicle/chronicle-report/dec_2023_Supreme_Court_Chronicle_Newsletter.pdf> accessed 2 June 2024.
[1013] Petition(s) for Special Leave to Appeal (Crl.) No(s). 529/2021, Order dated 29 November 2022, ¶ 6.
[1014] Department-Related Parliamentary Standing Committee on Home Affairs, *Prison – Conditions, Infrastructure and Reforms* (Report No. 245, 2023) <https://Sansad.In/GetFile/rsnew/Committee_site/Committee_File/ReportFile/15/188/245_2023_9_12.pdf?source=rajyasabha> accessed 10 May 2024.

The usefulness of any kind of database is dependent upon its real-time updation and upgradation, keeping abreast with the technical and legal developments in society and seamless access of such information to the concerned legal authorities. Odisha Prison Department also suggested that for seamless integration, data updation on CCTNS to e-Prisons must be real time to prevent data duplicacy/misspellings/erroneous data entry.[1015]

For better facilitation of data exchange and integration with other software, any shortfall of infrastructure and technical personnel like trained data entry operators (DEOs) must be timely addressed by the State Governments. To address the problem of inadequate technical assistants/DEOs to implement e-prisons, the Parliamentary Standing Committee on Home Affairs recommended that:[1016]

> *"...the respective State/UT Governments may recruit persons for such posts on regular basis or services of technical assistants/DEOs may be obtained by outsourcing the requirement or the undergraduate students from courses like criminology/forensics may be taken as interns to inter alia provide such services."*

The attention of the Supreme Court was also invited to similar concerns in the implementation of the e-Prison module in *Re Policy Strategy for Grant of Bail* which is *sub-judice*:[1017]

> *"(i) Deployment of dedicated manpower for data entry at the prisons*
> *(ii) State Authorities may be requested to formulate policy for imparting* ***regular training in order to avoid disruption in carrying out the data entry service***
> *(iii) The Trial Courts may provide unique IDs [Pre Trial Number IR CNR Number] while communicating with the prison authorities."*

[1015] As per Information received from Odisha Prison Department.
[1016] Department-Related Parliamentary Standing Committee on Home Affairs, *Prison – Conditions, Infrastructure and Reforms* (Report No. 245, 2023) <https://Sansad.In/GetFile/rsnew/Committee_site/Committee_File/ReportFile/15/188/245_2023_9_12.pdf?source=rajyasabha> accessed 10 May 2024.
[1017] Suo Motu Writ Petition (Crl.) No. 4/2021, dated 25 July 2023.

In matters of liberty, undue delay of even a single day would violate the Constitutional principles. The alerting system of ICJS with the integration of e-Prisons with CCTNS and CIS can create a seamless and automatic channel between the courts, police and prisons and set accountability of officers for unjustified delay in custody cases.

There is also a need to develop a check mechanism where a data expert certifies the information entered and updated to ensure authenticity, eliminate errors and assign accountability at all levels, especially prisons. The success of ICJS depends upon handshaking between the various stakeholders to ensure secure and reliable data exchange.

WAY FORWARD

- The most important aspect of any legal regime and access to justice is the ready availability of the laws. There is a need for all the prison departments and concerned authorities to ensure that the up-to-date State prison manuals are available on their official websites.

- In light of the *Sukanya Shantha* judgement, there is a need to revise prison legislations/policy with respect to following issues -
  i. Replacing stereotypical terminology like "*menial*" and "*degrading*" associated with certain types of work, particularly sanitation and conservancy services with dignified language like "essential institutional services".
  ii. Ensuring that there are no provisions in the prison manuals which foster discrimination on the basis of caste, social status or gender. There is also a need to have a rotational/roster system for allocation of prison tasks so that there is no discrimination on the basis of socio-economic identities of the prisoner.
  iii. The stigmatising terminology of '*condemned prisoners*' used for death sentenced prisoners who have not exhausted all legal remedies may be done away with in the prison manuals. The manuals should also have a clear letter of law to ensure that prisoners sentenced to death are treated like any other convicted prisoner and are not kept in any kind of solitary confinement in light of *Sunil Batra v. Delhi Administration* case.
  iv. All caste-based terminology must be replaced and al prisons manuals must be revised accordingly.

- In light of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, manual scavenging and dry/insanitary latrines should be expressly prohibited in prisons and correctional institutions and prisoners should be provided the requisite equipment for maintaining hygiene and cleanliness in prisons.
- In line with the MPM 2016, the States must also review and revise prisoner's wage every three years to ensure that reasonable compensation is given to the prisoners.

- There is also a need to update the initial health screening proforma in the MPM to include proper mental health diagnosis and signature of the psychologist. States must also ensure that all medical officers in prisons are trained in basic and emergency mental healthcare.
- Along with the need to have de-addiction centres in prisons, courts in tandem with prisons must also encourage the use of Section 64A of the NDPS Act, 1985 which provides for immunity from prosecution for volunteering for treatment at a de-addiction centre.
- With respect to open and semi-open prisons in India, there is a need to relax the eligibility criteria for being admitted to such prisons to make a dent in congestion in closed jails. Further, there should at least be one post of probation officer and welfare officer in all the district prisons & correctional homes. All the States must also constitute the Discharged Prisoner After-care and Rehabilitation Committee and undertake concerted efforts to have a 'follow-up action/service' for released prisoners, as part of the after-care regime.
- There is a need for the States to effectively implement the MHA scheme designed to assist eligible poor prisoners who are unable to furnish bail bonds or pay fines. The process may be digitised to curb any unnecessary delay in communication.
- There is a need for adequate strength and representation of panel lawyers from marginalised communities, women and transgenders to effectuate proper representation of all prisoners. LSAs must also foster a culture of pro bono service among senior advocates, and impart effective training for legal aid personnel. The infrastructural bottlenecks in the legal aid institutions and legal aid clinics in prisons should also be identified and remedied by the concerned authorities.
- District Courts must be encouraged and trained to use the triple method of plea bargaining, compounding and Probation of Offenders Act 1958 and also use video conferencing and court technology like NSTEP to ensure a speedy and unhindered trial procedure. For the use of the newly added punishment of community service in BNS 2023, there is a need to devise an efficient monitoring mechanism and defined rules in place.

- Cases of undertrial prisoners can be marked as ‘URGENT CASES’ for the judges to prioritise them. Video conferencing can also be utilised particularly in case of recording evidence of official witnesses, where appropriate. Further, for procuring the presence of official witnesses at the stage of evidence, there may be a dedicated portal for witnesses who are involved in government services.
- State Governments must take proactive steps to fill the vacancies in SFSLs and correctional personnel in prisons.
- There is a need for real time data updation on various platforms of ICJS to ensure the success of e-Prisons. A check mechanism may also be developed where a data expert certifies the information entered and updated in order to ensure authenticity, eliminate errors and assign accountability at all levels, especially prisons.

ANNEXURES

A. Annual Family Income of Prisoners in 2023[1018]

S. No.	States & UTs	Upto Rs. 30,000 (inclusive)	Rs. 30,000 to ≤ Rs. 1 lakh	Rs. 1 lakh to ≤ Rs. 10 lakhs	More than Rs. 10 lakhs
1	Andaman & Nicobar Islands	311	29	1	0
2	Andhra Pradesh	NA	NA	NA	NA
3	Arunachal Pradesh	NA	NA	NA	NA
4	Assam	NA	NA	NA	NA
5	Bihar	NA	NA	NA	NA
6	Chandigarh	NA	NA	NA	NA
7	Chhattisgarh	1,289	2,220	1,737	71
8	Delhi	2,888	3,709	4,218	172
9	Dadra & Nagar Haveli and Daman & Diu	51	23	50	2
10	Goa	140	155	200	79
11	Gujarat	0	0	0	0
12	Haryana	0	0	0	0
13	Himachal Pradesh	714	1,089	641	98

[1018] As per information received from prison departments, as on 31st December 2023. *Note:* Prison departments of Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chandigarh, Gujarat, Haryana, Karnataka, Kerala, Ladakh, Lakshadweep, Tamil Nadu, and Tripura do not maintain such data.

14	Jammu & Kashmir	1,853	1,327	729	47
15	Jharkhand	5,321	9,094	3,416	419
16	Karnataka	NA	NA	NA	NA
17	Kerala	NA	NA	NA	NA
18	Ladakh	NA	NA	NA	NA
19	Lakshadweep	NA	NA	NA	NA
20	Madhya Pradesh	16,950	16,464	9,566	422
21	Maharashtra	1,645	2,129	842	128
22	Manipur	350	98	61	10
23	Meghalaya	494	610	125	19
24	Mizoram	348	1,483	177	19
25	Nagaland	247	105	30	0
26	Odisha	1,461	1,590	341	6
27	Puducherry	18	180	168	51
28	Punjab	11,705	12,766	5,803	307
29	Rajasthan	1,820	2,616	1,524	13
30	Sikkim	146	106	6	0
31	Tamil Nadu	0	0	0	0
32	Telangana	1,213	1,147	1,135	118
33	Tripura	0	0	0	0
34	Uttar Pradesh	4,653	5,592	5,876	234
35	Uttarakhand	873	1,586	1,324	231
36	West Bengal	15,751	7,790	1,113	130
TOTAL		**70,241**	**71,908**	**39,083**	**2,576**

B. <u>Comparison of Prisoner's daily Wage (PW) with the Lowest Minimum Wage in the State (MW)</u>[1019]

S. No.	States/UTs	PW			MW			Comparison between MW and PW (unskilled)
		Skilled	Semi-skilled	Unskilled	Skilled	Semi-skilled	Unskilled	
1	Andhra Pradesh[1020]	200	180	160	461.85	445.85	425.9	3 times
2	Arunachal Pradesh[1021]	75	-	55	220	210	200	4 times
3	Assam[1022]	M-75 F-100	-	M-55 F-80	474.6	379.7	326.7	6 times
4	Bihar[1023]	156	112	103	519	426	410	4 times
5	Chhattisgarh[1024]	75	-	60	384.3	358.3	336.7	6 times

[1019] PW has been taken from Prison Statistics India, 2022, NCRB, MHA, Government of India. *<u>Note 1</u>*: For ease of analysis, the publicly available lowest minimum wage in the category of unskilled labour as on 1 April 2024 has been used for the purpose of comparison with the daily prisoner's wage as applicable to respective States. *<u>Note 2</u>:* Piece rate workers have been excluded. *<u>Note 3</u>*: The ratio has been rounded off.

[1020] Department, Government of Andhra Pradesh, Notification No. G/466/2023 (29 September 2023) <https://labourlawreporter.com/minimum-wages-andhra-pradesh/> accessed 7 June 2024.

[1021] Department of Labour and Employment, Government of Arunachal Pradesh, Notification No. LAB (MW) - 22/2016(1 July 2016) <https://labourlawreporter.com/minimum-wages-arunachal-pradesh/> accessed 7 June 2024.

[1022] Labour Welfare Department, Government of Assam, Notification No E-238621/409, Labour & Welfare Department (24 November 2023) <https://labourcommissioner.assam.gov.in/sites/default/files/public_utility/MINIMUM%20WAGE%2098%20schedule.pdf> accessed 5 June 2024.

[1023] Government of Bihar, Notification 1496-1497 dated 01.04.2024 of 69 Scheduled Employments <https://state.bihar.gov.in/labour/cache/40/07-Jun-24/SHOW_DOCS/1496-1497.pdf> accessed 7 June 2024.

[1024] Government of Chhattisgarh, Notification No. 2023/6465(25 September 2023) <https://labourlawreporter.com/minimum-wages-chhattisgarh/> accessed 7 June 2024.

6	Delhi[1025]	308	248	194	816	742	673	3 times
7	Goa[1026]	80	60	50	523	468	407	8 times
8	Gujarat[1027]	100	80	70	462	452	441	6 times
9	Haryana[1028]	100	90	80	486.4	441.2	420.2	5 times
10	Himachal Pradesh[1029]	-	-	350	435	398	375	At par
11	J & K[1030]	72	-	60	483.	400	311	5 times
12	Jharkhand[1031]	144	113	91	560	425	405	4 times

[1025] Labour Department, Government of NCT of Delhi, Notification No. F. No.(142)/02/MW/VII/Part file/ 5206-5224(23 October 2023)
< https://labour.delhi.gov.in/labour/current-minimum-wage-rate> accessed 7 June 2024.
[1026] Department of Labour, Government of Goa, Notification 24/21/2009-LAB-III/(01)/551 (11 August 2023 <https://goaprintingpress.gov.in/downloads/2324/2324-19-SI-EOG-2.pdf> accessed 7 June 2024.
[1027] Labour, Skill Development and Employment Department, Government of Gujarat, Notification No. KHR/2023/28/LVD/10/2022/18/M2(27 March 2023)
<https://col.gujarat.gov.in/Portal/News/998_3_minimum_wages_46_Schedule_Employment_27.03.2023.pdf> accessed 7 June 2024.
[1028] Labour Department, Government of Haryana, Notification No. IR-2/2024/5377-522(22 February 2024) <https://labourlawreporter.com/minimum-wages-haryana/> accessed 7 June 2024.
[1029] Government of Himachal Pradesh, Notification No. Shram (A)4-2/2018-P-II (7 July 2023), <https://himachal.nic.in/showfile.php?lang=1&dpt_id=14&level=2&lid=23841&sublinkid=24361> accessed 7 June 2024.
[1030] Labour and Employment Department, Government of Jammu and Kashmir, Notification No. S.O. 513(12 October 2022), <https://rgp.jk.gov.in/pdf/SRO/SRO-2022/S.%20O.%20%20513%20%202022%20%20%20PDF.pdf> accessed 7 June 2024.
[1031] Government of Jharkhand, Notification No. 540-531 (11 March 2024), <https://shramadhan.jharkhand.gov.in/ftp/WebAdmin/documents/Revised-minimum-wages-11.03.2024-Gazette.pdf> accessed 7 June 2024.

13	Karnataka[1032]	615	548	524			414.5	At par
14	Kerala[1033]	152	127	63	-	-	300	5 times
15	Madhya Pradesh[1034]	120	-	72	-	-	317	4 times
16	Maharashtra[1035]	67	61	48	-	-	331	7 times
17	Manipur[1036]	50	40	30	273	248	225	8 times
18	Meghalaya[1037]	148.4	140.7	132.3	509	455	402	3 times
19	Mizoram[1038]	30	24	20	460	420	380	19 times

[1032] Government of Karnataka, Notification No. KAE 1 LWA 20223 dated 17 January 2023 (75-Tailoring Industry) <https://karmikaspandana.karnataka.gov.in/storage/pdf-files/minimum%20wages/75%20Garments.pdf> accessed on 7 June 2024.

[1033] Labour and Skill Department, Government of Kerala, Notification No. G.O. (P) No. 10/2022/LBR, S.No. 3 (22 February 2022) <https://document.kerala.gov.in/deptdocumentdetails/en/ekw0bU5IRnJ5M2J0VUMvd1VrYVpGUT09/dStDWmtodHJsR3VKd3phb1ljeC9ZZz09> accessed 12 June 2024.

[1034]Government of Madhya Pradesh, Notification No. 1/11/ अन्वे./पांच/2024 [8621-870], (13 March 2024), <https://labour.mponline.gov.in/Portal/Services/Shram/DMS/Citizen/Display_Documents.aspx?Sid=8> accessed 7 June 2024.

[1035] Government of Maharashtra, Notification क्र.ग्रा.वि./कि.वे.अ/वि.भ./2023(1)/कार्या-10/, (1 February 2023) <https://www.datocms-assets.com/40521/1679111491-maharashtra-min-wages-mumbai-thane-pune-2023.pdf> accessed on 7 June 2024.

[1036] Labour and Employment Department, Government of Manipur, Notification No. 5/289/91-Lab (Pt-1), (27 December 2016), <https://labourlawreporter.com/minimum-wages-manipur/> accessed 7 June 2024.

[1037] Labour Department, Government of Meghalaya, Notification No. LBG. 9/2023/13 (27 November 2023), <https://meglc.gov.in/notification/Notification_Minimum_Wages_27_11_2023.pdf> accessed 7 June 2024.

[1038] Labour, Employment, Skill Dev. & Entrepreneurship Department, Government of Mizoram, Notification No. B 14015/4/2010-LESDE/417 (16 June 2023), <https://lesde.mizoram.gov.in/uploads/attachments/2023/06/28bebbcff8ade4a003176700eacc5472/posts-95-minimum-wages-rate-revised-2023.pdf> accessed 7 June 2024.

20	Nagaland[1039]	135	125	115	235	210	176	2 times
21	Odisha[1040]	145	115	95	550	500	450	4 times
22	Punjab[1041]	60	50	40	477.4	442.9	412.9	10 times
23	Rajasthan[1042]	180	-	156	309	297	285	2 times
24	Sikkim[1043]	40	30	30	535	520	500	17 times
25	Tamil Nadu[1044]	200	180	160	250	220	190	At par
26	Telangana[1045]	70	50	30	-	-	322	10 times

[1039] Labour Department, Government of Nagaland, Notification No. LAB- 1/6/2004/ (Pt. II) (14 June 2019) <https://labour.nagaland.gov.in/wp-content/uploads/2019/07/revision-of-minimum-rates-of-wages.pdf> accessed 7 June 2024.

[1040] Office of The Labour Commissioner, Government of Odisha, Notification No. 6158/ LC, Bhubaneswar (4 October 2023) <https://labourdirectorate.odisha.gov.in/sites/default/files/2023-10/DOC-20231004-WA0014..pdf> accessed 7 June 2024.

[1041] Office of The Labour Commissioner, Government of Punjab, Notification No. ST/2027 (13 October 2023) <https://pblabour.gov.in/pbLabourStaticSiteAdmin/uploads/eb7ab788-74f4-4b4c-89c9-e42bf562e5cd_Minimum%20Wages%20w.%20e.%20f.%2001-09-2023%20in%20English.pdf> accessed 7 June 2024.

[1042] Government of Rajasthan, Notification सांखया एफ.8.(1)वीड़ीए/न्य.म/श्रम/2000/पार्ट-1/25066 (06.10.2023), <https://labour.rajasthan.gov.in/Notification.aspx> accessed 7 June 2024.

[1043] Labour Department, Government of Sikkim, Notification No. 29/DL, dated 14 September, 2022 <https://labour.sikkim.gov.in/Uploads/AllFiles/127.pdf> accessed 7 June 2024.

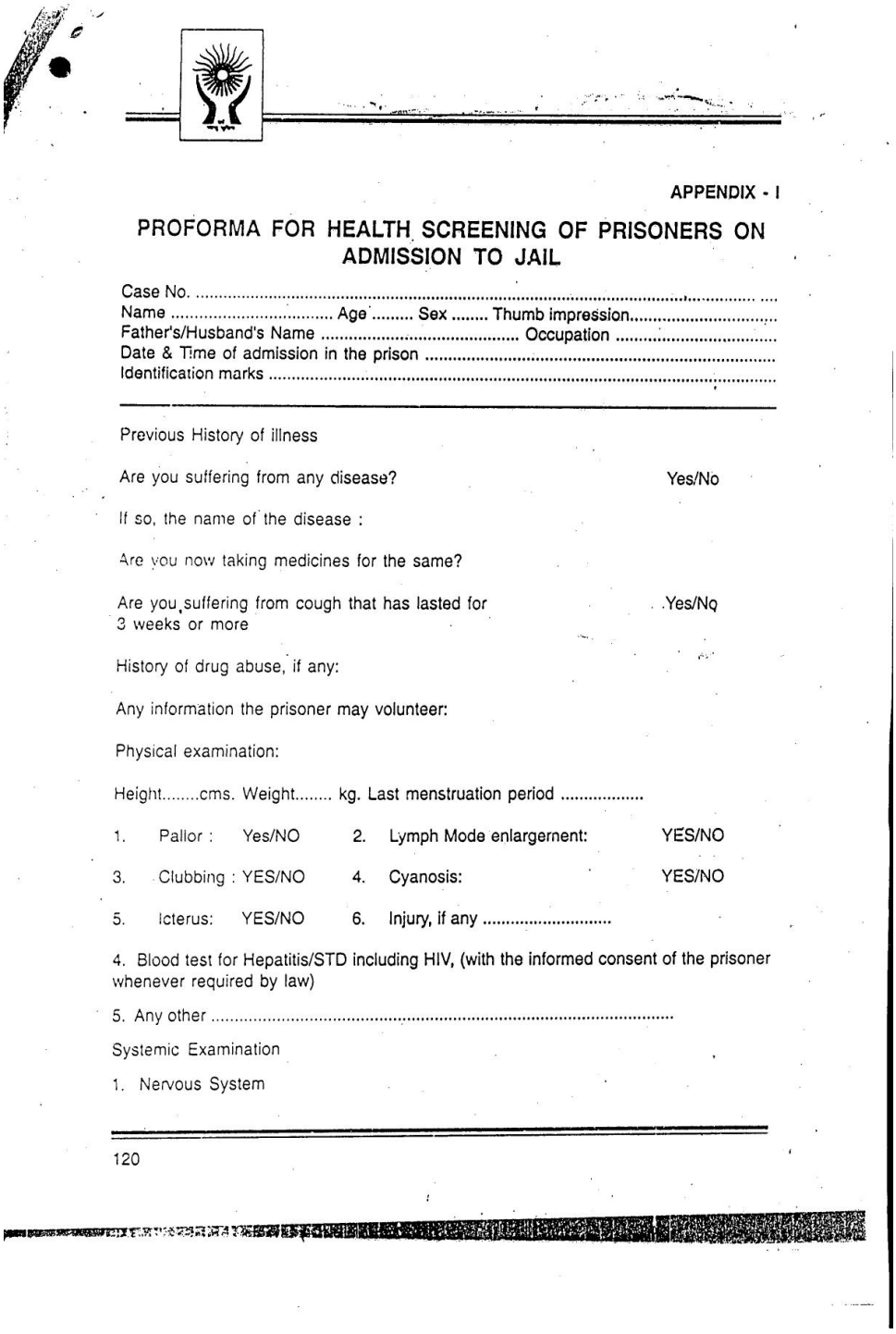
[1044] Notification No. G.O. (D) No. 45, dated 18 June 2023 <https://cms.tn.gov.in/sites/default/files/go/labemp_e_45_2023.pdf> accessed 7 June 2024.

[1045] Government of Telangana, Notification No. G.O.Rt. No.95 (29 January 2024) <https://labour.telangana.gov.in/minimumWagesDraft.do> accessed 7 June 2024.

27	Tripura[1046]	49.50	42	36	-	-	176	5 times
28	Uttar Pradesh[1047]	40	30	25	487	435	395	16 times
29	Uttarakhand[1048]	67	52	44	-	-	281.3	6 times
30	West Bengal[1049]	100	90	80	377	343	312	4 times
31	Andaman & Nicobar[1050]	110	-	87	832	709	628	7 times
32	Puducherry[1051]	180	160	150	298	287.3	276.8	2 times
33	Chandigarh[1052]	110	100	90	543	531	525	6 times

[1046] Labour Department, Government of Tripura, Notification No. F. 22(15)-LAB/TEA/MWI91/36-66(04 January 2018) <https://labour.tripura.gov.in/sites/default/files/2024-05/Revised%20Minimum%20Wages%20of%20Tea%20Plantations.pdf> accessed 7 June 2024.
[1047] Government of Uttar Pradesh, Notification No. 1013-20(29 September 2023) <https://labourlawreporter.com/minimum-wages-uttar-pradesh/> accessed 7 June 2024.
[1048] Government of Uttarakhand, Notification No. 329/VIII/19-228(Labour)/2001-Part-II, dated 8 March 2019 <https://labour.uk.gov.in/files/329(1)-Eet_se_related.PDF> accessed 7 June 2024.
[1049] Office of The Labour Commissioner, Government of West Bengal, Notification No: 44/Stat/14/RW/24/2023/LCS/JLC (12 December 2023), <https://lc.wb.gov.in/sites/default/files/upload/min_wages/january-2024/4%20Circular_16%20emps_WB%20Zone_12.pdf> accessed 7 June 2024.
[1050] Office of The Labour Commissioner, Directorate Of Employment & Training, Andaman and Nicobar Administration, Notification No.133/2023/F.No.16/1/MW/2019-20/LC&DET,(27 December 2023), <https://labour.and.nic.in/webPages/pdf/MW_Jan2024.pdf> accessed 7 June 2024.
[1051] Labour Department, Government of Puducherry, Notification No. G.O.Ms.No. /AIL/Lab/G/2018 Puducherry, the READ: I.D.No. 1002/Lab/AIL/G/2018 (12 September 2018) <https://labour.py.gov.in/sites/default/files/lrdminimumwagesfoot-wear-industry.pdf> accessed 7 June 2024.
[1052] Labour Commissioner, Union Territory of Chandigarh, Notification No. ST/(CPI)/2023-24/679 (06 March 2024), <https://chandigarh.gov.in/sites/default/files/updation2024/lab24-mw-oct23to310324.pdf> accessed 7 June 2024.

C. NHRC Proforma for Health Screening of Prisoners on Admission to Jail[1053]



APPENDIX - I

PROFORMA FOR HEALTH SCREENING OF PRISONERS ON ADMISSION TO JAIL

Case No. .....
Name ..... Age ..... Sex ..... Thumb impression.....
Father's/Husband's Name ..... Occupation .....
Date & Time of admission in the prison .....
Identification marks .....

Previous History of illness

Are you suffering from any disease? Yes/No

If so, the name of the disease :

Are you now taking medicines for the same?

Are you suffering from cough that has lasted for 3 weeks or more Yes/No

History of drug abuse, if any:

Any information the prisoner may volunteer:

Physical examination:

Height.....cms. Weight..... kg. Last menstruation period .....

1. Pallor : Yes/NO 2. Lymph Mode enlargernent: YES/NO
3. Clubbing : YES/NO 4. Cyanosis: YES/NO
5. Icterus: YES/NO 6. Injury, if any .....

4. Blood test for Hepatitis/STD including HIV, (with the informed consent of the prisoner whenever required by law)

5. Any other .....

Systemic Examination

1. Nervous System

120

[1053] Proforma as received from NHRC, D.O. No. 4/7/2010 PRP&P, NHRC; also available at <https://nhrc.nic.in/sites/default/files/Medical%20Examination%20of%20Prisoners%20on%20Admission%20to%20Jail.pdf> accessed 1 July 2024.

2 Cardio Vascular System

3. Respiratory System

4. Eye, ENT

5. Gastro Intestinal system abdomen

6. Teeth & Gum

7. Urinal System

The medical examination and investigations were conducted with the consent of the prisoner after explaining to him/her that it was necessary for diagnosis and treatment of the disease from which he/she may be suffering.

Date of commencement of medical investigation

Date of completion of medical investigation

Medical Officer

D. Number of Prisoners with Mental Illness[1054]

S. No.	States/UTs	No. of prisoners with mental illness
1	Andaman & Nicobar	18
2	Andhra Pradesh	366
3	Arunachal Pradesh	7
4	Assam	383
5	Bihar	388
6	Chandigarh	0
7	Chhattisgarh	389
8	Delhi	1,215
9	Dadra & Nagar Haveli and Daman & Diu	1
10	Goa	75
11	Gujarat	412
12	Haryana	610
13	Himachal Pradesh	185
14	Jammu & Kashmir	162
15	Jharkhand	373
16	Karnataka	968
17	Kerala	1,396
18	Ladakh	0
19	Lakshadweep	0
20	Madhya Pradesh	717
21	Maharashtra	990

[1054] As per information received from the prison departments, as on 31 December 2023.

22	Manipur	100
23	Meghalaya	49
24	Mizoram	2
25	Nagaland	2
26	Odisha	912
27	Puducherry	0
28	Punjab	3,485
29	Rajasthan	432
30	Sikkim	14
31	Tamil Nadu	435
32	Telangana	237
33	Tripura	42
34	Uttar Pradesh	1,182
35	Uttarakhand	429
36	West Bengal	527
TOTAL		**16,503**

E. Open Prisons in India[1055]

S. No.	States/UTs	Eligibility	No. of escapees in Open Prisons [1056]
1.	Andhra Pradesh[1057]	1. Aged between 21 to 55 years without any history of diseases which may be aggravated in open conditions.[1058] 2. Resident of Andhra Pradesh. 3. Casual and star class prisoners 4. Should have good family ties. 5. Undergone some period of imprisonment in a closed prison and should not have ordinarily more than 5 years to serve. 6. Should not be a superior class prisoner.	0
2.	Assam[1059]	1. Within the age of 21 to 60 years. 2. Prisoners who are permanent residents of the State of Assam shall be preferred. 3. A and B Division convicts, female convicts and convicts sentenced to simple imprisonment are not eligible to be transferred to open prison. 4. Non-habitual convicted prisoners whose term	0

[1055] As per the respective prison manuals of the States/UTs and information received from prisons departments. *Note* - The eligibility criteria covered here is only on the basis of gender, age, marital status, minimum sentence, and the portion of the sentence served. Hence, it is not exhaustive.
[1056] National Crime Records Bureau, Prison Statistics India 2022 (Ministry of Home Affairs 2023).
[1057] Andhra Pradesh Prison Rules 1979, Rule 1089.
[1058] Andhra Pradesh prison rules 1979, Rule 1089, however as per information received from the Andhra Pradesh Prison Department, the eligible age is 21 to 60 years.
[1059] The Assam Superintendence and Management of Jails (Supplementary Provisions) Rules 1968, Rule 5.

		of imprisonment is five years or more, who have served at least one-third of the period of sentence with remission, and have at least one year of unexpired portion of sentence on the date of admission to the colony. IGP, however, in exceptional cases, may consider even cases of non-habitual convicted prisoners whose term of imprisonment is 3 years.	
3.	Bihar[1060]	1. Not below the age of 30 years. 2. Ordinary place of residence is inside of Bihar. 3. Served at least one half of his substantial sentence, excluding remission. In case the prisoner is convicted to life imprisonment then at least 10 years in jail, excluding remission. This requirement may be relaxed for prisoners above 60 years of age or prisoners with terminal diseases. 4. He has been sentenced for not less than 6 years. 5. Habitual offender with more than 1 previous convictions of imprisonment to his credit.	1
4.	Gujarat[1061]	1. For prisoners sentenced to life imprisonment he should have completed an actual term of 3 years. 2. For prisoners other than those sentenced to	–

[1060]Bihar Open Prison Rules 2008, Rules 3 and 4.
[1061] Gujarat Open Prison Rules 1972. See Gujarat Open Prison (First Amendment) Rules 1975, Rule 2.

		life imprisonment, he should have undergone at least ¼ (one fourth) of the actual imprisonment of his total sentence. 3. Habitual offenders are ineligible.	
5.	Himachal Pradesh[1062]	1. All convicts belonging to Himachal Pradesh and convicts belonging to other Union Territories/States may be considered. 2. All convicts excepting habitual and those convicted for heinous offences, provided that a casual convict has still to undergo an unexpired sentence of at least 4 months at the time of his admission to Open Air Jail. 3. Habitual prisoners, provided they do not have more than one previous convictions except in the case of convicts under Section 109 CrPC. 4. Convicts under Section 302 and 304 IPC provided that they have undergone at least 8 years of their sentence including remission. 5. Convicts sentenced for forgery and poisoning provided they have completed at least 1/4th of sentence. 6. Prisoners convicted for up to 5 years on completion of 3 years of sentence subject to maintaining good behaviour 7. Prisoners convicted for 10 years sentence on completion of 6 years sentence subject to maintaining good behaviour 8. The prisoner should not have been involved in any kind of Jail offence/crime from the last 4	3

[1062] Himachal Pradesh Prison Manual 2021, Rules 23.02 and 23.03.

		years. 9. Prisoner should have surrendered in time from parole. 10. Convicts sentenced under provisions of the Special Power Act or offences connected with Political Agitation/Movement.	
6.	Karnataka[1063]	1. Prisoners sentenced to terms of imprisonment of five years or more and have undergone 1/4th of sentence excluding remission. 2. Prisoners sentenced to imprisonment for life and who have undergone five years of sentence excluding remission. 3. Class 1 prisoners, prisoners convicted under political movement or any Special Act, habitual prisoners, and prisoners who are awarded major punishments for prison offences; are ineligible.	0
7.	Kerala[1064]	1. WeIl behaved 'C' Class male prisoners sentenced to imprisonment for 3 years and above, preference being given to those sentenced for longer periods, if those sentenced to three years have served one year of the actual sentence and those sentenced to more than three years have served three years of actual sentence.	3
8.	Madhya	1. Women prisoners are ineligible. 2. Is sentenced to imprisonment for seven years	0

[1063] The Karnataka Prisons And Correctional Services Manual 2021, Rule 957.
[1064] Kerala Prison Rules 1958, Rule 3A.

	Pradesh[1065]	or more and has served ⅔ (two third) of the sentence with remission on the date of his selection. 3. Those who are sentenced to life imprisonment and who have served 14 years of imprisonment with remission on the date of his selection. 4. Who, on the date of selection have been adjudicated with major punishment for two or more jail offences, during the last two years are ineligible. 5. Habitual prisoners are ineligible.	
9.	Maharashtra[1066]	1. Class 1 prisoners, habitual prisoners classified by courts, and women prisoners shall not normally be sent for confinement in an open prison. 2. Sentenced to terms of imprisonment of one year or more and have undergone one year or half of their sentence. whichever is less excluding remissions but inclusive of set-off period.[1067] 3. Sentenced to imprisonment for life or more than fourteen years in the aggregate and who have undergone five years of the sentence excluding remission.[1068] 4. Prisoners who are awarded three or more	32

[1065] Open Prison Rules 2009, Rule 5.
[1066] Maharashtra Open Prisons Rules 1971, Rule 4.
[1067] Maharashtra Open Prisons (Amendment) Rules 2015.
[1068] Maharashtra Open Prisons (Amendment) Rules 2015.

		major punishments for prison offences during the last two years, prior to the date of selection are ineligible.[1069]	
10.	Odisha[1070]	1. Aged between 30 to 60 years. 2. Prisoners who are unmarried, habitual offenders and female prisoners are ineligible. 3. All life convicts, who have completed 7 years of conviction, excluding remission, having agricultural background or knowledge of any industry, craft or other technical education. 4. Prisoners whose ordinary place of residence is outside the State of Odisha are ineligible. 5. Who have availed parole or furlough leave at least once without breach of condition. 6. Terminal (short term) convicts who have completed one year or half of the sentence, whichever is more.	1
11.	Punjab[1071]	1. Aged between 21 to 50 years without any history of a disease which may be aggravated in the Open Air Jail. 2. Does not have more than one previous conviction. 3. Sentenced to rigorous imprisonment for a period of not less than 1 year or is a prisoner sentenced to simple imprisonment but elects to do labour and in either case, and *inter alia* also fulfils the following conditions:	3

[1069] Maharashtra Open Prisons Rules 1971, Section 4(ii)(c).
[1070] Odisha Model Jail Manual 2020, Rule 844.
[1071] Punjab Open Air Jails Rules 1978, Rule 3.

		(a) If sentenced for a period of not more than 7 years, he has undergone 1/5th of the substantive sentence; (b) If sentenced to more than 7 years or sentenced to life imprisonment, he has undergone 1/4th of the substantive sentence.	
12.	Rajasthan[1072]	1. Aged between 25 to 60 years of age. 2. Prisoners who are married. 3. Prisoners having ordinary place of residence in Rajasthan. 4. Prisoners who have fixed abode in Rajasthan. 5. Served 1/3rd of the substantive sentence including remission. 6. Prisoners who have been sentenced to less than five years imprisonment are ineligible. 7. Prisoners convicted for vagrancy are ineligible.	42
13.	Tamil Nadu[1073]	1. Aged between 21 to 55 years. 2. Women, political prisoners and 'A' class prisoners are ineligible. 3. Prisoners having good family ties. 4. Resident of State. 5. Casual or Star Class Prisoners. 6. Prisoners who have undergone 1 year of sentence excluding remission but not having more than 5 years to serve excluding remission.	0

[1072] The Rajasthan Prisoners Open Air Camp Rules 1972, Rules 3 and 4.
[1073] Tamil Nadu Prison Rules 1983, Rules 796 and 797.

		7. Life prisoners who have undergone 3 years of sentence excluding remission, but not having more than 5 years to serve, excluding remission. 8. Prisoners who have been awarded less than three major punishments for prison offences during the last two years prior to the order of selection.	
14.	Telangana[1074]	1. Aged between 21 to 65 years without any history of disease which may be aggravated in open conditions. If prisoners aged above 65 years are fit in strength, they also will be selected 2. The prisoner should not be not a superior class, or habitual prisoner. 3. The prisoner must have undergone some period of imprisonment.	1
15.	Uttarakhand[1075]	1. Aged between the age group of 21 to 50 years 2. Sentenced for a limited term of more than 5 years and has completed 1/4th of his sentence without remission. 3. The convict who has been sentenced with life imprisonment and has completed 5 years of his sentence without remission.	0
16.	West Bengal[1076]	1. Women and unmarried prisoners are ineligible.	4

[1074] As per information received from Telangana Prison Department.
[1075] The Uttarakhand Jail Manual 2023, Rule 548.
[1076] West Bengal Correctional Services Act 1992, Section 89; Information received from the West Bengal Correctional Services.

		2. Who is aged less than 25 years or more than 60 years is ineligible. 3. Resident of West Bengal. 4. Sentenced to imprisonment for a period of 7 years or more and has already served 2/3rd of their respective sentences including remissions. 5. Class I prisoners, prisoners convicted under political movement or under any special law for the time being in force are ineligible.	
17.	Haryana[1077]	1. The prisoners below the age of 25 are ineligible. 2. Under trial prisoner, detenue or a civil prisoner is ineligible. 3. Chargesheeted or convicted in more than one case is ineligible. 4. Punished for a major prison offence in the last three years is ineligible. 5. Is not a permanent resident or whose family member does not have a permanent residence in the State is ineligible. 6. Prisoners who do not have a family are ineligible. 7. Is convicted in connection with political agitation or political movement etc is ineligible. 8. Completed one year in the semi-open air prison if sentenced up to 10 years and two years in the semi- open air prison if sentenced	NA

[1077]Haryana Prison Rules 2022, Rules 947 and 979.

		for more than 10 years.	
18.	Delhi[1078]	1. The convicts who have been sentenced for more than 3 years and upto 5 years and have completed six months in Semi- open Jail. 2. The convicts who have been sentenced for more than 5 years and have completed one year in Semi-open Jail. Provided that the convict must have served, including under trial period, at least 3/4th of his total punishment awarded including remission.[1079]	0
19.	Goa[1080]	1. The convicts who have been sentenced for more than three years and up-to five years and have completed six months in semi-open Jail. 2. The convict who has been sentenced for more than five years and has completed one year in semi-open jail. Provided that the convict must have served, including undertrial period, at least ¾ (three fourth) of his total punishment awarded including remission.	0

[1078] Delhi Prison Rules 2018, Rule 1321.
[1079] Delhi Prisons Rules 2018, Rule 1325.
[1080] Goa Prisons Rules 2021, Rule 1324.

20.	Ladakh[1081]	1. On completion of three fourth of sentence/imprisonment in case of a life convict, or in the case of a convict sentenced to seven years of imprisonment or more after the convict having undergone half of the sentence, excluding remission as a convict. If there is no Semi-open or Open Institution, a prisoner may be transferred directly to an Open Colony after completion of 13 years stay in a closed Institution with remission in case of a life convict, or on completion of three-fourth of the sentence in the case of other convicts. Inmates should initially be treated in Semi-open Institutions and then in Open Institutions.	0
21.	Puducherry[1082]	1. On completion of five years of imprisonment, excluding remission, in the case of a life convict, and one year or one-fourth of the sentence as a convict excluding remission, whichever is more but, not more than two years in case of a terminal convict.	0
22.	Tripura[1083]	1. Convicts who have completed 3⁄4 of their sentences with remission and one year or one-fourth of the sentence as a convict excluding remission, whichever is more but	0

[1081] Ladakh Prison Manual 2021, Rule 21.04 (ii).
[1082] Puducherry Prison Rules 2021, Rule 947.
[1083] Tripura Sansodhanagar Rules 2021, Rule 739 (ii).

		not more than two years in case of a terminal convict.	
23.	Mizoram[1084]	1. On completion of five years of imprisonment, excluding remission, in the case of a life convict, and one year or one-fourth of the sentence as a convict excluding remission, whichever is more but not more than two years in case of a terminal convict, the Selection/ Classification Committee should study the inmate's case for his eligibility for an open institution. If the Selection/ Classification Committee is convinced that the inmate is fit for treatment in an open institution, a report in the prescribed form should be sent to the Inspector General for his transfer.	0
TOTAL			**90**

[1084] Mizoram Prison Manual 2017, Rule 23.09.

F. NALSA Proforma Form- 1[1085]

Form-1

National Legal Services Authority,

(Free and Competent Legal Services) Regulations, 2010)

(See regulation-3)

The Form of Application for Legal Services

(this may be prepared in the regional language)

Registration No. :

1. Name :
2. Permanent Address :
3. Contact Address with phone no. if any e-male ID, if any. :
4. Whether the applicant belongs to the category of persons mentioned in section-12 of the Act. :
5. Monthly income of the applicant :
6. Whether affidavit/proof has been produced in support of income /eligibility u/s 12 of the Act. :
7. Nature of legal aid or advice required :
8. A brief statement of the case, it court based legal services is required :

Place:

Date Signature of the applicant.

[1085] Form - 1 Form for Application for Legal Services as per Regulation 3, National Legal Services Authority, (Free and Competent Legal Services) Regulations, 2010

G. Data with respect to bail[1086]

S. No.	High Court	No. of accused persons granted default bail U/S. 167 (2) CrPC	Bails allowed but accused not released as unable to furnish the surety
1	Allahabad	126	6,158
2	Andhra Pradesh	585	462
3	Bihar	333	3,345
4	Bombay (incl. Goa & D&D)	478	1,661
5	Chhattisgarh	50	195
6	Delhi	23	1,104
7	Gauhati	2,746	892
8	Gujarat	76	284
9	Himachal Pradesh	9	50
10	Jammu & Kashmir and Ladakh	28	26
11	Jharkhand	67	57
12	Karnataka	254	665
13	Kerala	2,334	1,124
14	Madhya Pradesh	165	4,190
15	Madras	4,477	830
16	Manipur	513	89
17	Meghalaya	334	95

[1086] As per information received from High Courts, as on 31 December 2023.

18	Orissa	188	1,214
19	Punjab & Haryana	466	922
20	Rajasthan	68	286
21	Sikkim	28	128
22	Telangana	629	NA
23	Tripura	228	297
24	Uttarakhand	42	187
25	West Bengal	538	618
TOTAL		**14,785**	**24,879**

H. No. of Prison Legal Aid Clinics (PLACs)[1087]

S. No.	States/UTs	No. of jails	PLACs
1	Andaman & Nicobar	4	1
2	Andhra Pradesh	107	83
3	Arunachal Pradesh	9	9
4	Assam	31	30
5	Bihar	59	58
6	Chandigarh	1	2
7	Chhattisgarh	33	33
8	Delhi	16	16
9	Dadra & Nagar Haveli and Daman & Diu	2	0
10	Goa	1	1
11	Gujarat	32	30
12	Haryana	20	20
13	Himachal Pradesh	14	14
14	Jammu & Kashmir	14	14
15	Jharkhand	31	31
16	Karnataka	54	54
17	Kerala	57	57
18	Ladakh	1	1
19	Lakshadweep	4	0
20	Madhya Pradesh	132	96
21	Maharashtra	64	42

[1087] As per information received from prison departments, as on 31 December 2023.

22	Manipur	2	2
23	Meghalaya	5	5
24	Mizoram	10	8
25	Nagaland	12	12
26	Odisha	92	87
27	Puducherry	4	4
28	Punjab	26	25
29	Rajasthan	146	114
30	Sikkim	2	2
31	Tamil Nadu	142	129
32	Telangana	38	30
33	Tripura	14	12
34	Uttar Pradesh	77	48
35	Uttarakhand	11	10
36	West Bengal	60	60
TOTAL		**1,327**	**1,140**

I. Performance of UTRCs in 2023[1088]

		Undertrials		Convicts	
S. No.	**States/UTs**	Recommended	Released	Recommended	Released
1	Andaman & Nicobar Islands	0	0	0	0
2	Andhra Pradesh	2,063	940	16	16
3	Arunachal Pradesh	43	43	0	-
4	Assam	2,818	1,382	22	3
5	Bihar	1,974	1,378	39	35
6	Chandigarh	334	150	0	-
7	Chhattisgarh	1,445	1,154	0	-
8	Dadra & Nagar Haveli	5	0	0	-
9	Daman & Diu	0	0	0	-
10	Delhi	2,588	1,101	0	-
11	Goa	191	107	2	1
12	Gujarat	1,450	682	194	101
13	Haryana	2,601	1,703	4	0
14	Himachal Pradesh	297	172	4	0
15	Jammu & Kashmir	236	24	0	0
16	Jharkhand	3,420	1,001	38	0
17	Karnataka	2,086	1,713	8	7
18	Kerala	1,914	1,300	129	12
19	Ladakh	0	0	0	0
20	Lakshadweep	0	0	0	0
21	Madhya Pradesh	3,494	2,842	110	18
22	Maharashtra	8,044	4,411	31	22
23	Manipur	190	33	1	0

[1088] As per data received from NALSA, as on 31 December 2023.

24	Meghalaya	135	57	0	0
25	Mizoram	61	30	25	17
26	Nagaland	0	-	0	0
27	Odisha	3,596	2,076	32	0
28	Puducherry	0	-	0	0
29	Punjab	6,138	2,312	491	76
30	Rajasthan	5,437	2,084	265	1
31	Sikkim	27	23	0	0
32	Tamil Nadu	2,033	1,352	0	0
33	Telangana	1,021	624	96	5
34	Tripura	284	208	0	0
35	Uttar Pradesh	14,737	3,738	415	38
36	Uttarakhand	1,303	1,035	262	0
37	West Bengal	3,670	1,723	4	0
TOTAL		**73,635**	**35,398**	**2,188**	**352**

J. Panel Lawyers in India[1089]

S. No	States	No. of Panel Lawyers in the State	No. of Women Panel Lawyers	No. of Panel lawyers belonging to the SC/ST category	No. of panel lawyers who identify as a transgender person
1	Andhra Pradesh	1090	274	292	0
2	Arunachal Pradesh	191	42	79	NA
3	Assam	972	337	100	0
4	Bihar	2191	395	119	0
5	Chhattisgarh	2831	520	337	0
6	Goa	156	83	7	NA
7	Gujarat	2841	763	609	0
8	Haryana	1375	309	157	0
9	Himachal Pradesh	448	126	72	0
10	Jammu and Kashmir	610	139	24	0
11	Jharkhand	1003	136	132	0
12	Karnataka	2774	988	583	0
13	Kerala	2295	1146	35	0
14	Madhya Pradesh	1837	294	189	0
15	Maharashtra	4349	1325	673	1
16	Manipur	195	80	25	0
17	Meghalaya	230	144	230	0
18	Mizoram	132	66	131	NA

[1089] As per data received from NALSA, as on 31 December 2023.

19	Nagaland	NA	NA	NA	NA
20	Orissa	2307	332	239	0
21	Punjab	744	157	84	0
22	Rajasthan	1858	198	246	0
23	Sikkim	158	71	65	0
24	Tamil Nadu	4267	876	584	6
25	Telangana	1461	273	283	0
26	Tripura	351	104	33	NA
27	Uttar Pradesh	2021	224	194	0
28	Uttrakhand	291	61	30	0
29	West Bengal	3360	748	267	0
30	Aandaman and Nicobar Islands	NA	NA	NA	NA
31	Chandigarh	123	40	4	0
32	Dadra and Nagar Haveli	6	1	1	0
33	Daman and Diu	23	7	3	0
34	Delhi	886	261	3	0
35	Lakshadweep	9	1	10	NA
36	Puducherry	352	110	51	0
37	Ladakh	15	7	15	0
	Total	**43752**	**10638**	**5906**	**7**

K. Bail Rejection Statistics in District Judiciary in 2023[1090]

S. No.	HIGH COURT	Magisterial Courts			Sessions Court		
		Bail Decided	Bails Allowed	Bails Rejected	Bail Decided	Bails Allowed	Bails Rejected
1	Andhra Pradesh	31,248	27,909	1,371	29,270	18,169	5,527
2	Guahati	51,915	39,856	10,966	28,874	17,657	9,390
3	Bihar	144,375	106,176	28,583	141,576	103,579	28,950
4	Chhattisgarh	49,522	32,443	856	25,500	14,022	450
5	West Bengal	311,215	249,858	38,262	111,096	70,180	34,843
6	Delhi	39,763	31,458	8,305	44,048	18,007	23,488
7	Gujarat	99,425	77,209	18,785	63,174	37,546	22,752
8	Himachal Pradesh	3,411	3,003	213	4,069	2,394	1,433
9	Jammu & Kashmir and Ladakh	8,513	6,866	354	7,077	4,259	2,016
10	Jharkhand	74,091	54,920	17,408	36,847	23,234	12,533
11	Karnataka	90,957	79,379	1,356	28,943	21,126	6,870
12	Kerala	65,704	47,508	18,286	33,373	23,903	9,470
13	Bombay (incl. Goa &	123,761	113,441	4,075	56,314	39,060	15,458

[1090] As per information received from High Courts, as on 31 December 2023.

	D&D)						
14	Tamil Nadu	74,131	52,996	1,681	97437	61000	26,640
15	Manipur	745	557	137	1,366	963	293
16	Meghalaya	853	550	270	1,943	958	950
17	Madhya Pradesh	174,041	137,399	24,260	81,913	42,788	35,176
18	Orissa	134,425	108,094	26,331	38,600	26,521	12,079
19	Punjab & Haryana	91,056	73,185	14,575	100,810	54,218	36,052
20	Rajasthan	118,366	84,359	33,580	86,651	50,893	35,252
21	Sikkim	92	67	25	508	295	139
22	Telangana	14,429	12,472	1,957	21,473	12,707	8,766
23	Tripura	17,473	15,413	1,740	5,129	2,059	3,176
24	Uttarakhand	14,786	10,132	4,718	10,800	6,334	4,312
25	Allahabad	365,331	276,543	81,809	246,780	158,385	84,776
TOTAL		**2,099,628**	**1,641,793**	**339,903**	**1,303,571**	**810,257**	**420,791**

L. Use of alternatives to imprisonment and other ADR methods by District Judiciary in 2023[1091]

S. No.	High Court	No. of cases in which the convicted person has been released on probation of good conduct	No. of cases in which the convicted person has been released on admonition	No. of cases in which plea bargaining has been used	No. of undertrials in prisons who are accused of compoundable offences
1	Allahabad	2,066	172	563	1,678
2	Andhra Pradesh	14	7	3,596	228
3	Bombay	623	139	3,059	737
4	Calcutta	45	1,870	415	623
5	Chhattisgarh	41	22	37	252
6	Delhi	168	10,927	23,867	2,998
7	Gauhati	284	217	616	5,319
8	Gujarat	576	139	5,961	121
9	Himachal Pradesh	53	86	45	18
10	Jammu & Kashmir and Ladakh	114	40	140	1
11	Jharkhand	183	503	878	220
12	Karnataka	88	51	2,162	287
13	Kerala	178	53	13	5,746
14	Madhya Pradesh	170	78	831	711

[1091] As per data received from the High Courts, as on 31 December 2023.

15	Madras	1,011	207	398	200
16	Manipur	0	0	8	26
17	Meghalaya	24	2	29	24
18	Orissa	232	515	109	311
19	Patna	143	372	127	1,446
20	Punjab & Haryana	10,356	500	1,246	1,575
21	Rajasthan	53,938	145,953	8,380	462
22	Sikkim	8	1	2	0
23	Telangana	10	2	368	518
24	Tripura	18	31	8	10
25	Uttarakhand	105	129	33	185
TOTAL		**70,448**	**162,016**	**52,891**	**23,696**

M. Stage of cases in which the accused is in custody for more than 1 year in 2023[1092]

S. No.	High Court	Investigation	Committal	Appearance	Evidence	Arguments
1	Allahabad	555	1,368	38,046	22,212	3,587
2	Andhra Pradesh	184	1	83	42	13
3	Bombay (incl. Goa & D&D)	48	170	4,370	3,980	406
4	Calcutta	1,094	186	1,726	5,631	372
5	Chhattisgarh	NA	NA	NA	NA	NA
6	Delhi	44	118	1,014	3,205	528
7	Gauhati	88	60	125	1,083	58
8	Gujarat	5	14	565	2,818	320
9	Himachal Pradesh	0	0	58	514	46
10	Jammu & Kashmir and Ladakh	NA	52	843	2,006	164
11	Jharkhand	79	304	1,081	3,622	267
12	Karnataka	NA	128	371	1,546	290
13	Kerala	11	3	118	396	44
14	Madhya Pradesh	56	25	522	4,620	317
15	Madras	6	2	230	610	58
16	Manipur	16	8	6	22	5

[1092] As per data received from High Courts, as on 31 December 2023.

17	Meghalaya	6	12	74	112	12
18	Orissa	146	12	203	3,555	123
19	Patna	221	87	727	3,347	471
20	Punjab & Haryana	119	46	1,183	7,965	653
21	Rajasthan	337	53	498	4,329	502
22	Sikkim	0	0	1	10	2
23	Telangana	13	2	56	215	47
24	Tripura	NA	0	3	17	0
25	Uttarakhand	22	26	107	1,186	69
TOTAL		**3,050**	**2,677**	**52,010**	**73,043**	**8,354**

P. Use of Video Conferencing in District Judiciary[1093]

S. No.	High Court	Total No. of Cases Dealt through VC in 2023	Stages at which VC was used (Specify the total number of cases)			
			Appearance	Charge-framing	Evidence	Arguments
1	Allahabad	113,180	111,850	355	963	52
2	Andhra Pradesh	70,244	70,244	0	0	0
3	Bombay (incl. Goa & D&D)	NA	NA	NA	NA	NA
4	Calcutta	10,394	7,282	11	415	14
5	Chhattisgarh	19,932	9,542	1,714	8,030	646
6	Delhi	604,317	553,117	24,432	17,348	9,419
7	Gauhati	15,986	13,377	240	3,021	60
8	Gujarat	9,756	1,377	329	6,849	1,201
9	Himachal Pradesh	106,689	105,668	1	1,019	1
10	Jammu & Kashmir and Ladakh	18,486	11,210	1,554	4,104	402
11	Jharkhand	31,219	20,237	4,209	6,027	1,039
12	Karnataka	21,990	NA	NA	NA	NA
13	Kerala	46,627	44,303	890	1,084	350
14	Madhya Pradesh	87,278	26,680	6,902	59,367	2,686
15	Madras	427	1,937	15	302	24

[1093] As per data received from High Courts, as on 31 December 2023. *Note:* The total number of cases dealt through VC also includes proceedings other than the abovementioned stages.

16	Manipur	174	24	4	13	16
17	Meghalaya	6,190	4,421	71	384	104
18	Orissa	36,657	27,762	312	11,422	146
19	Patna	106,311	91,376	1,506	1,498	153
20	Punjab & Haryana	407,895	381,564	1,840	21,489	512
21	Rajasthan	12,614	0	0	0	0
22	Sikkim	1,030	861	0	168	1
23	Telangana	1,897	913	46	933	5
24	Tripura	1,938	2,648	2	526	75
25	Uttarakhand	29,106	26,056	73	2,743	441
	TOTAL	**1,760,337**	**1,512,449**	**44,506**	**147,705**	**17,347**

Q. <u>Strength of State Forensic Science Laboratories (SFSLs) in India</u>[1094]

S. No.	State/UTs	Sanctioned Strength	Working Strength	Vacancy
1	Andaman & Nicobar Islands	5	5	0
2	Andhra Pradesh	343	207	136
3	Arunachal Pradesh	8	17	0
4	Assam	-	NA	NA
5	Bihar	609	165	444
6	Chandigarh	NA	NA	NA
7	Chhattisgarh	340	135	205
8	Delhi	707	317	390
9	Dadra & Nagar Haveli and Daman & Diu	NA	NA	NA
10	Goa	53	29	24
11	Gujarat	814	348	466
12	Haryana	648	172	476
13	Himachal Pradesh	114	73	41
14	Jammu & Kashmir and Ladakh	283	156	127
15	Jharkhand	168	108	60
16	Karnataka	707	529	178
17	Kerala	225	190	35
18	Lakshadweep	NA	NA	NA
19	Madhya Pradesh	505	194	311

[1094] As per data received from respective SFSLs.

20	Maharashtra	1,463	979	484
21	Manipur	112	32	80
22	Meghalaya	23	11	12
23	Mizoram	57	38	19
24	Nagaland	27	13	14
25	Odisha	104	55	49
26	Puducherry	28	22	6
27	Punjab	189	60	129
28	Rajasthan	439	254	185
29	Sikkim	30	15	15
30	Tamil Nadu	623	486	137
31	Telangana	169	62	107
32	Tripura	60	45	15
33	Uttar Pradesh	1,560	388	1,172
35	Uttarakhand	105	49	56
36	West Bengal	385	86	299
TOTAL		**10,903**	**5,240**	**5,672**

R. Custody Certificate[1095]

CRL. MISC.No. _____ OF 2016
IN CRL. APPEAL No. _____-SB OF 2016

JAGDISH SINGH ...PETITIONER

Versus

STATE OF DEMO STATE ...RESPONDENT

CUSTODY CERTIFICATE

I, _____
Superintendent,_____, Prison_____, the deponent do hereby solemnly affirm and declare as under –

1). Detail of custody of the case, which is being required by the Hon'ble Court

(i)	Name of Convict/Accused & Father Name	
(ii)	Address	
(iii)	FIR No./Date/U/s/PS:	
(iv)	Convicted by the Ld. Court of (with date of judgment & tenure/term of sentence),if any:	

Detail of custody period in this case

** Years, Months and Days conversion are computer generated*

Sr No.	Particulars		Period	IN Days	Year	Month	Days
1.	Custody as Under trial		From To 19/08/2019				
2.	Custody after Conviction		From 20/08/2015 To 15/01/2016	149	0	4	27
			From 23/11/2017 To 22/03/2018	120	0	4	0
			From 17/04/2018 To 19/06/2018	64	0	2	3
			From 01/08/2018 To 01/08/2018	1	0	0	1
			Total	334	0	11	1
3.	Interim Bail Period, if any		...	0	0	0	0
4.	Parole Availed (-)		From 17/12/2015 To 23/12/2015	5	0	0	5
			From 22/03/2018 To 04/05/2018	42	0	1	12
			Total	47	0	1	17
5.	furlough Availed		...	0	0	0	0
6.	Detail of overstay/absent from parole/furlough (-)	PAROLE (GNCTD)	From 23/12/2015 To 25/12/2015	1	0	0	1
7.	Actual Custody Period after Conviction [S. No. 2-(4&6)]		=	286	0	9	12
8.	Actual Undergone Period [S. No. 1+7]		=	286	0	9	12
9.	Earned Remission + GR (+)		From 02/02/2018 To 27/04/2018	8	0	0	8

[1095] e-Prisons Division, National Informatics Centre, Ministry of Electronics & Information Technology, *User Manual of Prison Management System (PMS)*, (26 August 2019)<https://eprisons.nic.in/downloads/ePrisonsUM.pdf> accessed 20 February 2024.