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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

MENTAL HEALTH OF PRISONERS IN INDIA: THROUGH THE PRISM OF THERAPEUTIC JURISPRUDENCE

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Abstract

Human rights violations are rampant inside the prisons which have direct ramifications on the mental health of prison populace. Several literatures have indicated high incidence of mental illnesses in the prison population, with prevalence rate as high upto 40-50%. This directly affects the management of prisons, rehabilitation, right to fair trial, and access to justice, among others. The Mental Healthcare Act (MHCA), 2017 enacted in India, being a rights-based legislation, has now mandated the “Right to Mental Health Care” as a right for prisoners as well. In the light of above, this paper attempts to discuss the human rights of incarcerated persons from the lens of mental health, with a focus on therapeutic jurisprudence as an approach towards ensuring mental-health of the incarcerated populations by discussing the role of various stakeholders of Criminal Justice System (CJS) towards achieving mental health rights of prisoners.

In doing so, it is pertinent to first deal with an examination of consequences of custodial care on the mental-health of the prison populace. Then, the author has elaborated on various legislations and international compliances, along with specific judgments by various courts across the globe focussing on the mental health rights of the custodial population. Further, there has been an attempt to highlight the role of various stakeholders including judges, prison staff, psychiatrists and psychotherapists, social workers and other agencies, in ascertaining the mental health rights of the incarcerated population with a discussion on therapeutic jurisprudence. The paper concludes with certain suggestions to strengthen the mental healthcare rights regime of prisoners in India that also extends to post incarceration amalgamation of ex-prisoners with the society.

Keywords: mental health, prisoners, human rights, therapeutic jurisprudence

Mental Health Crisis in Prisons: A Legal Vacuum or an Institutional Failure?

Introduction- Prevalence of Mental Illnesses in Prisons

Legally, imprisonment means curtailing right to personal liberty of an offender or an accused. However, it has been observed that several other rights of those incarcerated, mostly human rights, are grossly violated. One of these rights is that of right to healthcare. In compared to the population outside prison, the needs with respect to physical health and mental care are higher¹, but more often than not, their concerns are not reciprocated with the same level of healthcare facilities and services as available to others in the community outside of prisons. Several studies show that incidence of severe mental illnesses in prisons and jails is 3 to 5 times higher than that prevalent outside of it². Furthermore, not just the incidence of mental illnesses in prisons is abysmal, additionally, treatment related services are largely inaccessible to the inmates. As per the ‘Prison Statistics of India’ Report 2022 by NCRB³, the gap in the sanctioned strength i.e., 3,497 and the actual strength i.e., 2,080 of Medical Staff as on 31st December, 2021 was huge. Further, there are 9,180 prisoners with mental illness across various prisons in India. Further, 150 prisoners died by suicide, and 5 prisoners with epilepsy and schizophrenia have died. This data is not devoid of a caveat that there is no clarity on whom to include as mentally ill, whether the data only includes those in mental health wards or is it inclusive of those inmates who are on psychiatric medication.⁴ The data does not clearly reflect upon the methodology adopted while collecting the same. Maitreyi Mishra in her article titled ‘What Numbers Don’t Tell Us’ has clearly highlighted that there is a mental health crisis in prisons.⁵

There is a common trend seen in the prisons worldwide that a significant percent of people having several health difficulties are locked up and detained in the prisons of every nation⁶. During their time in prison, individuals experience a high level of mental health issues.

¹ Hammett, T.M., C. Roberts, and S. Kennedy, “Health-Related Issues in Prisoner Reentry”, 47(3), *Crime Delinquency*, 390-409 (2001) http://www.reentrymediaoutreach.org/pdfs/health_bp.

² Lamb HR & Weinberger LE, “Persons with severe mental illness in jails and prisons: a review”, 49, *Psychiatr Serv*, 483–492 (1998).

³ National Crime Records Bureau (NCRB), *Prison Statistics of India Report (2022)*.

⁴ *Victor Rosario Congo v. Ecuador*, (11 Inter-American Commission on Human Rights Case 1999 743).

⁵ *SLIC*. (n.d.). <http://www.slic.org.in/>

⁶ Møller L, Stöver H, Jürgens R, Gatherer A & Nikogosian H, *Health in prisons: A WHO guide to the essentials in prison health (2007)*.

International Perspective

The problem of mental health in jails is becoming an increasingly significant problem worldwide. The UN's appointed *Special Rapporteur on the Highest Attainable Standard of Health* has communicated its concern that individuals having mental health issues are at times directed towards jails instead of receiving proper mental healthcare or support services.⁷ As a result, the number of inmates with mental illness in penal institutions is disproportionately high⁸. The Special Rapporteur has also highlighted the lack of access to the most basic mental health care and support services within prisons, exacerbating mental disabilities.

The Standard Minimum Rules state that it is necessary for prisons to offer psychiatric services for the diagnosis and treatment of mental illness. Various guidelines on prison health, such as the *European Prison Rules and Council of Europe's Recommendation 1235 on Psychiatry and Human Rights (1994)*⁹, make it mandatory for mental health related services to be provided to incarcerated individuals.

The *Special Rapporteur on Health*¹⁰ has raised serious concerns about susceptibility regarding human rights violations towards mentally ill prisoners. Various international bodies have established legislative norms to ensure treatment of individuals with mental illnesses in confinement which is humane¹¹. The jurisprudence regarding mental health-care in jails incorporates several guidelines outlined in the instruments mentioned before.

Because individuals with mental illnesses are in particular vulnerable in incarceration, it becomes all the more a larger responsibility of the state responsibility to ensure humane treatment for them and protect the well-being¹². The European Court has emphasised that inferior and powerless situation of patients in psychiatric hospitals necessitates increased scrutiny to ensure compliance with the Convention¹³.

⁷ World Health Organization Europe Health in Prison Factsheet (WHO Regional Office for Europe).

⁸ Commission on Human Rights, Report submitted by the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Paul Hunt: Addendum Mission to Peru, (2005).

⁹ Parliamentary Assembly, *Recommendation 1235 on Psychiatry and Human Rights* (1994).

¹⁰ Commission on Human Rights, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, (2005).

¹¹ *Herczegfalvy v. Austria*, 15 (1992) EHRR 437.

¹² *Keenan v. United Kingdom*, 33 (2001) EHRR 38.

¹³ *Rohde v. Denmark*, (2005) Application No. 69332/01.

According to the *UN Human Rights Committee*, the *Covenant on Civil and Political Rights* places an obligation on the state to offer appropriate psychiatric help and care ¹⁴.

In the case of *Edwards and another v. United Kingdom*¹⁵, two individuals with mental illness were apprehended distinctly, however, they were placed in the same prison room. One of them subsequently beat the other to death which shows absence of sufficient mental health screening procedures to detect the vulnerability in inmates and provide them with appropriate psychiatric care that matches their needs, thereby causing a violation of the *European Convention*.

The European Court has taken additional steps in defining acceptable standards for mental health care in prisons.¹⁶ Appropriate mental health care in detention facilities must involve proper record keeping and patient monitoring, and be administered by qualified staff. In the case of *Rohde v. Denmark*¹⁷, a monitoring standard that was deemed consistent with state obligations under Article 3 involved medical staff attending to the applicant automatically and regularly, as well as promptly reacting and increasing their observation when the individual exhibited any change in mood or behavior.

The Special Rapporteur on Health has shown worry multiple times about the inadequate level of mental health care provided in prisons.¹⁸ In their 2004 Annual Report¹⁹, they expressed criticism of the mistreatment of mentally ill prisoners in general. In their 2005 Mission to Peru Report²⁰, they made a specific recommendation for the availability of proper mental health related services for detainees.

The evolution of the law regarding mental health care in prisons has created a policy vacuum regarding onus of responsibility with respect to the transitional health of prisoners.²¹ The *Nelson Mandela Rules*, which are the *United Nations Standard Minimum Rules for the Treatment of Prisoners*, mandates a pre-release program to be provided to inmates either within the prison or another institution, with the aim of preparing them for a successful re-entry into mainstream

¹⁴ *Sahadath v. Trinidad and Tobago*, (2002) UN Doc CCPR/C/684/1996.

¹⁵ *Edwards and another v. UK*, 35 (2002) EHRR 417.

¹⁶ *Pantea v. Romania*, 40 (2005) EHRR 26.

¹⁷ *Rohde v. Denmark*, (2005) Application No. 69332/01.

¹⁸ *Williams v. Jamaica*, (1997) UN Doc CCPR/C/61/D/609/1995.

¹⁹ Commission on Human Rights, The right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Report of the Special Rapporteur, Paul Hunt, (2004).

²⁰ Commission on Human Rights, Report submitted by the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Paul Hunt: Addendum Mission to Peru, (2005).

²¹ Commission on Human Rights, Situation of detainees at Guantanamo Bay (2006).

society.²² However, in some cases, such as those observed in India, the success of such programs is uncertain even after completion.

Indian Legal Perspective

The laws in India concerning prisoners' fundamental right to health apply to the context of their imprisonment. In various orders such as *Re – Inhuman Conditions in 1382 Prisons*²³ (2017) and significant cases like *Sunil Batra v. Delhi Administration (II)*²⁴ and *Ajay Singh v. State of Maharashtra*²⁵, it was established that for a prisoner in custody, it is the responsibility of the state authorities to facilitate them with healthcare. This is because prisoners equally have their fundamental right to health, as guaranteed under Article 21 of the constitution, even while in detention, though some limitations to their rights may occur.

The primary law up for debate is the Mental Healthcare Act enacted in 2017, which includes numerous crucial measures regarding the mental health of inmates. According to Section 31(2) of the Mental Healthcare Act, medical officers working in prisons are required to undergo mandatory training in primary and emergency mental healthcare. Additionally, Section 103(6) of the act stipulates that each state government must create a Mental Health Establishment within the medical wing of at least one prison in their jurisdiction.

In 2016, the Hon'ble Supreme Court of India gave a landmark decision on the constitutional rights of prisoners in the country. Former CJI, Justice RC Lahoti, sent a letter to the then CJI, Justice Altamas Kabir, expressing concern about the poor conditions of prisons in India, which included custodial torture, custodial deaths, and overcrowding. Justice Lahoti emphasised that the state has a responsibility to ensure the safety of prisoners.²⁶ The court referred to the case of *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*²⁷, in which it affirmed that every prisoner, even those on death row, has the right to ensure the safety of their life. The court recommended that the central and state governments make changes to prison manuals and regulations to incorporate this directive.

²² Council of State Governments Justice Center, *Mental Health Courts: A Primer for Policy-makers and Practitioners*. New York: Council of State Governments, (2008). <http://cjmh-infonet.org/main/search?reset=1&category=Courts>.

²³ *In Re – Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700.

²⁴ *Sunil Batra v. Delhi Administration (II)*, (1978) 4 SCC 409.

²⁵ *Ajay Singh v. State of Maharashtra*, 2007 CriLJ 3647.

²⁶ *Dainik Bhaskar*. (n.d.). *Dainik Bhaskar*. <https://www.bhaskar.com/topics/assam/>

²⁷ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 746.

The Law Commission of India,²⁸ led by Justice HR Khanna, has recommended several potential solutions to address the issue of overcrowding in prisons. These include establishing guiding principles for release on bail in cases of non-bailable offences, liberalising provisions for release on bond, improving machinery and equipment, suggesting amendments to the *Code of Criminal Procedure (CrPC), 1973*, and the *Indian Penal Code (IPC), 1860*, and providing separate places for detention of under trial prisoners. The Commission also suggested that all communication regarding bail orders should be sent to prisons via email and that sufficient washrooms and filtered drinking water facilities should be constructed in these complexes. Additionally, the Human Rights Law Network has proposed a range of prison reforms, including providing educational facilities to prisoners, introducing non-discriminatory provisions for minority groups in jails, computerising prisons, and conducting social audits.

The above discussion and analysis highlights that despite directions passed by several courts in India, the ascertainment of right to mental health of prisoners is still a question. It is, therefore, pertinent to highlight the role of stakeholders of the CJS in ensuring these rights, and also assess the reality as it stands today.

Therapeutic Jurisprudence as an Approach in Ascertaining Mental Health Rights of the Prisoners- Role of Stakeholders of the Criminal Justice System (CJS)

Therapeutic Jurisprudence is a fairly new concept, first coined by professors David Wexler and Bruce Winick²⁹, according to which the role of Courts and other agents associated with it is crucial in ascertaining that the mental health of the inmates is not adversely affected due to the procedure of law.

Therapeutic jurisprudence, or the study of how the law functions as a therapeutic agent, is the vehicle for integrating ideas about mental health into the study of law.³⁰ In accordance with the ideals of justice, therapeutic jurisprudence recommends that we investigate how the information, theories, and insights of the mental health and associated disciplines might influence the

²⁸ *Law Commission of India | India*. (n.d.). <http://lawcommissionofindia.nic.in/>

²⁹ David Wexler, "Therapeutic Jurisprudence: The Law as a Therapeutic Agent" (1990).

³⁰ David B. Wexler and Bruce J. Winick, "Essays in Therapeutic Jurisprudence", (1991).

development of the law. The idea that the law itself may have therapeutic or counter therapeutic effects is known as therapeutic jurisprudence.

One of the biggest problems faced in ascertaining rights of prisoners is that of overcrowding. Resources sanctioned and available become scarce because of the issue of overcrowding. Stakeholders of the Criminal Justice System have an important role in ensuring that the rights of inmates are realised under the given circumstances, resources and infrastructure, however, in this paper, the author has limited the scope to mental health rights of the prisoners only. Several guidelines and legislations have been laid down to chalk down the role of the stakeholders of the CJS, some of them are discussed as follows along with challenges faced in implementing these guidelines.

Jail Authorities and Prison Staff

To ensure prisoners with mental illnesses are provided with appropriate care and treatment, it is important for jail authorities to work in conjunction with mental health institutions that are operated by the relevant governments. These establishments may need to provide protocols for halfway houses, sheltered housing, supported living, and other similar facilities under Section 18(4)(b) of the MHCA, 2017. These institutions, among others, may be essential in aiding prisoners in transitioning to life outside of prison.

However, the ground reality comes out to be quite different. Prison staff is one of the primary caregivers of the mentally ill incarcerated populace. In India, for every 7 prisoners, only one prison staff is available, whereas in the UK, the ratio is that of 2:3 between prison staff and prison population.³¹ In the given circumstances, mental health rights often takes a backseat as the potential of the deficient staff is mostly utilised in doing the basic minimum. Role of a caregiver of a mentally ill person is very sensitive and requires special efforts to take care of the mentally ill people. However, prison staff is over burdened in India, and their role as primary caregivers of the mentally ill prison population is often compromised.

Judges

While comprehensive court statistics are lacking in many jurisdictions, there are reports indicating that due to growing number of people with mental ailments in the CJS has put a significant strain

³¹ *Untitled Page*. (n.d.). <https://pib.gov.in/newsite/PrintRelease.aspx?relid=134687>

on court functions. Due to the complexity of these cases, court staff may struggle with how to handle them, and a lot of work of the court staff is resource-intensive. In response, many courts have begun connecting these individuals with community-based treatment services in an effort to reduce their chances of further involvement with the criminal justice system. Mental health courts, which is similar to the drug court model, have emerged as the most common way of making this connection. These problem-solving oriented courts are specifically established to facilitate specialised services and support to individuals with mental illnesses who have encountered the CJS³² (Wolf, 2007). However, there is an immense scope for India to work on Mental Health Courts. Sensitisation programmes for judges at an extensive rate are being conducted across the country. Active participation and indulgence of judges in ascertaining the mental health rights of the inmates is crucial as it stands today. Further,

Psychiatrists and psychotherapists

The role of psychiatrists and psychotherapists is immeasurable in ascertaining the mental health rights of the inmates. They, alongwith the paramedics are the backbone of the mental health rights and its actualisation. However, there is a sheer dearth of psychiatrists and psychologists available for prisoners. Further, hospitals available for inmates are severely low across the country.

Despite legislative mandates, there is a significant gap between the laws and their enforcement by authorities³³. An example of this gap is evident in the Yerawada Jail in Mumbai, where resident psychiatrists are not available despite the existence of a Mental Healthcare Establishment, as required by Section 103(6) of the MHCA, 2017. As per Dr. Sandeep Mahamuni, a visiting psychiatrist in several jails in Maharashtra and the author had an opportunity to interview him personally for the purpose of research, several inmates suffer from mental illnesses like anxiety, depression, schizophrenia and epilepsy.³⁴ Few even have suicidal tendencies and end up harming themselves. However, because of absence of resident doctors in the mental health wing of the prisons, immediate and emergent medical attention is impossible to be provided to these inmates, and they are sent to hospitals located in Pune for treatment. Therefore, immediate counselling for inmates on a regular basis must be the priority of the State to ensure that the right to mental health of the prisoners is ensured.

³² Wolf R.V., Principles of Problem-Solving Justice. New York: Center for Court Innovation, (2007).

³³ Lalli, U., "Attitude to prison reforms: An empirical survey", *Indian Journal of Criminology*, (2018-19).

³⁴ Outlook India. (2018). Mental Health sufferers in Maharashtra's Jails.

<https://magazine.outlookindia.com/story/mental-health-suffers-in-maharashtras-jails/300608>

Social Workers

The presence of free legal assistance for marginalized communities is vital in order to ensure that everyone has equal access to justice. Article 39-A, which serves as the fundamental basis for the legal aid concept, was included in the Constitution of India via the 42nd Amendment. The article requires the state to ensure fairness by providing equal opportunities and offering free legal assistance, so that no citizen is deprived of the chance to seek justice because of economic or other disadvantages. In *Hussainara Khatoon v. State of Bihar*,³⁵ it was interpreted by the Supreme Court that the right to receive legal assistance is understood to be inherently included within Article 21 of the Constitution of India. The Court, deeply concerned about the situation where undertrials in prisons of Bihar were without legal representation for long durations, expressed its astonishment and stated: "It is unquestionable that a prompt trial, and when we say prompt trial, we mean a reasonably swift trial, is a crucial and necessary aspect of the fundamental right to life and freedom guaranteed by Article 21." The court highlighted that Article 39-A stressed the importance of providing free legal assistance as an essential part of a "reasonable, fair and just" process. Consequently, the right to free legal services is inherently included in the assurance of Article 21. Legal aid was described as the method through which social justice is provided. It also conveyed the aspiration that each state government would offer legal assistance to prevent the deviation from the essence of Article 21. In another case,³⁶ the court stated that free legal aid at the cost of the state is a fundamental right of the accused and "implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21"

In India, the Prisons Act 1894 empowers states to establish rules regarding the responsibilities of correctional officers in prisons. Social workers can play a critical role in various stages of the correctional process, from admission to release, and are well-suited to perform certain tasks in these processes. Despite the rising suicide rates in prisons, accurate statistics are not available, and unnatural deaths may be misclassified as suicides. Senior prison officers often report suicide attempts and inmate deaths under the Unnatural Death category. Given the significant problems of suicide and self-harm in prisons, social workers could provide valuable assistance in addressing these issues.

Overcrowding, sickness, stinking toilets, lack of proper bedding, restrictions on movement due to lack of staff, non-production of undertrial prisoners, inadequate medical facilities, delay in the

³⁵ *Hussainara Khatoon v. State of Bihar*, 1979 AIR 1369.

³⁶ *Khatri v. State of Bihar*, (AIR 1981 SC 262).

granting of parole, refusal of pre-adult release on dubious grounds, etc, are some of the factors that contribute to worsening the mental health of the inmates. Some of these afflictions result from the systemic neglect of the entire system, not from any particular misdeed of the prison staff. In many places, NGOs run rehabilitation programs and a few offer aftercare. Prison Fellowship International is a good example. Most prisoners are ill-prepared for release. No measures are taken to reduce their likelihood of reoffending. Programs to instil a set of principles, the culture of honest work and to foster pro-social relations with the community are crucial. Prisons with long-standing good leadership tend to educate the illiterate prisoner and provide higher education facilities to those who are reasonably educated and willing to upgrade their skills so that they are employable when they return to society. Therefore, a collaborative effort and an active involvement of the various stakeholders of the Criminal Justice System can surely help in actualising the mental health rights of the prison population, along with other rights. Doing so will enable therapeutic approach towards safeguarding the mental health rights of the prisoners in India.

Conclusion and Suggestions: Beyond and After Prisons

India's criminal justice system is harshly strained and overcrowded. The prisons are generally overcrowded. Prison authorities often put forth that they are severely understaffed. In such a situation, it is practically impossible for them to ensure mental health rights of the prisoners. A further problem arises after prisoners are released from incarceration. As long as they come from a privileged background, people who are confined in jails, suffer even after they go out of the prisons; the tag of a criminal stays with them like a stigma which is indeed quite heavy, long-lasting and cannot be erased easily. Friends, families, and everyone else they know stay away from them. It is difficult for them to get employment opportunities.

This further leads to a life of destitution and further mental trauma, as they are drenched of any sort of emotional or financial support in order to lead a life of dignity. This often makes one time offenders to indulge in other crimes habitually.

As per the *Delhi Prison Rules, 1857*, "If any prisoner becomes a patient of Mental Illness immediately before the expiry of his sentence, he shall be handed over to his relatives or friends on the expiry of his sentence, failing which he may be sent to Institute of Human Behaviour & Allied Sciences or any other Government Hospital, for treatment." However, in case a person develops a mental ailment after leaving prison and reintegrating into mainstream society, it raises

the question of where the responsibility of the prison authorities ends regarding the health of the prisoner.

One could argue that *Section 18(1) of the MHCA, 2017* guarantees the right of all individuals, including prisoners with mental illness, to access mental healthcare and treatment provided by the government. However, it is important to consider that prisoners may face practical barriers in accessing such healthcare, such as limited access to services and the need for assistance in seeking treatment. While the Act places the responsibility on the government to provide mental health services to all individuals, including prisoners, there runs an assumption that ex-inmates can manage and get medical aid themselves which clearly shadows their need for requiring assistance in getting access to mental healthcare institutions.

Despite the existence of various laws and court rulings aimed at protecting prisoners' rights in India, there is still much work to be done to improve the prison system. The major challenge lies in implementing these rights and reforms effectively. However, the judiciary has played a crucial role in bringing about positive changes in the past, and there is an expectation that the recent decision by the Apex Court will further improve the current prison system. Overall, while progress has been made, there is still a long way to go to achieve a better-managed and administered prison system and a collective effort is required not just from those actively involved in the CJS but also from the society at large, to make the inmates during and post incarceration feel that they are a part of the same society.