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## **2. Prisons in India: An overview of reforms and current situation**

In this chapter, we provide a broad overview of the international obligations and guidelines, with respect to the care of prisoners, and summarise the various steps taken towards prison reform in India. We then provide a brief overview of prisons in India. We also deal with the general problems of Indian prisons, which undoubtedly play an important part in understanding the challenges in providing mental health services to prisoners and to staff in prisons.

### **International Obligations and Guidelines**

The International Covenant on Civil and Political Rights (ICCPR) remains the core international treaty on the protection of the rights of prisoners. India ratified the Covenant in 1979 and is bound to incorporate its provisions into domestic law and state practice. The International Covenant on Economic, Social and Cultural Rights (ICESR) states that prisoners have a right to the highest attainable standard of physical and mental health. Apart from civil and political rights, the so called second generation economic and social human rights as set down in the ICESR also apply to the prisoners.

The earlier United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955 consists of five parts and ninety-five rules. Part one provides rules for general applications. It declares that there shall be no 'discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. At the same time there is a strong need for respecting the religious belief and moral precepts of the group to which a prisoner belongs. The standard rules give due consideration to the separation of the different categories of prisoners. It indicates that men and women be detained in separate institutions. The under- trial prisoners are to be kept separate from convicted prisoners. Further, it advocates complete separation between the prisoners detained under civil law and criminal offences. The UN standard Minimum Rule also made it mandatory to provide separate residence for young and child prisoners from the adult prisoners. Subsequent UN directives have been the Basic Principles for the Treatment of Prisoners (United Nations 1990) and the Body of

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Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (United Nations 1988).

On the issue of prison offences and punishment, the standard minimum rules are very clear. The rules state that 'no prisoner shall be punished unless he or she has been informed of the offences alleged against him/her and given a proper opportunity of presenting his/her defense'. It recommends that corporal punishment, by placing in a dark cell and all 'cruel, in-human or degrading punishments shall be completely prohibited as a mode of punishment and disciplinary action' in the jails.

### **Prison Reforms in India – a brief background and overview**

The history of prison establishments in India and subsequent reforms have been reviewed in detail by Mahaworker (2006). A brief summary of the same is presented below.

The modern prison in India originated with the Minute by TB Macaulay in 1835. A committee namely Prison Discipline Committee, was appointed, which submitted its report on 1838. The committee recommended increased rigorousness of treatment while rejecting all humanitarian needs and reforms for the prisoners. Following the recommendations of the Macaulay Committee between 1836-1838, Central Prisons were constructed from 1846.

The contemporary Prison administration in India is thus a legacy of British rule. It is based on the notion that the best criminal code can be of little use to a community unless there is good machinery for the infliction of punishments. In 1864, the Second Commission of Inquiry into Jail Management and Discipline made similar recommendations as the 1836 Committee. In addition, this Commission made some specific suggestions regarding accommodation for prisoners, improvement in diet, clothing, bedding and medical care. In 1877, a Conference of Experts met to inquire into prison administration. The conference proposed the enactment of a prison law and a draft bill was prepared. In 1888, the Fourth Jail Commission was appointed. On the basis of its recommendation, a consolidated prison bill was formulated. Provisions regarding the jail offences and punishment were specially examined by a conference of experts on Jail

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Management. In 1894, the draft bill became law with the assent of the Governor General of India.

### **Prisons Act 1894**

It is the Prisons Act, 1894, on the basis of which the present jail management and administration operates in India. This Act has hardly undergone any substantial change. However, the process of review of the prison problems in India continued even after this. In the report of the Indian Jail Committee 1919-20, for the first time in the history of prisons, 'reformation and rehabilitation' of offenders were identified as the objectives of the prison administrator. Several committees and commissions appointed by both central and state governments after Independence have emphasised humanisation of the conditions in the prisons. The need for completely overhauling and consolidating the laws relating to prison has been constantly highlighted.

The Government of India Act 1935, resulted in the transfer of the subject of jails from the centre list to the control of provincial governments and hence further reduced the possibility of uniform implementation of a prison policy at the national level. State governments thus have their own rules for the day to day administration of prisons, upkeep and maintenance of prisoners, and prescribing procedures.

In 1951, the Government of India invited the United Nations expert on correctional work, Dr. W.C. Reckless, to undertake a study on prison administration and to suggest policy reform. His report titled 'Jail Administration in India' made a plea for transforming jails into reformation centers. He also recommended the revision of outdated jail manuals. In 1952, the Eighth Conference of the Inspector Generals of Prisons also supported the recommendations of Dr. Reckless regarding prison reform. Accordingly, the Government of India appointed the All India Jail Manual Committee in 1957 to prepare a model prison manual. The committee submitted its report in 1960. The report made forceful pleas for formulating a uniform policy and latest methods relating to jail administration, probation, after-care, juvenile and remand homes, certified and reformatory school, borstals and protective homes, suppression of immoral traffic etc. The report also suggested amendments in the Prison Act 1894 to provide a legal base for correctional work.

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## **The Model Prison Manual**

The Committee prepared the Model Prison Manual (MPM) and presented it to the Government of India in 1960 for implementation. The MPM 1960 is the guiding principle on the basis of which the present Indian prison management is governed.

On the lines of the Model Prison Manual, the Ministry of Home Affairs, Government of India, in 1972, appointed a working group on prisons. It brought out in its report the need for a national policy on prisons. It also made an important recommendation with regard to the classification and treatment of offenders and laid down principles.

## **The Mulla Committee**

In 1980, the Government of India set-up a Committee on Jail Reform, under the chairmanship of Justice A. N. Mulla. The basic objective of the Committee was to review the laws, rules and regulations keeping in view the overall objective of protecting society and rehabilitating offenders. The Mulla Committee submitted its report in 1983.

## **The Krishna Iyer Committee**

In 1987, the Government of India appointed the Justice Krishna Iyer Committee to undertake a study on the situation of women prisoners in India. It has recommended induction of more women in the police force in view of their special role in tackling women and child offenders.

## **Subsequent developments**

Following a Supreme Court direction (1996) in *Ramamurthy vs State of Karnataka* to bring about uniformity nationally of prison laws and prepare a draft model prison manual, a committee was set up in the Bureau of Police Research and Development (BPR&D). The jail manual drafted by the committee was accepted by the Central government and circulated to State governments in late December 2003. How many have acted on it is anybody's guess. As in the case of the recommendations of the National Police Commission (1977), which had sought the creation of a State Security Commission and

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the promulgation of a new Police Act to replace the 1861 enactment, implementing jail reform recommendations rests with the States. The Home Ministry can do precious little if there is no political will on the part of States to push through both police and prison reforms.

In 1999, a draft Model Prisons Management Bill (The Prison Administration and Treatment of Prisoners Bill- 1998) was circulated to replace the Prison Act 1894 by the Government of India to the respective states but this bill is yet to be finalized. In 2000, the Ministry of Home Affairs, Government of India, appointed a Committee for the Formulation of a Model Prison Manual which would be a pragmatic prison manual, in order to improve the Indian prison management and administration.

The All India Committee on Jail Reforms (1980-1983), the Supreme Court of India and the Committee of Empowerment of Women (2001-2002) have all highlighted the need for a comprehensive revision of the prison laws but the pace of any change has been disappointing (Banerjea 2005). The Supreme Court of India has however expanded the horizons of prisoner's rights jurisprudence through a series of judgments.

### **Prisons in India – a brief summary**

According to the UN Global Report on Crime and Justice 1999, the rate of imprisonment in our country is very low, i.e. 25 prisoners per one lakh of population, in comparison to Australia (981 prisoners), England (125 prisoners), USA (616 prisoners) and Russia (690 prisoners) per one lakh population. A large chunk of prison population is dominated by first offenders (around 90%) The rate of offenders and recidivists in prison population of Indian jails is 9:1 while in the UK it is 12:1, which is quite revealing and alarming. Despite the relatively lower populations in prison, the problems are numerous.

As of 2007, the prison population was 3,76,396, as against an official capacity of 277,304, (representing an occupancy rate of 135.7%) distributed across 1276 establishments throughout the country. The prison population has been steadily increasing during the last decade. A majority of the prison population is male (nearly 96%) and approximately two-thirds are pre-trial detainees (undertrials).

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## **Prison Reforms – a Summary**

1. 'Prisons' is a State subject under List-II of the Seventh Schedule to the Constitution of India. The management and administration of Prisons falls exclusively in the domain of the State Governments, and is governed by the Prisons Act, 1894 and the Prison Manuals of the respective State Governments. Thus, States have the primary role, responsibility and authority to change the current prison laws, rules and regulations.

2. The existing statutes which have a bearing on regulation and management of prisons in the country are:

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| (i) The Indian Penal Code, 1860.                | (ii) The Prisons Act, 1894.                              |
| (iii) The Prisoners Act, 1900.                  | (iv) The Identification of Prisoners Act, 1920.          |
| (v) Constitution of India, 1950                 | (vi) The Transfer of Prisoners Act, 1950.                |
| (vii) The Representation of People's Act, 1951. | (viii) The Prisoners (Attendance in Courts) Act, 1955.   |
| (ix) The Probation of Offenders Act, 1958.      | (x) The Code of Criminal Procedure, 1973.                |
| (xi) The Mental Health Act, 1987.               | (xi) The Juvenile Justice (Care & Protection) Act, 2000. |
| (xiii) The Repatriation of Prisoners Act, 2003. | (xiv) Model Prison Manual (2003).                        |

3. Various Committees, Commissions and Groups have been constituted by the State Governments as well as the Government of India (GoI), from time to time, such as the All India Prison Reforms Committee (1980) under the Chairmanship of Justice A.N. Mulla (Retd.), R.K. Kapoor Committee (1986) and Justice Krishna Iyer Committee (1987) to study and make suggestions for improving the prison conditions and administration, inter alia, with a view to making them more conducive to the reformation and rehabilitation of prisoners. These committees made a number of recommendations to improve the conditions of prisons, prisoners and prison personnel all over the country. In its judgments on various aspects of prison administration, the Supreme Court of India has laid down three broad principles regarding imprisonment and custody. Firstly, a person in prison does not become a non-person; secondly, a person in prison is entitled to all human rights within the limitations of imprisonment; and, lastly there is no justification for aggravating the suffering already inherent in the process of incarceration.

### **4. CENTRAL ASSISTANCE TO STATES**

Based on the recommendations of various Committees, Central assistance was provided to the States on a matching contribution basis to improve security in prisons, repair and renovation of old prisons, medical facilities, development of borstal schools, facilities to women offenders, vocational training, modernization of prison industries, training to prison personnel, and for the creation of high security enclosure. The total assistance provided to the State Governments from 1987 to 2002 was Rs. 125.24 crore. The Eleventh Finance Commission had also granted an amount of Rs 10 crore to the Government of Arunachal Pradesh for the construction of jail.

### **5. NON-PLAN SCHEME ON MODERNISATION OF PRISONS (2002-2007)**

An assessment was made by the Bureau of Police Research and Development (BPR&D) on the requirements of the States depending on their prison population and available capacity etc. and a non-plan scheme involving a total outlay of Rs 1800 crore to be implemented over a period of five years from 2002-03 to 2006-07 was launched with the approval of Cabinet.

#### **SALIENT FEATURES OF THE SCHEME**

- Total Outlay: Rs. 1800 Crores
- Covering: 27 States (Except Arunachal & UTs)
- Cost Sharing (CS:SS): 75:25
- Project Duration: 2002-03 to 2006-07
- Scheme Extended: Upto 31.3.2009 (without Additional Funds)

#### **MAJOR COMPONENTS OF THE SCHEME**

- Construction of new prisons and additional barracks
- Repair and renovation of existing prisons
- Improvement in water and sanitation
- Living accommodation for prison personnel

As against the total Central share of Rs1350 crore over a period of 5 years, an amount of Rs. 1346.95 crores has been released to the State Governments upto 31.3.2009. Out of total central share of Rs. 1350 crore, Rs. 3.05 crore was uncommitted fund and central share of J&K which Rs 1.55 crore was uncommitted fund and Rs. 1.50 crore was the central share of J&K which could not be released to the State Government due to non-submission of utilization certificate. The progress of the Scheme is being monitored closely with a view to ensure that the funds released to the States are properly utilized for the purpose for which they have been released.

Source: Ministry of Home Affairs 2009. Available from: <http://mha.nic.in/pdfs/Modprison.pdf>

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**Table 1: Prisons in India (data for 2007)**

<b>Ministry responsible</b>	Ministry of Home Affairs		
<b>Prison administration</b>	Governments of States (28) and Union Territories (7)		
<b>Prison population total (including pre-trial detainees / remand prisoners)</b>	<b>376,396</b>	at 31.12.2007 (National Crime Records Bureau)	
<b>Prison population rate (per 100,000 of national population)</b>	<b>32</b>	based on an estimated national population of 1,160.9 million at end of 2007 (from United Nations figures)	
<b>Pre-trial detainees / remand prisoners (percentage of prison population)</b>	<b>66.6%</b>	(31.12.2007)	
<b>Female prisoners (percentage of prison population)</b>	<b>4.1%</b>	(31.12.2007)	
<b>Juveniles / minors / young prisoners incl. definition (percentage of prison population)</b>	<b>0.1%</b>	(31.12.2007 - under 18)	
<b>Foreign prisoners (percentage of prison population)</b>	<b>1.3%</b>	(31.12.2007)	
<b>Number of establishments / institutions</b>	<b>1,276</b>	(31.12.2007 - comprising 113 central jails, 309 district jails, 769 sub jails, 16 women's jails, 28 open jails, 25 special jails, 10 Borstal schools and 6 other jails)	
<b>Official capacity of prison system</b>	<b>277,304</b>	(31.12.2007)	
<b>Occupancy level (based on official capacity)</b>	<b>135.7%</b>	(31.12.2007)	
<b>Recent prison population trend (year, prison population total, prison population rate)</b>	1999	<b>281,380</b>	<b>(28)</b>
	2001	<b>313,635</b>	<b>(30)</b>
	2003	<b>326,519</b>	<b>(30)</b>
	2005	<b>358,368</b>	<b>(32)</b>
	2007	<b>376,396</b>	

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## Major Problems of Prisons Relevant to India

Despite the relatively low number of persons in prison as compared to many other countries in the world, there are some very common problems across prisons in India, and the situation is likely to be the same or worse in many developing countries. Overcrowding, prolonged detention of under-trial prisoners, unsatisfactory living conditions, lack of treatment programmes and allegations of indifferent and even inhuman approach of prison staff have repeatedly attracted the attention of the critics over the years.

### Overcrowding

Congestion in jails, particularly among undertrials has been a source of concern. The Law Enforcement Assistance Administration National Jail Census of 1970 revealed that 52% of the jail inmates were awaiting trial (Law Commission of India 1979).

Obviously, if prison overcrowding has to be brought down, the under-trial population has to be reduced drastically. This, of course, cannot happen without the courts and the police working in tandem. The three wings of the criminal justice system would have to act in harmony.

Speedy trials are frustrated by a heavy court workload, police inability to produce witnesses promptly and a recalcitrant defence lawyer who is bent upon seeking adjournments, even if such tactics harm his/her client. Fast track courts have helped to an extent, but have not made a measurable difference to the problem of pendency. Increasing the number of courts cannot bring about a desired difference as long as the current 'adjournments culture' continues (Raghavan 2004).

#### Tihar courts trouble again

The high-security Tihar Jail is back in the news. The Delhi High Court has directed the Registrar-General to visit the jail and the Rohini district prison after inmates alleged serious violation of their fundamental and human rights by the authorities.

At a 'mahapanchayat' organised by the inmates to voice their concerns, they alleged that incidents of violence among prisoners like stabbing and blade attacks are on the rise. The security personnel, they said, have done nothing to contain the situation. Overcrowding is a big problem in the jail that has around 13,000 inmates against the combined capacity of 6,200.

The Hindustan Times June 27, 2006

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## Corruption and extortion

Extortion by prison staff, and its less aggressive corollary, guard corruption, is common in prisons around the world. Given the substantial power that guards exercised over inmates, these problems are predictable, but the low salaries that guards are generally paid severely aggravate them. In exchange for contraband or special treatment, inmates supplement guards' salaries with bribes. Powerful inmates in some facilities in Colombia, India, and Mexico enjoyed cellular phones, rich diets, and comfortable lodgings, while their less fortunate brethren lived in squalor. An unpublished PhD dissertation from Punjab University on 'The Functioning of Punjab Prisons: An appraisal in the context of correctional objectives' cites several instances of corruption in prison. Another article suggested that food services are the most common sources of corruption in the Punjab jails. Ninety five percent of prisoners felt dissatisfied and disgusted with the food served (quoted in Roy 1989)

### Unsatisfactory living conditions

Overcrowding itself leads to unsatisfactory living conditions. Although several jail reforms outlined earlier have focused on issues like diet, clothing and cleanliness, unsatisfactory living conditions continue in many prisons around the country. A special commission of inquiry,

#### Conditions in Jails

Chaotic conditions prevail in UP jails. Massive overcrowding, understaffing and rampant corruption have completely derailed the management. The presence of large number of Mafiosi has also badly affected the jail administration. The State Jail Department data indicates that as against the capacity of nearly 44000 there are 85000 prisoners in 62 jails in the state. In some jails like Shahjehanpur, Moradabad, Fatehgarh and Deoria the numbers are four times more than the capacity. Even as ten new jails are under construction, the existing ones are as old as more than 150 years, which according to a senior department officer require large-scale modernisation.

"In fact the government comes out of hibernation only after jail break," commented the officer on the condition of anonymity. The situation is unlikely to improve without "de-crowding", he said.

The crowding could be gauged from the fact that as against the provision of 40 sq-feet area for each prisoner, 150 to 200 prisoners are locked in each barrack.

The department with Rs 700 crore annual budget has been facing rampant corruption due to lack of facilities in jails.

"The prisoners bribe the jail officers for all sorts of facilities," said the officer.

There is feeling in the department that rampant corruption could not be contained in the jails without their modernisation.

Interestingly there is no dearth of "well-connected" prisoners. At present, there are 11 MLAs and one MP in UP jails.

Excerpted from: M Hasan in the Hindustan Times, June 30,2010; Available from:

<http://www.hindustantimes.com/Overcrowding-corruption-crumble-UP-jails/Article1-565439.aspx>

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appointed after the 1995 death of a prominent businessman in India's high-security Tihar Central Jail, reported in 1997 that 10 000 inmates held in that institution endured serious health hazards, including overcrowding, "appalling" sanitary facilities and a shortage of medical staff (Human Rights Watch 2006)

'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.*

### **Staff shortage and poor training**

Prisons in India have a sanctioned strength of 49030 of prison staff at various ranks, of which, the present staff strength is around 40000. The ratio between the prison staff and the prison population is approximately 1:7. It means only one prison officer is available for 7 prisoners, while in the UK, 2 prison officers are available for every 3 prisoners.

### **Inequalities and distinctions**

'Though prisons are supposed to be leveling institutions in which the variables that affect the conditions of confinement are the criminal records of their inmates and their behaviour in prison, other factors play an important part in many countries' (Neier et al 1991). This report by the Human Rights Watch, specifically cite countries like India and Pakistan, where a 'rigid' class system exists in the prisons. It states that under this system, special privileges are accorded to the minority of prisoners who come from the upper and middle classes irrespective of the crimes they have committed or the way they comport themselves in prison.

### **Inadequate prison programmes**

Despite the problems of overcrowding, manpower shortage and other administrative difficulties, innovative initiatives have been undertaken in some prisons. For e.g. the Art of Living has been carrying out a SMART programme in Tihar Jail. This includes two courses per month and follow up sessions every weekend. Two courses are annually

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conducted for prison staff. But these are more by way of exceptions and experiments. A Srijan project there is aimed at providing social rehabilitation. However, such programmes are few and far between. Many prisons have vocational training activities, but these are often outdated. Hardly any of the prisons have well planned prison programmes providing structured daily activities, vocational training, pre-discharge guidance and post-prison monitoring.

Prisons, though for a short or longer period are places of living for both accused as well as convicts. The reformatory objective expects that it should also be a place of learning and earning. To provide physical, material and mental conditions of decent living to prisoners, it requires recreating almost a miniature world inside the prisons. This is difficult if not impossible. European countries are increasingly in search of alternatives to confinement, as they realised more resources for assimilation of deviant are available in open society rather than inside the closed walls. This has not happened so far in India as governments across the ideological spectrum are illiberal and society is unsympathetic to rights of the incarcerated. The result is lowest priority to the prison management.

Karnam M. Commonwealth Human Rights Initiative 2008

### **Poor spending on health care and welfare**

In India, an average of US\$ 333 (INR 10 474) per inmate per year was spent by prison authorities during the year 2005, distributed under the heads of food, clothing, medical expenses, vocational/educational, welfare activities and others.(National Crime Records Bureau 2005). This is in contrast to the US, where the average annual operating cost per state inmate in 2001 was \$ 22,650 (the latter presumably also includes salaries of prison staff). The maximum expenditure in Indian prisons is on food. West Bengal, Punjab, Madhya Pradesh, Uttar Pradesh, Bihar and Delhi reported relatively higher spending on medical expenses during that year, while Bihar, Karnataka and West Bengal reported relatively higher spending on vocational and educational activities. Tamil Nadu, Orissa and Chattisgarh reported relatively higher spending on welfare activities.

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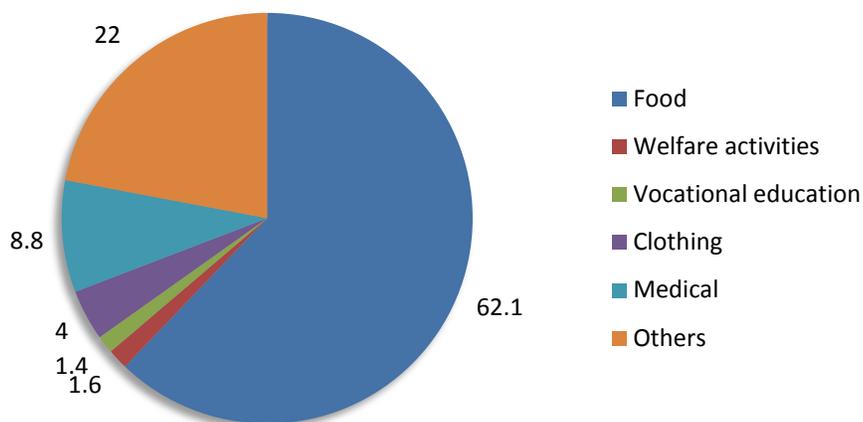
**Table 2: Spending on prisons in states of India**

SL. NO.	STATE/UT	TOTAL SANCTIONED BUDGET (IN Rs. LAKHS)		PERCENTAGE VARIATION IN 2005-06 OVER 2004-05
		2004-2005	2005-2006	
1	ANDHRA PRADESH	9336.8	9292.0	-0.5
2	ARUNACHAL PRADESH	-	-	-
3	ASSAM	4493.7	4229.8	-5.9
4	BIHAR	6828.5	7042.6	3.1
5	CHHATTISGARH	2994.3	2280.4	-23.8
6	GOA	364.1	210.8	-42.1
7	GUJARAT	2601.4	3761.8	44.6
8	HARYANA	6260.8	6253.0	-0.1
9	HIMACHAL PRADESH	1259.0	1129.4	-10.3
10	JAMMU & KASHMIR	2454.3	2857.7	16.4
11	JHARKHAND	6737.3	3240.1	-51.9
12	KARNATAKA	4952.2	5646.7	14.0
13	KERALA	3343.8	3457.1	3.4
14	MADHYA PRADESH	6579.4	7101.5	7.9
15	MAHARASHTRA	9759.3	9723.3	-0.4
16	MANIPUR	853.7	825.6	-3.3
17	MEGHALAYA	304.8	283.2	-7.1
18	MIZORAM	684.6	809.0	18.2
19	NAGALAND	1125.4	1093.2	-2.9
20	ORISSA	2934.3	3101.7	5.7
21	PUNJAB	6139.7	6751.0	10.0
22	RAJASTHAN	3530.1	3588.1	1.6
23	SIKKIM	522.3	522.9	0.1
24	TAMILNADU	9051.1	8101.6	-10.5
25	TRIPURA	988.1	1298.6	31.4
26	UTTAR PRADESH	18795.3	20376.1	8.4
27	UTTARANCHAL	896.3	915.7	2.2
28	WEST BENGAL	7271.7	7632.0	5.0
<b>TOTAL(STATES)</b>		<b>121062.3</b>	<b>121524.6</b>	<b>0.4</b>
29	A & N ISLANDS	214.0	227.0	6.1
30	CHANDIGARH	289.0	301.1	4.2
31	D & N HAVELI	6.0	6.0	0.0
32	DAMAN & DIU	25.0	21.0	-16.0
33	DELHI	7073.0	6549.6	-7.4
34	LAKSHADWEEP	1.0	1.0	0.0
35	PONDICHERRY	126.1	143.3	13.6
<b>TOTAL(UTs)</b>		<b>7734.1</b>	<b>7248.9</b>	<b>-6.3</b>
<b>TOTAL (ALL-INDIA)</b>		<b>128796.3</b>	<b>128773.6</b>	<b>0.0</b>

**Source: National Crime Records Bureau**

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**Figure 2: Percentage distribution of expenditure on various items on prison inmates (2005)**



**Source: National Crime Record Bureau.**

**Press Information Bureau, Govt of India  
Press Release August 4, 2009**

Lok Sabha

The Union Government has received proposals from State Governments regarding modernisation of prisons in their respective States.

Considering the demand of various States for granting further financial assistance for construction of new jails/additional barracks so as to address the problem of overcrowding, the Ministry of Home Affairs has initiated the process of formulating second phase of the scheme of modernization of prisons. Necessary steps are being taken in this regard in consultation with the Ministry of Finance.

The proposal so received from the state Governments will be considered only after the proposal mooted by the Ministry of Home Affairs is approved by the Cabinet. The proposals of State Governments shall be processed depending upon the terms of approval of the scheme as also the funds sanctioned by the Cabinet and provided in the budget.

This information was given by the Minister of State in the Ministry of Home

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The scheme for modernisation of prisons was launched in 2002-03 with the objective of improving the condition of prisons, prisoners and prison personnel. The components include construction of new jails, repair and renovation of existing jails, construction of additional barracks, improvement in sanitation and water supply and construction of staff quarters for prison personnel. Activities under the scheme have been construction of 168 new jails, renovation, repairs and construction of 1730 new barracks, construction of 8965 staff quarters as well as improvement of water and sanitation in jails. The scheme was extended upto 31.3.2009 without affecting the total outlay of Rs.1800 crore (Govt of India, Ministry of Home Affairs). A second phase has been envisaged in 2009 with a financial outlay of Rs 3500 crores. However, questions have been raised whether modernisation can bring about change without integrity of purpose. Can isolation of any institution from public support and scrutiny make it transparent and attentive to its objectives? Any government that claims attempting to integrate the felon into society first of all should declare prison is as much a public institution as that of a university or hospital; remove its isolation and integrate it functionally and physically into society; make police, judiciary, medical and educational departments, conscious of their accountability for pathetic prison conditions (Karnam 2008). Otherwise things are not going to change just with allocation of crores of rupees and launching of schemes.

### **Lack of legal aid**

In India, legal aid to those who cannot afford to retain counsel is only available at the time of trial and not when the detainee is brought to the remand court. Since the majority of prisoners, those in lock up as well as those in prisons have not been tried, absence of legal aid until the point of trial reduces greatly the value of the country's system of legal representation to the poor. Lawyers are not available at the point when many of them mostly need such assistance.

A workshop conducted by the Commonwealth Human Rights Watch in 1998 in Bhopal, focused on several aspects related to legal aid. It was pointed out that 70% of the prison population is illiterate and lacks an understanding of prisoner's rights. Thus the poor in prison do not always get the provisions in law though the State is obliged to provide legal

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aid. As also observed by the Mulla Committee, most prison inmates belong to the economically backwards classes and this could be attributed to their inability to arrange for the bail bond. Legal aid workers are needed to help such persons in getting them released either on bail or on personal recognisance. Bail provisions must be interpreted liberally in case of women prisoners with children, as children suffer the worst kind of neglect when the mother is in prison.

The lack of good and efficient lawyers in legal aid panels at that time was also a concern raised. Several suggestions were made to speed up trial processes so that the population of undertrials could be reduced. Some of the suggestions provided were expeditious holding of trials, making it possible for undertrials to plead guilty at any stage of the trial, system of plea bargaining. In a seminar, efforts made at the Tihar Jail by the University of Delhi faculty and students of law in the field of legal aid were highlighted. These included imparting legal literacy to the prisoners, sensitizing the prison administration, taking up individual prisoners to provide legal aid, involving para-legal staff to work with prisoners, both convicts and undertrials. The seminar suggested for Lok Adalat involvement to be greater and that constant monitoring of prisons was necessary to identify inadequacies and shortcomings in the prison administration. It finally suggested the need for law reform as essential to the entire system of legal aid.

A similar finding was noted in the NIMHANS-National Commission for Women study in the Central Prison, Bangalore. Many of the women were illiterate, had never stepped out of their houses, had no financial resources and many had been arrested on petty charges. Most had no idea about legal procedures, such as, what is the process of trial, how to arrange for a defense lawyer, what laws exist to protect their children or property etc.

### **Abuse of prisoners**

Physical abuse of prisoners by guards is another chronic problem. Some countries continue to permit corporal punishment and the routine use of leg irons, fetters, shackles, and chains. In many prison systems, unwarranted beatings are an integral part of prison life.

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Women prisoners are particularly vulnerable to custodial sexual abuse. The problem was widespread in the United States, where male guards outnumbered women guards in many women's prisons. In some countries, Haiti being a conspicuous example, female prisoners were even held together with male inmates, a situation that exposed them to rampant sexual abuse and violence.

A book reviewing prison services in Punjab, reported that, 'to get food supplements, or blankets in winter, class c-prisoners must fan the convict officers, or massage their legs, or even perform sexual favours for them. The enslavement of other prisoners to the convict officers who effectively run the prisons is particularly severe for new comers (known as amdani). They are teased, harassed, abused and even tortured as part of the process of breaking them in (Human Rights Watch 2001).

### **Consequence of prison structure and function**

Physical and psychological torture resulting from overcrowding, lack of space for segregation of sick, stinking toilets for want of proper supply of water, lack of proper bedding, restrictions on movement resulting from shortage of staff, parading of women through men's wards for lack of proper separation, non-production of undertrial prisoners in courts, inadequate medical facilities, neglect in the grant of parole, rejection of premature release on flimsy grounds, and several such afflictions result not from any malfeasance of the prison staff but from the collective neglect of the whole system (Human Rights Watch 2001).

In many places, non-governmental organisations provide rehabilitation programmes and a few provide aftercare. Some notable examples include the Prison Fellowship International. Most prisoners are ill prepared for release. No steps are taken to minimise their chance of committing re-offences. Programmes to develop a set of values, the ethos of honest labour and to build pro-social ties with the community are essential.

Well-established prisons with continuous good leadership generally impart literacy to the illiterate inmate and offer facilities for higher education to those who are already reasonably educated and are willing to improve on their knowledge so that they are usefully employed after getting back to the community

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## **Health Problems in prisons**

The overcrowding, poor sanitary facilities, lack of physical and mental activities, lack of decent health care, all increase the likelihood of health problems in prisons. Kazi et al (2009) mention that prisons are 'excellent venues for infectious disease screening and intervention, given the conditions of poverty and drug addiction'.

It is surprising and indeed shocking that despite the large prison population in India, there is a complete dearth of published information regarding the prevalence of health problems in prisons. An exception is a small study in the Central Jail at Hindalga in the Belgaum district of Karnataka, 850 prisoners were evaluated (letter in the Indian J Community Medicine, Bellad et al 2007). Follow-up of these prisoners for a period of 1 year revealed that anaemia (54.82%) was the commonest morbidity among chronic morbidity followed by respiratory tract infections (21.75%) and diarrhoea (13%) for acute morbidity. Pulmonary TB and HIV contributed 2% and 1.5% respectively. Other morbidity included, diabetes (3.6%), senile cataract (7%), pyoderma (12%) etc. Very few details are available of this work including criteria for diagnosis, investigations carried out etc. In another study, anemia was the common physical problem noted in prisons (Gupta et al., 2001).

## **Tuberculosis**

TB notification rates in prisons are many times greater than that for the general population. TB is considered to be the single biggest cause of death among the world's prison populations. Despite TB's endemic nature in Asia, TB among prisoners is not well documented.

Prisoners are vulnerable to TB because:

- They are from the most disadvantaged socioeconomic strata of society, mostly young males, and therefore may enter the prison with a high risk of prior TB infection/disease.
  - They have poor nutrition, before entering the prison as well as the poor diet inside the prison plays a contributing role.
  - They may be HIV-positive before due to injecting drug-use. In some countries, up to 70% of prisoners with TB are also infected with HIV. The vulnerability of
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prisoners to punishment, sexual violence can increase the risk of transmission of HIV, which accelerates the progression to TB.

- Prisons are overcrowded and have poor ventilation.
- Budgetary allocations for health care are low and poor treatment is inadequate
- Antituberculous treatment may not be completed prior to release or transfer.

Prisons are reservoirs of TB and threaten not only the inmates, but the prison staff, visitors and community. As with any confined and limited environment effective TB control activities can be initiated. (Jeet India 2004)

Tuberculosis (TB) is a serious problem among prison populations around the world. The spread of TB was especially worrisome in Russia, in light of the country's enormous inmate population--over one million prisoners as of September 2000--and the increasing prevalence of multi-drug resistant (MDR) strains of the disease. Approximately one out of every ten inmates was infected with tuberculosis, with more than 20 percent of sick inmates being affected by MDR strains, constituting a serious threat to public health. High rates of TB were also reported in the prisons of Brazil and India (Human Rights Watch Report 2001).

High rates of pulmonary tuberculosis have been reported from prisons in Pakistan (Shah et al 2003, Hussain et al 2003, Rao et al 2004). The stratified random sample study of 425 of a total sample of 6607 male prisoners from the NWFP in Pakistan (Hussain et al 2003) found an overall prevalence of latent mycobacterium tuberculosis infection at 48%. Using multiple logistic regression, a prisoner's age, educational level, smoking status, duration of current incarceration, and average accommodation area of 60 ft<sup>2</sup> or less in prison barracks were found to be statistically significant ( $P < 0.05$ ) predictors of latent MTB infection. In a Bangladesh study, the main risk factors of TB in prison were exposure to TB patients (adjusted odds ratio 3.16, 95% CI 2.36–4.21), previous imprisonment (1.86, 1.38–2.50), longer duration of stay in prison (17.5 months for TB cases; 1.004, 1.001–1.006) and low body mass index which is less than 18.5 kg/m<sup>2</sup> (5.37, 4.02–7.16) (Banu et al 2010). The study recommends entry examinations and active symptom screening among inmates to control TB transmission inside the prison.

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## HIV/STIs

‘The HIV/AIDS epidemic ravaged prison populations, with penal facilities around the world reporting grossly disproportionate rates of HIV infection and of confirmed AIDS cases. Inmates around the world frequently died of AIDS while incarcerated, often deprived of even basic medical care’ (Human Rights Watch Report 2001). In countries like India, Indonesia and Thailand, HIV prevalence in prisons is between two and 15 times greater in the prison populations than in the general community. This could be on account of risky heterosexual or homosexual encounters, voluntary or coerced, injecting drug use, interpersonal violence or on account of practices like tattooing (reported from the other countries). TB/HIV co-infection is also well known (WHO 2007).

**Table 3: Subnational HIV prevalence in prisons in India**

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City/region/prison	Year	Sample size	HIV prevalence (%)
<b>Nationally</b>	2000	Data inaccessible	1.7% of inmates; 9.5% of female inmates
<b>West Bengal</b>	2006	384	2.3%
<b>Amritsar Central Jail</b>	2005	500	2.4%
<b>Ghaziabad</b>	1999	249	1.3% of inmates aged 15–50 years
<b>Orissa, three prisons</b>	1999	377	6.9%
<b>Madurai</b>	1996	Data inaccessible	4.3%; 2% of male and 14.2% of female inmates
<b>Central Prison, Bangalore</b>	1995	1114	1.8% of male inmates
<b>Madras</b>	1995	Data inaccessible	3.5%
<b>Thirunelveli</b>	1995	Data inaccessible	0.5%

Source: WHO SEARO 2007

HIV prevalence in prisons in India is much higher than in the community (1.7–6.9%),

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compared with 0.36%). Among female prisoners, prevalence levels of 9.5–14.2% have been reported.

Most prisoners bring in HIV infection when they enter the prison. High risk sexual behaviours are common in prisons, and combined with a lack of poor knowledge of HIV/other STI transmission and a paucity of services makes this a very hidden and difficult problem to tackle (Guin 2009). The tedious prison environment, crowding and hostility, lack of occupation of mind and body and just plain boredom lead to accumulated frustration and tension. This environment leads to high risk activities such as use of drugs and unprotected sex. Some become involved because of monetary gain. Risky lifestyle leads to the transmission of diseases from one prisoner to another and poses a serious public health risk if unchecked.

There continues to be stigma associated with discussing HIV/AIDS particularly in correctional settings where many HIV risk behaviours (e.g. injection drug use, unprotected anal sex) are disallowed. However, there are hardly any reports of sexual activity in prisons in India and no prevalence data is available. A study from Thailand shows that of 689 male inmates, one quarter reported ever having sex with men; of them, more than 80% reported sex with men during incarceration (WHO SEARO 2007). Sex between men is reported to be common in prisons in India, though homosexuality is illegal in India. In a study conducted in Arthur Road Jail, 71.6% of 75 employees and 677 inmates said that they thought sex between men was common in prisons. Eleven per cent of inmates and staff engaged in homosexual activity in prisons. A study in a district jail near Delhi found that 28.8% of 184 male inmates had a history of sex with men (WHO SEARO 2007).

A study conducted in Chennai in 2005 found that the HIV prevalence was 37% among 48 IDUs who were “ever in jail”, compared with 21% among 20 IDUs who had never been incarcerated. The authors found that 16% of HIV risk among IDUs in Chennai could be attributed to having been imprisoned (Panda et al 2005).

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The co-infection rates between tuberculosis and HIV are very high. In a random selection of 365 imprisoned men in Karachi, Pakistan, Kazi et al (2010) found the prevalence of confirmed tuberculosis was 2.2%, 2.0% were HIV-infected; syphilis was confirmed in 8.9%, HBV in 5.9%, and HCV in 15.2%. By self-report, 59.2% had used any illicit drugs, among whom 11.8% had injected drugs.

In India, there is no clear policy on testing for HIV in prisons in general, nor is there a uniform policy on access to voluntary counselling and testing. Anecdotal reports suggest that a few state prisons require testing at entry; some require it during custody and others before release. Lack of privacy is a common issue for those diagnosed as HIV positive.

There are adhoc interventions on HIV education, information and communication in Indian prisons. These are listed in the accompanying box. The national policy on segregation of prisoners with HIV is unclear. There are reports of segregation of HIV-positive prisoners, with approximately 20 HIV positive inmates in Maharashtra's prisons lodged in separate cells. In Arthur Road Jail, there is an HIV

Although there is no uniform policy on HIV prevention and intervention in prisons in India, several prisons have undertaken such programmes.

The Government of Andhra Pradesh started a sexual health programme titled Partnership for Sexual Health (PSH Prison Project) in January 2000. The project was managed by the Andhra Pradesh AIDS Control Society and operated in eleven jails in Andhra Pradesh. Three trained staff members provided HIV education. The programme also included counselling, referral and medical treatment.

In Mumbai, the Mumbai District AIDS Control Society and the International Labour Organization together with the Department of Preventive and Social Medicine, Sion Hospital conducted a workplace intervention programme at the Arthur Road Jail from 2004 to 2006. The intervention employed a peer educator's approach to raise awareness of HIV/AIDS. Jail employees and inmates were given training for three half-days, following which peer educators were selected from different cells. The intervention led to the drafting of an HIV/AIDS Workplace Policy for provision of voluntary counselling and testing (VCT) and condoms in prisons, and provision of antiretroviral therapy (ART), with JJ Hospital, Mumbai as the ART centre. The draft policy will be submitted to the Maharashtra Home Ministry for approval (personal communication, Palve A, Mumbai District AIDS Control Society, 12 September 2007).

In West Bengal, Vivekananda International Health Centre has been delivering an AIDS intervention programme in 20 prisons. The programme, reaching 50 000 prisoners and staff, includes education about sexually transmitted infection (STI) and HIV.

In Gujarat, an information and education programme conducted by NGOs aims to change prisoner attitudes and HIV risk behaviours.

#### Harm reduction programmes

The distribution of condoms is against prison policy as male-to-male sex is regarded as a crime in India.<sup>32</sup> However, a government-run prison intervention in Andhra Pradesh includes condom distribution.<sup>33</sup> There are no prison needle and syringe programmes (NSPs) in India.

Education and counselling services as well as treatment for STI is provided in 42 prisons in Andhra Pradesh by Hindustan Latex Limited under an agreement with the Andhra Pradesh State AIDS Control Society.<sup>33</sup> Partnership for Sexual Health and other NGOs provide STI treatment in prisons in Surat, Gujarat.<sup>32</sup>

WHO SEARO 2007

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barrack, which houses all HIV-positive prisoners. (WHO SEARO 2007). There are no ongoing programmes for drug abuse treatment (except in Tihar Jail), no programmes for reduction of HIV risk for high risk sexual behaviour like condom distribution or reducing risk in injecting drug users, like needle syringe exchange programmes, bleach distribution (for cleaning injecting equipment) or opioid substitution programmes. In some prisons in India, antiretroviral treatment is provided to persons who are HIV positive, but the numbers are not clear. Treatment for STI (Sexually Transmitted Infections) is also provided in some prisons as are adhoc support and care services.

### **Women and Health Care in Prisons**

Although the population of women in prisons is relatively low, their adverse social positions and social disadvantage make them more liable to rejection from families and greater dejection when they are in prison. Low levels of education and poor legal awareness makes women more likely to serve longer sentences in prison.

**Table 4: Women in Prisons of South Asia**

<b>S. No.</b>	<b>Country</b>	<b>Female Prisoners (Percentage of prison population)</b>
1.	India	3.7 %
2.	Nepal	8.3 %
3.	Sri Lanka	3.8 %
4.	Maldives	21.6 %
5.	Pakistan	1.5 %
6.	Bangladesh	2.8 %
7.	Bhutan	No data available
8.	Afghanistan	2.8 %

*(Source: International Centre for Prison Studies, 2004)*

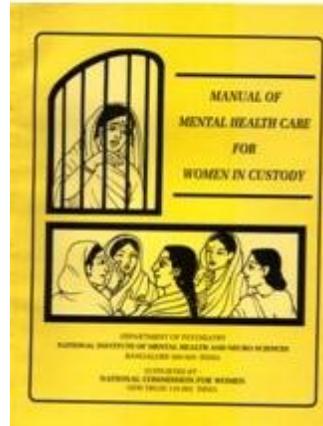
Studies from developed countries find that mental illness is grossly over-represented among incarcerated women. It is a substantial contributor to the poor health status of this population. Of particular concern are the effects of trauma and substance use disorders, which are often a result of past victimisation. Mental ill health may also be appreciated in relation to psychological distress in the form of suicidality and self-harm, both of which are elevated among women compared with both their male counterparts and the general population. The prison experience frequently compounds this disadvantage and

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psychological distress by failing to address the underlying trauma and the particular mental health needs of female prisoners. Women are "unable to defend themselves, and ignorant of the ways and means of securing legal aid. They are unaware of the rules of remission or premature release, and live a life of resignation at the mercy of officials who seldom have understanding of their problems." (Agarwal 1994).

Women in the contemporary prison face many problems; some resulting from their lives prior to imprisonment, others resulting from their imprisonment itself. Women in prison have experienced victimization, unstable family life, problems in education and work, and substance abuse and mental health problems. Social factors that marginalise their participation in mainstream society and contribute to the rising number of women in prison include poverty, lack of social support, separation or single motherhood, and homelessness. Lack of financial support and social ostracisation makes life after release a veritable hell.



NIMHANS carried out a study of the women prisoners in the Central Prison Bangalore with support from the National Commission for Women in 1998. (Murthy et al 1998)

Particularly difficult situations for women are separation from children and other significant people, including family. Some women are pregnant when they come into prison and this can be a particularly difficult time, physically and psychologically. World over, it has been found that prison services are not sensitive enough in timely recognition and treatment of their mental health problems and do not address their vocational and educational needs adequately when compared to men. As mentioned earlier, women are more liable to abuse. In some parts of the world, it is said that women in prison are likely to be subject to more disparate disciplinary action than the men. The characteristics of women offenders and their pathways to crime differ from male offenders. The system responds to them differently, therefore there is the need for gender-responsive treatment and services.

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