

## PRISONERS' RIGHTS & STATUS IN INDIA: AN OVERVIEW

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### ABSTRACT

*'No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens but its lowest ones.'*

- Nelson Mandela

A democratic country like India is known for its codified law, written constitution, and the Fundamental rights it provides to its citizens. However, one cannot divert from the fact that India doesn't have proper legislation or codified laws for the prisoners. Though, over the past few decades, awareness in India is rising regarding the rights of the prisoners. Our judiciary system has also recognized their importance and has passed various judgements regarding them. This article explains and gives light to the laws related to the prisoners, their constitutional rights like the right to privacy, free legal aid, free medical aid, and their right to get a fair trial with help of various judgements passed by the courts. The struggle and hardships faced by the prisoners such as custodial violence/torture are flabbergasting. The article further gives light to the issues such as overcrowding of prisons and the status of women prisoners in India. The agony of the prisoners is heart-wrenching.

**Keywords:** Prison, Prisoners, Rights, Violence, Incarceration, Law.

### INTRODUCTION

*"An individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is, in reality, expressing the highest respect for the law".*

- Martin Luther King

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Everyone born on this planet has the right to live freely and independently with utmost dignity and respect. When someone between us commits any act which is prohibited by our Indian legal system, then the offender should be punished but that doesn't make that person any less of a human being, he should not be deprived of the basic human needs and requirements. They are very much part of our society just like a normal human being. Therefore, their rights, duties, and living environment should be taken care of. Imprisonment is one of the oldest forms of punishment in India, from the Mughals to the British era it was followed rigorously. The offenders are kept confined and separately from the general public so that they don't repeat the crime and also as a punishment for their wrongful act, it is known as 'Incarceration' or 'Imprisonment'. Their freedom to move freely is curtailed. According to the Cambridge Dictionary, 'Prison is a building where criminals are forced to live as a punishment'<sup>1</sup>. According to Merriam Webster, 'Prison is a place for confinement, especially for law breakers'<sup>2</sup>. The prisoners' rights and related laws are evolving in India, even though there is no proper legislation related to prisoners but still, due to the alarming awareness about the prisoners' rights, their rights have been taken as a vital priority by the Indian courts.

### **LAWS RELATED TO THE PRISONERS IN INDIA**

Though as mentioned already, there is no proper legislation regarding the prisoners' rights. Still, some acts are primarily passed for the prisoners. One of the most prominent acts passed was The Prisons Act of 1894, some of the important reforms undertaken by this act are:

- Accommodation rights of a prisoner<sup>3</sup>.
- Provisions regarding the sanitization and mental health of the prisoners<sup>4</sup>.
- Right to purchase Food, Clothing, and Bedding<sup>5</sup>.
- Provision regarding availability of hospitals in every prison<sup>6</sup>.
- Prisoners are not to be ironed by jailers unless it's necessary for certain circumstances<sup>7</sup>.

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<sup>1</sup> Prison def. Cambridge eng. Dictionary

<sup>2</sup> Prison Def., Merriam-Webster.

<sup>3</sup> The prisoners Act 1894, Section 4

<sup>4</sup> Id., Sec14.

<sup>5</sup> Id., Sec 31.

<sup>6</sup> Id., Sec 39.

<sup>7</sup> Id., Sec 58

Further, The Prisons Act of 1900 was passed, where a few significant steps were taken which were worth noting:

- All references to prisons or to imprisonment or confinement were referred to as Reformatory Schools<sup>8</sup>.
- Rights of ‘Lunatic Prisoners’ were introduced, where their right to medical treatment and their transfer to Mental asylum from prison was expressly mentioned<sup>9</sup>.
- Release of a prisoner, on recognizance, by order of High Court, recommended for pardon<sup>10</sup>.

### **THE CONSTITUTIONAL RIGHT OF THE PRISONERS**

The Fundamental Rights form the basic rights which are given to the citizens of India. All the Fundamental Rights of the prisoners do not get curtailed by their incarceration, though the fundamental rights are not absolute, some reasonable restrictions can be imposed during certain circumstances. Some of the most important Fundamental Rights given to the prisoners are Articles 14, 19, 21, and 22. Under Part III of the Indian Constitution Article 14 guarantees the right to equality for every citizen, Article 14<sup>11</sup> expressly mentions that the ‘equals should be treated equally and the concept of reasonable classification was one of the key highlights of this article. Therefore, this article provides the basis for the reasonable classification of prisoners. Under Article 19<sup>12</sup>, the right to freedom is guaranteed by the constitution. The prisoners can enjoy ‘The freedom of speech and expression’ and ‘The freedom of becoming a member of associations’ but still there are few rights under this article that the prisoner cannot practice. These include ‘Right to Freedom’, by their incarceration their freedom to move freely is curtailed by the constitution, also ‘The Right to freedom of occupation or to carry on any trade or business and ‘The freedom to reside and settle in any part of the territory of India’ cannot be practiced by them. Article 20<sup>13</sup> becomes one of the most significant rights when it comes to the prisoners, it provides protection to an accused against excessive and arbitrary punishment. Article 20(1) protects them from ‘Ex Post Facto Laws’ which means no person can be subjected to a greater penalty as prescribed by the law in force at the time of the

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<sup>8</sup> The Prisoners Act 1900, Section 14

<sup>9</sup> Id., Sec 30

<sup>10</sup> Id., Sec 33

<sup>11</sup> The Constitution of India, Article 14

<sup>12</sup> The Const. Ind. Art 19

<sup>13</sup> The Const. Ind., Art 20

commission of the act. Article 20(2) protects the person from 'Double Jeopardy'. I.e., no person shall be punished more than once for the same offence. Article 20(3) of the constitution saves the accused from self-incrimination. Article 21<sup>14</sup> is very crucial when it comes to the rights of the prisoners, the courts have dived deep into this article in order to uphold the right of prisoners. It provides the right to life and personal liberty to a person. In the case of Francis Coralie Mullin vs. Union Territory of Delhi (1981),<sup>15</sup> it was observed that the procedure for depriving a person of life or liberty must not arbitrary and unreasonable, it should be fair, just, and reasonable. The Menaka Gandhi case was a game-changer, in this case, the court linked the Articles 14, 19, and 21 and said any procedure should meet the requirements mentioned in this article and the judgement also laid some more rights which come under the ambit of Article 21, these include:

- Right to Speedy Trial.
- Right to Fair Trial.
- Right to food and clean water.
- Right to medical care.
- Right to free legal aid.

Therefore, Article 21 is one of the most significant Fundamental Rights specially when it comes to the rights of the prisoners. Article 22<sup>16</sup> gives guidelines for protection against arrest where it is expressly mentioned that no person shall be detained in custody without being informed nor shall he be denied the right to consult a legal practitioner.

### **RIGHT TO FREE LEGAL AID**

*“People shouldn't be imprisoned without having the ability to challenge the legality of that imprisonment.”*

- Jeff Bingaman

Legal Aid is a system of providing free legal services to those who are incapable to afford it by themselves which includes the facilities of hiring a lawyer and filing a case in different courts

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<sup>14</sup> The Const. Ind., Art 21

<sup>15</sup> 1981 AIR 746, 1981 SCR (2) 516

<sup>16</sup>The Const. Ind., Art. 22

or tribunals. In the case of *Hussainara Khatoon vs. State of Bihar*<sup>17</sup>, the court observed the right of every prisoner who is not in a condition to afford can avail of the facility of free legal aid. Article 39(A) of the Indian Constitution also provides for the provision of 'Free Legal Aid' where it was expressly mentioned that the "state shall not deny justice to any citizen by reason of economic or other disabilities".

In the case of *Madhav Hayawadanrao Hoskot vs State Of Maharashtra*<sup>18</sup>, it was observed that "If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court under Art. 142, read with Arts. 21, and 39A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice."<sup>19</sup>

Article 39A of the Indian Constitution expressly states that the state shall promote justice by providing free legal aid by suitable legislation and schemes or in any other way possible to ensure justice is not denied to any citizens by reason of economic or other disabilities.

## **RIGHT TO FAIR TRIAL**

In a country like India where exists a vast variety of people from different regional and ethical backgrounds, the Right to Fair Trial becomes a significant part to mitigate the biasness or favoritism on part of the prisoners by looking at their background. Article 21 renders the Right to a fair trial as a part of the life and personal liberty of a person. Here, the principle of 'Audi alteram partem' and 'Nemo judex causa sua' is followed which means a court must give a reasonable opportunity to both the sides to speak their part and no one should be a judge in its own case respectively. In one of the prominent cases of the Supreme Court, *Rattiram & Ors vs State Of Madhya Pradesh*<sup>20</sup>, it was observed by the court that a 'Fair Trial' is the heart of criminal jurisprudence and is an important facet of a democratic polity. It further stated, "the denial of a fair trial is a crucifixion of human rights". The court in *Willie Slaney v. The state of Madhya Pradesh*<sup>21</sup> raised the question of "whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself". Therefore, It's not

<sup>17</sup> 1979 AIR 1369, 1979 SCR (3) 532

<sup>18</sup> 1978 AIR 1548, 1979 SCR (1) 192

<sup>19</sup> *ibid*

<sup>20</sup> *Rattiram v. State of Madhya Pradesh*, AIR 2012 SC 1485.

<sup>21</sup> *Willie (William) Slaney vs The State Of Madhya Pradesh* on 31 October, 1955

just a constitutional right but also a basic human right of a person for a fair trial. Where the court is impartial and the accused is given a reasonable and proper opportunity to express their part.

## **PRISONERS AND THE RIGHT TO PRIVACY**

*“Right to privacy is born with human being and extinguish with human being.”*

- Justice Abhay Manohar Sapre

The Right to Privacy is a very significant part of Article 21 and is a Fundamental Right under the Constitution of India. In the landmark judgement of K.S. Puttaswamy case it was observed that “Privacy is intrinsic to freedom, liberty, and dignity. The sanctity of privacy lies in its functional relationship with dignity. Privacy ensures that a human being can lead a life of dignity by securing the inner recesses of the human personality from unwanted intrusions.”<sup>22</sup> Over the years, the ‘Right to Privacy’ is evolving in India. In one of the recent judgement in the case of Dnyaneshwar S/O. Kachru Tondmal vs The State of Maharashtra 2019<sup>23</sup>, the Bombay High court has observed that illegal search by the police into the house of the petitioner is an intrusion into their privacy. Further, it stated that provisions of Section 165 CrPC are enforced when the police must undertake an investigation where no time is there to go with the lengthy process, but this should be only in an exceptional case not in every case. Section 165 of CrPC expressly lays down various steps to be followed while searching. While this was one of the aspects, the other aspect which is related to the privacy rights of the prisoners is the installation of cameras in jails, I.e., in the states like Uttar Pradesh and Delhi the order was passed for the installation of cameras not only in general places like mess or external areas but even in their personal spaces like inside the cells. This forms a big question mark that is this a violation of the Right to Privacy of the Prisoners, especially the female prisoners. This concern was raised in the well-known case of Shri Dilip K. Basu vs State of West Bengal & Ors 2015<sup>24</sup>, which relates to the custodial death and torture of the prisoners. Though to some extent, it will help regarding this, especially in the collection of evidence of custodial torture/death but it at the same time contravenes the right to privacy of the prisoners.

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<sup>22</sup> Justice K.S.Puttaswamy(Retd) vs Union of India on 26 September, 2018

<sup>23</sup> AIR 2019 SC 1567

<sup>24</sup> (1997) 1 SCC 416: 1997 SCC (Cri) 92

## THE CRIMINAL PROCEDURE (IDENTIFICATION) BILL, 2022 AND THE RIGHT TO PRIVACY

The Criminal Procedure (Identification) Bill, 2022<sup>25</sup> was recently passed by the parliament. This bill seeks to replace and repeal the older the Identification of Prisoners Act of 1920, which permits and gives powers to acquire and record the measurements and photographs of the criminals and others. The bill was passed in order to authorize the investigators to record the personal information of the convicts for the purpose of investigation and identification of the criminals. According to Clause 4(2) of the bill, measurement records of the convicts will be collected, stored, and retained by the National Crime Records Bureau in digital or electronic form for 75 years. The contemporary technological advancements have reached their height and the optimum utilization of them to keep an eye on convicts was easily predictable. With the advancement in science, the bill claims that 'measurement' includes many kinds of personal data such as fingerprint, palm print, and footprint impressions along with biometric samples such as iris and retina scan, physical and biological samples and their analysis referred in Section 53 and Section 53A of Code of Criminal Procedure 1973<sup>26</sup>. It will also include some kind of behavioral data such as handwriting and signatures. The bill gives powers to the magistrate to order to give measurements primarily for investigation. No doubt that the bill will enhance the efficiency of the system which will aid concerned authorities to investigate better and as a result, it will affect the conviction rate as well. The biggest concern about the bill is: Does it violates the right to privacy of the convicts? Does this intrude and hampers their privacy and liberty? Is it contrary to the constitutional provision of Article 21 and Article 20(3)?

The biological and physical sampling may include narcoanalysis, polygraph tests, and brain mapping which is unconstitutional as per Article 20(3)<sup>27</sup> which protects every accused of becoming a witness against himself and it equally violates Article 21<sup>28</sup> which guarantees the right to life, right to liberty and right to privacy of every person. It is contrary to Articles 14<sup>29</sup> and 19<sup>30</sup> which guarantee equal protection of law and equality before the law. Hence, with the advancement in technology and law, it may help the investigating agencies in many ways to

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<sup>25</sup>[2376LS Ev Criminal Procedure \(Identification\) 93 of 2022.p65 \(prsindia.org\)](https://prsindia.org/2376LS-Ev-Criminal-Procedure-Identification-93-of-2022.p65)

<sup>26</sup> Section 53, The Code of Criminal Procedure, 1973.

<sup>27</sup> INDIA CONST. Art. 20(3)

<sup>28</sup> INDIA CONST. Art. 21

<sup>29</sup> INDIA CONST. Art. 14

<sup>30</sup> INDIA CONST. Art. 30



operate and investigate smoothly and easily but it will not be very smooth on the part of prisoners. They are also human beings and being a human, they have some rights in their personal life. The fundamental right to privacy is very much applicable to them and their interest must be protected.

## **RIGHT AGAINST CUSTODIAL VIOLENCE**

*‘Potentially, a government is the most dangerous threat to man’s rights: It holds a legal monopoly on the use of physical force against legally disarmed victims.’*

- Ayn Rand

Custodial violence can be defined as an act of torturing a person under police or judicial custody which can sometimes even leads to the death of the victim. For ages, this has been a matter of concern, the police, in order to get the information about the crime or to get confession from the accused, use many illegal and immoral techniques like third-degree torture, fake encounters, custodial rape, etc. Despite being an alarming issue, this continues to exist in major parts of the world. The horrific act of custodial violence was seen at the time of the pandemic as well, in one of the most recent cases which shook the entire country. In Jayaraj and Bennick's case in Tamil Nadu<sup>31</sup>, the father and the son duo were beaten to death when they were under police custody just because they have not adhered to the covid guidelines and had opened their shop beyond curfew timings. This case has been a spine chiller for the entire country.

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There are remedies in the law against custodial violence, in order to protect the persons who become victims of custodial offences. Some of them are:

Section 330, 331, and 348 of the Indian Penal Code<sup>32</sup> criminalize custodial torture or grievous hurt which was caused to extract information from the victim. Section 376(2) of the IPC<sup>33</sup> criminalizes the offence of custodial rape done by police or any other staff of the jail. In the case of Tukaram and Another v. State of Maharashtra<sup>34</sup>, popularly known as the ‘Mathura Rape Case’, where a Mathura young tribal woman from Maharashtra was brutally raped by Two policemen in 1972, this spine-chilling incident shook the entire country. Section 25 and 26 of

<sup>31</sup> Case Number: SC/0000470/2020

<sup>32</sup> Section 330, 331 & 348 of IPC

<sup>33</sup> Section 376(2) of the IPC

<sup>34</sup> 1979 AIR 185, 1979 SCR (1) 810



the Indian Evidence Act<sup>35</sup> invalidates any kind of confessions given to a police officer under police custody, except in special circumstances when it is given in the presence of a magistrate. Section 76 of CrPC<sup>36</sup> says that the person arrested must be brought to the court without delay, which should not exceed 24 hours of time exclusive of the time necessary for travel. Section 7 and 29 of the Indian Police Act 1861<sup>37</sup> were enacted to put penalties on police officers who are not performing their duties diligently and are violating constitutional safeguards. According to the report published by National Crime Records Bureau (NCRB) in the Annual Crimes India publication<sup>38</sup>, it was clearly revealed the number of deaths that takes place under police custody each year. “Between 2001 to 2018, a total of 1,727 persons have died in police custody including those in judicial remand and those who have been arrested but not yet produced before the court. On average, 96 persons in custody have lost their lives annually. In 2010 and 2018, the number was lowest at 70, while 2005 reported the highest number of such cases at 128 in these 18 years. In the last five years, between 2014 to 2018, 452 persons had lost their lives, accounting for 26% of such deaths in 18 years.<sup>39</sup>”

Thus, in spite of the statutory and constitutional provisions given in IPC and CrPC, the heinous crime of custodial violence is still being practiced in many parts of the country. The police force still engages in illegal and unconstitutional practices and stricter penalties should be implemented in order to save the victims from being tortured, raped, or murdered under police custody.

## **PRISONERS AND MENTAL HEALTH**

The awareness regarding the mental health of individuals has drastically multiplied after the pandemic hit the world. During the time of lockdown, when people all over the world were forced to live in their houses confined, they were experiencing many kinds of mental health issues like depression and anxiety. Being a human being, socializing and meeting friends and family is our very nature, and when someone restricts you to do so and confines you within four walls, this becomes a matter of concern, being all isolated and lonely people's mental

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<sup>35</sup> Section 25 & 26 IEA

<sup>36</sup> Section 76 CrPC

<sup>37</sup> ACT NO. 5 OF 1861 [ 22nd March, 1861] An Act for the Regulation of Police.

<sup>38</sup> <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf>

<sup>39</sup> [2376LS Ev Criminal Procedure \(Identification\) 93 of 2022.p65 \(prsindia.org\)](#)

health starts deteriorating and then as result words like depression, anxiety and suicidal thoughts are no longer alien to them.

Prisoners go through the same, in fact, even worse, they don't have even the basic amenities which a person enjoys at their home. Since they spent most of their time behind the bars, they are socially isolated and confined in a real sense. There are many reasons which can impact the mental health of the prisoners like unhygienic and unsanitary living conditions, a sense of being lonely and captivated as they are separated from their loved ones, bad infrastructure, and overcrowding. In one of the surveys, it has been observed that the prisoners suffer three times more mentally than the normal civilians. Also, according to the data published by NHRC<sup>40</sup>, the suicide rate of prisoners is comparatively higher than that of normal civilians. The Mental Healthcare Act of 2017<sup>41</sup> has recognized this issue and has given significant provisions regarding this. According to Section 18<sup>42</sup> of the act, everyone has a right to mental healthcare and treatment run or funded by the government. Section 33<sup>43</sup> and 45<sup>44</sup> of the act state establishment of central and state mental health authorities. According to Section 73,<sup>45</sup> the state authority should constitute mental health review boards. According to Section 328<sup>46</sup> & 329<sup>47</sup> of CrPC, the accused should be granted bail if he/she was found to be a lunatic and is under trial. Though the legislature has taken cognizance of the issue still there is a huge gap between the legislation and its actual implementation. People are now aware of the alarming issue of mental health and its impact on our life but still, there is a long way to go. The practical implementation of the law and policies in a real sense will take time.

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## **PRISONERS AND OVERCROWDING OF PRISONS**

Prison Overcrowding is one of the biggest challenges which is faced not only in India but in many countries around the world, the overcrowded jails are not only making it difficult for the prisoners to live but also adversely affecting their health and hygiene. The prisons are now holding a large proportion of prisoners than their actual capacity, this is really dangerous for the inmates as it can give rise to numerous problems like unfit sanitary conditions and

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<sup>40</sup> [Suicide in Prison, NHRC India 2014 Report](#)

<sup>41</sup> [The Mental Health Care Act 2017](#)

<sup>42</sup> Section 18, MHA 2017

<sup>43</sup> Section 33, MHA 2017

<sup>44</sup> Section 45, MHA 2017

<sup>45</sup> Section 73, MHA 2017

<sup>46</sup> Section 328 CrPC

<sup>47</sup> Section 329 CrPC

malnutrition and in the long run, it may affect the mental health of the prisoners as well. According to the report by Prison Statistics of India<sup>48</sup>, the occupancy rate of the Indian prison from 2011 to 2022 has gone up by 24.4% from 3.33 lakhs to 4.14 lakhs and on the other hand, the number of inmates has also increased but by a larger proportionate 31% from 3.73 lakhs in 2011 to 4.89 lakhs in 2020. Therefore, these percentages depict the need for adequate accommodation facilities for the prisoners, it is one of the most alarming concerns which needs to be addressed in the best way possible.

### **STATUS OF WOMEN PRISONERS IN INDIA: PATRIARCHY, JAIL, AND STRUGGLE**

The survival of women under incarceration is difficult as compared to the male inmates, they have to deal with lots and lots of hardships that are unique to females like health issues related to menstruation, incarcerated pregnancies & childbirth. According to the report published by Prison Statistics of India 2020<sup>49</sup>, “A total of 20,046 female inmates were lodged in various prisons at national level out of which only 15.4% (3,084) female inmates were lodged in Women Jail as on 31st December 2020. Around 84.6% of total female inmates (16,962) were lodged in another type of jail.” Also, the report clearly states that the women's jails which are exclusively meant for women exist only in 14 states/UTs. Hence, the ignorance regarding the well-being of women prisoners by the concerned authorities is visible here. Many times, it has been seen that women are more vulnerable than men in terms of being sexually objectified. The issue of custodial rape came into the limelight in the late 1970s, In *Tukaram and others vs. the State of Maharashtra*, popularly known as the Mathura Rape case, a minor girl Mathura was brutally raped by a constable and a head constable. Women constitute 4.3% of the total number of prisoners, which is a total of 17,834 women. The majority of the women prisoners are from poor economic backgrounds and backward societies, some of them are already malnourished and are facing some health issues. According to the Model Prison Manual<sup>50</sup>, only lady doctors shall be allowed for the medical care of the female inmates also facilities like ECG, ultrasound, and sonography should be made available in the prison, and a gynecologist with sufficient nurses shall be available for take care of the maternity needs of the female prisoners. A women prisoner is allowed to keep her child up to the age of 6 years if no proper arrangement of

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<sup>48</sup> [Prison Statistics India 2020 \(ncrb.gov.in\)](https://prisonstats.gov.in/)

<sup>49</sup> *ibid*

<sup>50</sup> Bureau of Police Research and Development of India, Model Prison Manual 2003

keeping that child outside is made. Hence, a proper facility must be provided by the government for the well-being of the children growing up in the prisons.

## CONCLUSION

The prisoners of a country are the most vulnerable group whose rights need to be protected by the law of the nation. The laws related to the prisoners are evolving in India, special provisions should be made to empower them and to make them feel protected. Special concern should be given to the betterment of their physical and mental health so that when they are out in the real world after completing their term of imprisonment, they can restart their life afresh. Stricter laws related to custodial violence shall be enforced for the safety of the prisoners. Proper vocational training should be given to the prisoners so that they can become productive in the cell. Still, there is a long way to go for Indian prisons to reform properly.

