

# A Study of Right to Mental Health of Prisoners in India: Legal Intricacies and Concerns

**Shivam Kumar**

PhD Research Scholar, University of Lucknow, U.P., India

## Abstract

Since the foundation of the United Nations at the conclusion of the Second World War, the issue of human rights protection has been persistently addressed in numerous international human rights documents and conventions. Human rights are, in a nutshell, the fundamental, multifaceted, and inalienable rights that primarily evolved from notions of self-respect. They are innate to all humans from birth and are freely accessible to everyone regardless of religion, caste, color, sex, gender, ethnicity, etc. Hence by virtue of this pervasive norm, human rights are also available even to the least dignified members of our society who usually remain detained in prisons. But it has been witnessed quite often that because of the physical and mental torture which the prisoners suffer at the hands of the prison officials and due to the poor prison health infrastructure their Mental Health care needs which is an important facet of Right to wellbeing and health is being violated continuously as a result of which many prisoners commit suicides and further become incompetent to live a healthy and dignified life whenever they are released from prisons. Prisons exemplify an inhuman cycle of psychological disorders and human rights violations. Due to the dearth of any mental support inside prisons, this situation often leads to deterioration of mental health of prisoners which can cause serious impairments and disabilities.<sup>1</sup> In India, prison-based mental health services are in a very primitive level. As a result, mental health legislations can serve as a valuable weapon for protecting the rights of detained persons suffering from a mental condition; yet, mental health regulations in India continue to fall short of addressing the mental health requirements of the prison population.

**Keywords:** mental health, prisons, human rights, mental illness, prisoners, psychologists, Mental Health Professionals.

## INTRODUCTION

*“It is said that no one truly knows a country until one has been inside its Prisons. A nation should not be judged by how it treats its highest citizens, but its lowest ones”.*

**Nelson Rolihlahla Mandela<sup>2</sup>**

It has been witnessed in various pivotal human rights research works that a hefty number of detention systems around the world are somehow at a stage of utter predicament and crisis with serious effects on prisoners, their families and eventually societies as a whole. The basic objective with which the system

<sup>1</sup> Jo Nurse, Paul Woodcock, Influence of Environmental Factors on Mental Health within Prisons: Focus Group Study BMJ Vol. 327(2003)

<sup>2</sup>Quoted in UNODC “ The United Nations Standard Minimum Rules for the treatment of Prisoners(Nelson Mandela Rules)” , General Assembly resolution 70/175, annex, adopted on 17 December 2015

of prisons came into the existence is now undermined overstretched and poorly managed. There is no debate that barring few exceptional liberties and imposition of Lawful restrictions, unlike any other normal human beings prisoners also have been conferred upon them the multifaceted, inalienable and very basic human rights which are necessary for the survival and overall subsistence of an individual and further to live a dignified life. From the plethora of Human Rights one among them is Right to health that includes the physical and mental well being and not merely the absence of any ailment or disease as recognized under the Constitution of the World Health Organization<sup>3</sup> and various other International Treaties and Declarations; and right not to contract or suffer any diseases in prison. Hence, all human beings have a highest attainable standard of physical and mental health, including prisoners. Health care for prisoners is defined as a state responsibility. Prisoners with mental illness are entitled to the same standards of health care as the rest of the community enjoys, and their health care mechanism must effectively include adequate standards of mental health care. This is true even under the revised Nelson Mandela Rules of 2015, which are regarded as a benchmark for the formation of laws and other significant conventions dealing with the right to mental health of prisoners. In summary, public health policies aim to provide everyone in society with the greatest possible living conditions so that everyone can be healthy. Unfortunately, prisoners—and particularly their mental health—are frequently overlooked in this equation. Under World Health Organization, right to health has been widely recognized as a fundamental human right that includes mental health of people. However, in the WHO Report, it was estimated that 450 million people suffer from mental health or behavioral disorders and Accounts for 12% of the global burden of disease more so in the developing countries, even more particularly among the persons detained in the prison. The high rates of mental disorders and illness among the vulnerable prison population is related to various different reasons such as the misconceived notion that people with mental illness are a kind of threat to the community, and lack of, or poor access to mental health infrastructure in prisons. besides this mental disorders also develops itself during the imprisonment as well as a consequence of prevailing circumstances such as overcrowding, various different forms of violence, lack of privacy, isolation etc in prisons. Hence there is no wrong in saying that prisons are becoming a kind of a factory and dumping ground at the same time that is manufacturing prisoners suffering with adverse mental health issues. In India although several legislative, executive and judicial measures have been taken to address the problems of poor mental health infrastructure such as the framing of the Indian mental health care act of 2017 which has repealed the earlier act of 1987, establishment of mental health hospitals and judiciary also from time to time has given various directions and guidelines in different cases ordering the government to comply with the international standards for improving the mental health services not only for general public but also for those under trials and convicts who are detained in prisons as they are highly vulnerable to mental illness as compared to general public living outside the jails. But unfortunately all these attempts have been proved to be futile and worthless till now in achieving its goals because of the two important problems the first one is the problem of implementation of the provisions and programmes which are made to improve mental health services and infrastructure inside prisons and other detention centers and secondly somehow all these laws, regulations programmes and schemes which are formulated by the government for upholding the right to mental health which is implicit is article 21 of the Indian constitution are general people centric and has not focused much on the problems of those who are

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<sup>3</sup>Preamble to the Constitution of the World Health Organization, Adopted on 22<sup>nd</sup> July 1946.

detained in prisons because of the very generic stigma of bad man attached to them. Therefore all this reflects the procedural loopholes and implementation mechanisms problems prevailing in the current mental health care act of 2017 its related policies and current prison framework and infrastructure towards addressing the mental health needs of prisoners as a whole.

Human rights and mental health care for the vulnerable prison population require legislation and policies that provide support. In India, the legal reform in mental health care has been primarily reactive. The lack of trained human resources is one of the greatest obstacles to effective mental health care delivery in India, as it impedes its implementation despite the fact that recent legislative and policy developments offer optimism for proactive reform. Hence Mental health legislation which presents a statutory framework to safeguard the rights of mentally ill prisoners is not satisfactory as it stands today because of the insensitiveness towards the needs of mentally ill prisoners and various other reasons that are causing a serious violation of human rights of the them and lastly current prison system is one of the major causes for the high incidence of mental illness among the incarcerated persons that needs immediate reformation at the hands of the authorities and government.<sup>4</sup>

### **International Legal Framework and documents addressing the different dimensions of the Right to Mental Health of Prisoners**

*“Without health life is not life; it is only a state of languor and suffering- an image of death”*

**Buddha<sup>5</sup>**

It is true that in comparison to all the vulnerable groups that face the social stigmatization, persons with mental disabilities are perhaps the most under privileged and disadvantaged. And this whole situation becomes a disaster when the person suffering from mental illness is bound to be detaining in prisons without proper treatment.<sup>6</sup> Hence in order to remedy these chronological and enduring problems several international and global health policies and laws were formulated keeping in mind the individual rights principles and equivalent philosophy of justice and righteousness. These concepts have also been defined under the Indian Mental Health care act of 2017 which will be discussed in later chapters of the Article. But first it is necessary to discuss the numerous charters and declarations associated with Mental Health, its right based approach dimensions along with the problem of mental illness associated with it keeping in mind the vulnerable prison population. All international treaties, including the Universal Declaration of Human Rights, the United Nations Declaration on the Rights of the Disabled and the Mentally Retarded, and the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, promulgated or adopted, as the case may be, by the General Assembly, state that such individuals shall be treated on an equal footing with all other people while maintaining their inherent dignity and self worth.<sup>7</sup> The U.N. Charter affirms the essentiality of a universal respect for, and observance of, human rights and fundamental freedoms for all without distinction... and in the context of mentally ill persons it includes both their privileges but also the right

<sup>4</sup> WHO Resource Book on Mental Health, Human Rights and Legislation, World Health Organization 2005

<sup>5</sup> Brainy Quote, —Buddha Quotes, available at: <http://www.brainyquote.com/quotes/authors/b/buddha.html> (Visited on April. 11, 2023).

<sup>6</sup> Lawrence O. Gostin and Lance Gable, *Global Mental Health Changing Norms, constant Rights*, 9 Geo. J. Int'l Aff. 83 (2008).

<sup>7</sup> Khawaja Abdul Mutaquim, *Protection of Human Rights: National and International Perspectives* 138 (edn.1st, 2004).

of protection against infringement of their right to mental Health. Next the Universal declaration of human rights (UDHR) adopted on 10 December 1948<sup>8</sup> that provided for 30 important fundamental rights which formed the basis for a democratic society mentions in its preamble including article 1 that All human beings are born free and equal in dignity and rights and by virtue of this Grund norm even mentally ill prisoners are also on the very same pedestal as the normal human beings to receive the essential health care services including mental healthcare as ensured in article 25 dealing with right to health along with a binding effect provision as given in article 28 of the declaration. Article 6 of the ICCPR provided that every human has the inherent right to life which needs effective protection by the instrument of law and further no one shall be arbitrarily deprived of his life. Furthermore, article 7 said that no one shall be subjected to torture or cruel, inhuman, or humiliating treatment or punishment because mental torture ultimately leads to the degradation of the inmates' mental health.

Further Article 26 of ICCPR provides a binding mechanism by the establishment human rights committee of the U.N. which is responsible for ensuring that the each signatory like for example India that acceded to this covenant on 10<sup>th</sup> April 1979 must comply with the above mentioned articles in regard to effective protection of prisoners from any kind of torture that leads to mental illness.

Next comes the International covenant on economic, social and cultural rights 1966 which was also ratified by India in 1979 of which article 12 referred to Right to health in inspirational terms as it mandated “*The right of everyone including the people with mental disorders to the enjoyment of highest attainable standard of physical and mental health*” Hence there is no doubt that it is the most important international obligation that expressly deals with the effective delivery of mental health services for everyone including those who are incarcerated in prisons.

In addition to the covenants in the international bill of rights the united nations has also adopted several standards, directions and treaties further elaborating the human right to health including the mental health but the main problem persisting in these treaties is that generally nowhere expressly the right to mental health of prisoners is discussed but it has been interpreted from the Branch of Right to health and by virtue of its application on everyone without any distinction on the basis social, cultural and economic status it becomes also applicable to the prisoners as well.

And these specific human rights treaties include **Convention against Torture of 1984** adopted by the General Assembly of the United Nations on 10 December 1984 (resolution 39/46). India signed the Convention on 14 October 1997, but has not ratified it yet.<sup>9</sup>

The convention on the rights of persons with disabilities, which was unanimously adopted by the United Nations and its optional protocol on 13<sup>th</sup> December 2006, and ratified by our country in October 2007 is the next important convention, which is also the basis of our Indian mental health care act of 2017 as it is made in accordance with and to align and harmonize with it. It elevated the movement from viewing

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<sup>8</sup>United for Human Rights, Universal Declaration of Human Rights, *available at*: <http://www.humanrights.com/what-are-human-rights/universal-declaration-of-human-rights.html> (Visited on April. 26, 2023).

<sup>9</sup>NHRC, —Core International Human Rights Treaties, Optional Protocols & Core ILO Conventions Ratified by India, *available at*: [http://nhrc.nic.in/documents/india\\_ratification\\_status.pdf](http://nhrc.nic.in/documents/india_ratification_status.pdf) (Visited on May 6, 2023).

people with disabilities as objects of charity and medical treatment to subjects with rights, capable of claiming those rights and making decisions for their lives based on their free, informed consent, as well as being active members of society.

At last there are also several principles and standards that specifically deals with the ensuring proper mental health care services for the prisoners all over the world that includes “*Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, 1991*” which includes 25 principles that not only cover the definition of mental health but also provides for protection of rights of offenders with mental disorders without any discrimination. Further last but not the least is the **United Nations Standard minimum rules on the treatment of prisoners also known as the “Nelson Mandela Rules” of 1955 that was adopted in 2015** by UNGA by expanding the rules in a positive manner in honour of arguably the most celebrated prisoner of the twentieth century. All this articulate standards of medical care for persons in detention. Each of these instruments, and therefore the standards they define, has been adopted by the UN General Assembly.<sup>10</sup> Nevertheless these standards and rules exerts a political and moral influence but none has a binding effect within international Law and are mostly persuasive in nature but even after that they have found legal expression within domestic laws and judgments of the municipal courts that is why it very important to understand and study the legislative, executive and judicial mechanisms and instruments of India dealing with Right to mental health specifically in reference to vulnerable prison population which has incorporated these international standards, guidelines and important provisions of various different conventions.

### **Analysis of the Constitutional, Legislative, administrative and Judicial Framework & attitude dealing with Right to Mental Health of prisoners**

Human Rights protection is an essential inevitability for the potential expansion of individual personality, which contributes in the progress of the nation as a whole and it is the responsibility of non other than the state to maintain the structure of social order by creation and execution of laws without which a better ordered civilized social life would not be doable.<sup>11</sup> Now as far as far as right to mental health is concerned first we have to look at its parent Right from which it has originated i.e. “Right to health”. Although it was not expressly mentioned as a fundamental right under part 3 of Indian constitution and neither the right to mental health but various different directive principles of state policy in part 4 of constitution such as Article 39 clause (e) to (f), article 41, article 42, and article 47 etc together provided for a constitutional framework for Right to health and ultimately that included the mental health perspective as well for all human beings included incarcerated persons by virtue of international obligations of the covenants and conventions which India has signed and ratified. Yet this framework had no tooth or binding mechanisms as these directive principles are not enforceable in the courts of law.<sup>12</sup> But as health care for all including prisoners who are the most disadvantaged and stigmatized section of the society is the basic need and cases of the medical negligence are coming to the fore front, there was the urgent need to expand the jurisprudence of health rights in India and there the

<sup>10</sup> See also, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985) GA Res 40/33, annex, 40 UN GAOR Supp (No 53) at 207, UN Doc A/40/53 (The Beijing Rules); United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) GA Res 45/113, annex, 45 UN GAOR Supp (No. 49A) at 205, UN Doc A/45/49

<sup>11</sup> Amartish Kaur, “*Protection of Human Rights in India: A Review*” *Jamia Law Journal* Vol 2, 23, (2017)

<sup>12</sup> *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789; *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180.

Judiciary our Supreme Court came into the picture as it successfully interpreted health right as an integral part of “Right to Life” under Article 21 of the Indian constitution which is considered as the mini constitution in itself.<sup>13</sup>

In *Parmanand Katara v. Union of India*,<sup>14</sup> The Supreme Court has taken into account a very serious issue that exists in the medico-legal sphere, such as accident instances where doctors typically refuse to provide emergency medical assistance to the sufferer until legal formalities are finished. Therefore, it is his responsibility to provide medical care in order to preserve life.

Now if we look into the history of legislative and administrative steps that the Indian authorities and legislature has taken in regard to ensuring the effective mental health care delivery for the normal citizens including prisoners we find that the work in this direction begin in 1912 with the passing of Indian Lunacy Act which had a far reaching consequence and impacted the whole system of mental health administration in India.<sup>15</sup> However it was highlighted after independence that the Lunacy Act of 1912 had lived its usefulness and therefore a new draft of the mental health act was prepared in 1949 by the Indian Psychiatric society which later became the mental health Act of 1987 that came into effect in all states and UT’s in 1993 hence it replaced the act of 1912.<sup>16</sup> Later, on December 29th, 1990, State Mental Health Rules were drafted to go into effect in a state on the date the Mental Health Act, 1987, went into effect there. Each state was required under the State of Mental Health Rules to establish a State Mental Health Authority to issue licenses for the establishment of mental health care centers and to enforce minimum standards of treatment for the mentally ill.<sup>17</sup> It used psychiatric hospital in place of nursing home asylum, mentally ill person in place of lunatic and mentally ill prisoner in place of criminal lunatic and provided for custody of mentally ill persons along with legal aid to poor mentally ill criminals at state expenses. but still as society changes with the change in time and as the law is dynamic it has to adapt itself according to the changing needs of the individuals subjects otherwise it will become futile overtime and hence as a result of which review of the this mental health legislation became pivotal because at the international level the ratification of the convention on the rights of persons with disabilities in October 2007 by India, and non addressing of the human rights issues and mental health care delivery by the act of 1987 led to the enactment of new Indian mental healthcare act of 2017 by Indian parliament that aimed to provide for mental health care services for everyone including prisoners and further ensuring the right to life with utmost dignity for everyone.<sup>18</sup>

Another important legislation in this regard is the Rights of the persons with disabilities act 2016 which increased the kinds of disabilities from 7 to 21 and included mental illness and mental disorder as a kind of disability.

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<sup>13</sup> “No person shall be deprived of his life or personal liberty except according to procedure established by law” See Durga Das Basu, *“Indian Constitutional Law”* (Kamal Law House, Kolkata, 2011) at p. 262.

<sup>14</sup> AIR 1989 SC 2039, See Vincent vs Union of India [(1987) 2 SCC 165, Bandhua Mukti Morcha vs Union of India (AIR 1984 SC 802), Paschim Banga Khet Mazdoor Samiti Vs State of West Bengal (AIR 1996 SC 426).

<sup>15</sup> Somasundaram, “The Indian Lunacy Act, 1912, the Historic Background”, *Indian J Psychiatry* 1987 Jan; 29(1), pp. 3-14.

<sup>16</sup> Dr. Prateek Restage, “Mental Health Act, 1987 - An Analysis” *JIAFM*, 2005; 27 (3): 176-179

<sup>17</sup> B.S Chavan, Nitin Gupta, *et. al.* (eds.), *Community Mental Health in India* 35 (2012).

<sup>18</sup> B. S. Web Team, “Mental Healthcare Bill Passed in Parliament: All You Need to Know” , *available at:* [http://www.business-standard.com/article/current-affairs/mental-healthcare-bill-passed-in-parliament-all-you-need-to-know-117032800401\\_1.html](http://www.business-standard.com/article/current-affairs/mental-healthcare-bill-passed-in-parliament-all-you-need-to-know-117032800401_1.html) (Visited on May 21, 2023).

besides this our criminal code including Indian penal code 1860, code of criminal Procedure 1973 and evidence act 1872 also provides for protective provisions in regard to those suffering with mental illness. Further the new Model prison Manual of 2016 prepared by Bureau of Police Research and Development (BPRD) that replaced the earlier prison Manual of 2003 that requires the states to adhere to it by adopting it into their own prison manuals as there had been some groundbreaking changes in circumstances have been witnessed due to the availability of new technology since 2003. It includes a total of 32 chapters dealing with plethora of issues such as medical care, education of prisoners, after care and rehabilitation of prisoners.

Now looking at the judicial attitude towards upholding and ensuring the Rights of the mentally ill prisoners in India it is very evident that in fact it is our judicial system who by virtue of their judgments and decisions has given directions, and guidelines in enforcing the right to mental health of prisoners and has acted as the flag bearer of making sure that effective mental health services must be provided to every prisoner be it an under trial or convict and laws such as the mental healthcare act 2017 should be implemented properly. In *Ramamurthy v. State of Karnataka* AIR 1997 SC 1739, the Supreme Court of India strongly emphasized the need to bring uniformity in laws and regulations governing the prison system in India.

Regarding the 1382 Indian prisons that have inhumane conditions The letter petition was submitted to address the state of prison reforms in India and to request directives; as a result of the directives from the court, the Ministry of Home Affairs developed the New Model Prison Manual, 2016 Home Affairs.<sup>19</sup> In the case of *Accused X vs State of Maharashtra* (2019) while delivering the judgment, Justice N.V. Ramana stated that prisons could be challenging environments. A prisoner's mental health may be affected by congestion, violence, isolation, and lack of familial affection. The three-judge panel ruled that mental illness could be a mitigating factor in death penalty commutation cases after conviction. Additionally, the court ordered state governments to construct a robust mental health infrastructure in prisons.<sup>20</sup> Hence all this provides for a kind of a legal framework that currently exists in our country in regard to Right to Mental Health especially in regard to vulnerable prison population coming under the branch of Right to health embedded under article 21 of constitution.

### **Critical Appraisal of the Existing Legal framework of Right to Mental Health of Prisoners with special reference to the poor prison Infrastructure of Uttar Pradesh**

One of the very basic objectives of any research work is to either discover or find out a new area of study along with a possible solution or to find out the loopholes in the existing legal mechanism which are with a passage of time becomes obsolete or not able to meet the needs of the dynamic society. And there the researchers usually help the legislators in understanding the problem persisting in their arsenal which needs immediate positive reforms. Now as far as the existing Indian legal framework addressing the mental health issues and needs of incarcerated persons are concerned, it along with the entire prison infrastructure now requires a complete overhauling and careful scrutiny because the recent data and reports which used to work on these issues has described a very negative picture of how the prisoners are

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<sup>19</sup> AIR 2016 SC 700

<sup>20</sup> AIR 2019 SC 241

being treated in prisons and their mental health needs and services is a becoming a farfetched idea as there is no doubt in upholding this point that Prison populace has higher vulnerability towards mental illness than others and The current prison system is one of the major causes for the high incidence of mental illness among incarcerated persons (under-trials and convicts).

National Crime Record Bureau (NCRB) Prison Statistics India 2019 identified a total of 1350 prisons at the national level with an actual capacity of 4,03,739 prisoners but the actual prisoners detained in prisons at the end of the year on 31<sup>st</sup> December 2019 is 4,78,600 with an occupancy rate of 118.5%. The increase in number of prisoners from 2018 is of 2.69% during this period.

Uttar Pradesh has reported the highest capacity in their jails (capacity of 60,340 inmates in 72 jails contributing 14.95% of total capacity) but it has also reported the highest number of prisoners (1, 01,297) in its jails contributing 21.2% of the total number with an occupancy rate of 167.9% and from this data the problem of overcrowding which ultimately leads to poor prison mental health infrastructure comes on the fore front. The occupancy rate of Uttar Pradesh stands on second number just after Delhi which had an occupancy rate of 174.9% at the end of 31<sup>st</sup> December 2019.

Out of the Total 1, 44,125 convicted prisoners as on 31<sup>st</sup> dec 2019 Uttar Pradesh has reported the maximum number of convicts (19.2%, 27,612 convicts) in the country. it has also reported the highest number of under trials (22.2%, 73,418 Under trials) in the country out of the total 3,30,487 prisoners.

In 2019 a total number of 1775 deaths occurred in the prisons of the country out of which 1544 were natural deaths and 165 were unnatural deaths including suicide which reflected an increase of 10.74% from 2018 and all this situation is presenting a picture that one of the major reasons behind the suicides in prisons is the poor mental health and illness of the prisoners which is not getting properly addressed by the prison authorities as they are not having adequate infrastructure which includes the mental health professionals and psychiatrists availability as According to 2019 prison statistics data, there is a need for 13,500 psychiatrists but only 3,827 are available, and a need for 20,250 clinical psychologists but only 898 are accessible in our 1350 prisons around the country. In one recent case Hon'ble Justice Rajiv Sharma remarked that ***"A prisoner may emerge from the prison not only without job skills, but also incapacitated for future work because of severe and lasting physical and mental health issues."***<sup>21</sup> Now expressly the mentally ill prisoners is concerned as per the prison statistics of 2019 A total of 7,394 inmates were reported as suffering from mental illness out of total 4,78,600 inmates lodged in various jails in the country as on 2019 accounting for 1.5% of total of such inmates. And in this the maximum number of mentally ill prisoners belonged to the state of U.P. i.e. 1626 inmates out of which 754 were convicts, 865 were under trials and 7 were detunes. and this shows that in all states and union territories the prisoners of Uttar Pradesh are facing the substantial mental health disorders and the reasons behind this mainly includes the problem of overcrowding, substance use disorders, poor prison infrastructure, lack of adequate training in regard to mental health services to the prison officials, lack of mental health professionals and doctors in proportion to the prisoners, lack of privacy, insecurity about future prospects, delay in conducting the trial, Insubstantial food and deficiency in communications etc are

<sup>21</sup> Surendra Singh Sandhu v. State of Uttarakhand and Others (AIR 2017 Uttarakhand High Court)



some of pivotal reasons behind this rising violation of mental health service rights available to the prisoners.<sup>22</sup> Another important problem or issue which the prisons in India is facing since the time immemorial is the problem of Torture and cruel ill treatment in prisons which consequently leads to the deterioration of the mental health of prisoners because generally prisons are used as a dumping grounds for people suffering with mental disorders and there these disorders usually go undiagnosed and untreated and because till now India has not ratified the United Nations convention against torture 1984 and subsequently has not formulated any domestic legislation addressing the needs of those who mainly suffer this problem of torture and ill-treatment, this vicious evil is still trapping the prisoners of our country in the form of third degree tortures and other forms of violence mainly for the purposes of extracting confessions etc. although the law commission of India has several times directed the governments to ratify the convention against torture and even proposed for the life term in jails for the public servants convicted of the offence of torture infliction but still the Indian government and legislators are adamant upon their point of non- ratification of the convention because according to them ratification would open India to superior global meddling and scrutiny. Therefore on the basis of above mentioned requisite statistics and data reports it can be rightly said that even after the existence of the mental health legislations and other rules, regulations and desired infrastructure for providing the mental health service in prisons still the stigma and mental health disorders among prisoners is very persisting which brings forward a need to reform the entire legal system and physical infrastructure of mental health delivery for prisoners in India and specifically in the state of Uttar Pradesh.

## CONCLUSION, SUGGESTIONS AND WAY FORWARD

There is no question on this particular fact that the fortification of the rights of mentally ailing prisoners who are considered as the most inferior, downtrodden and stigmatized section of our society is extremely pivotal in the human rights discourse in a self-governing country like India where the rule of law and equality before law is the driving force of the government. hence it is a kind of sin qua non for the establishment of a proper welfare oriented democratic order in the state where not only the abled but disabled & inferior incarcerated persons also receive the basic necessities of life including health care services which includes mental health amenities as well.

However the current contemporary situation of the Indian prisons as per the reports of NCRB and project 39 A along with other vital institutions as we have discussed above reflects a slightly negative picture of the current mental health services prevailing in our prisons which needs adequate reforms because some how our current prison infrastructure is not sufficient to meet up the standards set up in various international instruments and domestic legislation and in addition to that it is also evident that most of the laws were either framed during the colonial period or their origin can be traced to the period, British influence is clearly visible.<sup>23</sup> According to the International Journal of mental health systems The IMHA addresses 96/175 (55.4%) of the examined WHO-RB standards. Taking into consideration other pertinent Indian legislation, 118/175 (68.0%) of the standards are mentioned in Indian law. Important areas of low concordance include the rights of families and competence and guardianship, non-protesting patients and involuntary community treatment, and there are no proper guidelines for the level

<sup>22</sup> WHO Resource Book on Mental Health, Human Rights and Legislation, World Health Organization (2005)

<sup>23</sup> Chowdhary Laxmi Narayana and Deep Shikhalin, "Indian legal System and Mental Health", Indian Journal of Psychiatry (2013); 55:177-81.

of training or category of professionals required to diagnose mental illness.<sup>24</sup> Prisons can either be incubators for aggressive ideologies or it can become the institutions for positive rehabilitative reforms.<sup>25</sup> Therefore the approach of the prison officials should be like that of the physicians in the hospitals so the prisoners then would be able to consider detention officials as their friends and can also share their mental illness issues and problems of depressions and disorders with them.

Apart from that addressing the mental health issues in prisons is not only important for humanizing the worth and life of prisoners suffering with psychological disorders but it is equally important for the prison employees as well who face difficulties in demanding working environments for all levels of staff hence a prison Being open to and advocating for the mental health needs of inmates makes a prison more likely to be a place that boosts staff morale and mental health, and this should be one of the main goals of good prison administration. Further the community in addition to the government and administration can also a prime role in improving the mental services inside prisons and here the role of the non- governmental organizations becomes very important that can engage mental health professionals and other important stakeholders in unifying the efforts of the government by educating and changing community attitudes towards mental ill prisoners and thus advocating for the human rights of the people with mental illness.<sup>26</sup>

In addition to this if we look into the legislative setup and its execution by the administrative authorities it is quite evident that although the Indian mental health care act 2017 made some important provisions for improving the conditions of mentally ill prisoners in our country but still it has not been proved fruitful as many states including Uttar Pradesh has not till yet set up a proper state mental health authority as provided for under section 45 of the act which provides that Every State Government shall, within a period of nine months from the date on which this Act receives the assent of the President, by notification, establish, for the purposes of this Act, an Authority to be known as the State Mental Health Authority as a result of which the mental health review board which is constituted under Section 73 by the state authority has also not been constituted till now which is mandated to perform the function of jail visits and inspection and to seek clarifications from the medical officer in charge of the prison. further Section 103(6) of the Indian mental health care act 2017 specifically dealing with prisoners with mental illness which states that the appropriate government shall setup a mental health establishment in the medical wing of at least one prison in each state that needs to be registered with the state mental health authority but as the state authority is not currently functioning , the system of checks and balances for the prisons has been disturbed as there is no superior controlling authority existing in the state for monitoring the working of the mental health establishments and review boards. Hence this problem needs the urgent attention of all the three organs of the government otherwise the provisions addressing the mental health needs of the incarcerated persons will become futile.

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<sup>24</sup> World Health Organization. WHO resource book on mental health, human rights and legislation. Geneva: World Health Organization; (2005).

<sup>25</sup>Shane Bryan, *Radicalization and de-radicalization in prison – What should we do with violent extremist offenders?* London: Penal Reform International (2014).

<sup>26</sup> Hanigan B. Mental health care in the community: An analysis of contemporary public attitudes towards, and public representations of, mental illness. *J Mental Health* 1999;8:431-40

Therefore collectively there is a need to ensure the availability of psychosocial support and rationally prescribed psychotropic medication for the prisoners suffering with mental disorders, essential training to the staff should be provided including the prison administrators, imparting of education to prisoners and their families on mental health issues with a view to reduce stigma and discrimination, promotion of high standards in prison management is essential, and further ensuring that the needs of prisoners are always included in the national mental health policies and plans by using the tool of inter-sectoral collaboration.<sup>27</sup> Also the treatment of mental illness of prisoners suffering with substance use disorders is important which even after so much security and regulations finds its way into the prisons which ultimately leads to the deterioration of the mental health of prisoners in the circumstances of its non-availability. According to an NIMHANS assessment done in the Bangalore Central Prison<sup>28</sup> 79.6% of the prisoners had either mental illness or a substance use disease. After removing substance abuse, 27.6% of the population had a diagnosable mental illness. This implies that substance abuse has an impact on the mental health of convicts.

And as far as the women prisoners are concerned suffering with mental disorders, their rates of suffering with psychological distress and mental health problems are much higher and they are more vulnerable to neglect, violence and sexual abuse as compared to male prisoners. Therefore it is pivotal that their privacy and dignity must be maintained in prisons, plus regular health checkups along with peer help groups must be there for them to deal with the stressful situations inside the prisons. The prison authorities should also work towards ensuring the de-addiction counseling, family counseling, vocational and behavioral rehabilitation<sup>29</sup>

The main objective behind bringing forward the concept of detention for the prisoners must be based on the reformatory theory that should include rehabilitation and treatment programmes instead of deterrent punishment. When offenders are released back into the community, they must be able to lead productive, law-abiding lives. Keeping this in mind, the negative effects of incarceration should be mitigated; mental health should be maintained and promoted in all detention facilities, whether a local penitentiary or a borstal school. There is a renowned proverb: *“If you want to have an idea of the life standard of a people, peep into their washroom”*. The similar goes for the individual civilization and Dostoyevsky rightly suggests, *“The degree of civilization in a society can be judged by entering its prisons”*.<sup>30</sup> A failure by the prison administration to turn an offender into a law-abiding citizen would be both an expensive oversight and a potential threat to society. The financial cost of recidivism is substantial (cost of re-incarceration and direct cost of criminal behavior), as well as the human suffering it causes or ultimately inflicts upon.<sup>31</sup>

<sup>27</sup>Poreddi V, R, Reddemma K, Math SB. People with mental illness and human rights: A developing countries perspective. *Indian J Psychiatry* 2013; 55:117-24.

<sup>28</sup>Math SB, Murthy P, Parthasarathy R, Kumar CN, Madhusudhan S., *Mental health and substance use problems in prisons*. Bangalore: NIMHANS; (2011).

<sup>29</sup>UNODC 2009. Women's health in prison; correcting gender inequity in prison health. Pub: World Health Organization. (Kyiv Declaration on Women's Health in Prison) Available online at [http://www.unodc.org/documents/commissions/CND-Session51/Declaration\\_Kyiv\\_Women\\_60s\\_health\\_in\\_Prison.pdf](http://www.unodc.org/documents/commissions/CND-Session51/Declaration_Kyiv_Women_60s_health_in_Prison.pdf) (Accessed on May 20, 2023).

<sup>30</sup>Peter Young, *the Prison Cell: The start of a better approach to prison management*. ASI (Research) Limited, 1987. P.4

<sup>31</sup>Quaker Council for European Affairs. *The social reintegration of ex-prisoners in Council of Europe Member States*. (2011) [http://www.cepprobation.org/uploaded\\_files/rprt-reintegration-full-en-may-2011.pdf](http://www.cepprobation.org/uploaded_files/rprt-reintegration-full-en-may-2011.pdf) accessed (May 22, 2023)

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